104TH CONGRESS, 1st Session } HOUSE OF REPRESENTATIVES { REPT. 104–204, Part 1

COMMUNICATIONS ACT OF 1995

JULY 24, 1995.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BLILEY, from the Committee on Commerce, submitted the following

REPORT

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 1555]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill (H.R. 1555) to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; REFERENCES; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Communications Act of 1995".

(b) REFERENCES.—References in this Act to "the Act" are references to the Communications Act of 1934.

(c) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

TITLE I—DEVELOPMENT OF COMPETITIVE TELECOMMUNICATIONS MARKETS

Sec. 101. Establishment of part II of title II.

"PART II—DEVELOPMENT OF COMPETITIVE MARKETS

"Sec. 241. Interconnection.
"Sec. 242. Equal access and interconnection to the local loop for competing providers.
"Sec. 243. Preemption.
"Sec. 244. Statements of terms and conditions for access and interconnection.
"Sec. 245. Bell operating company entry into interLATA services.
"Sec. 246. Competitive safeguards.
"Sec. 247. Universal service.
"Sec. 248. Pricing flexibility and abolition of rate-of-return regulation.
"Sec. 249. Network functionality and accessibility.
"Sec. 250. Market entry barriers.
"Sec. 251. Illegal changes in subscriber carrier selections.
"Sec. 252. Study.
"Sec. 253. Territorial exemption.".

Sec. 102. Competition in manufacturing, information services, alarm services, and pay phone services.

"PART III—SPECIAL AND TEMPORARY PROVISIONS

"Sec. 271. Manufacturing by Bell operating companies.
"Sec. 272. Electronic publishing by Bell operating companies.
"Sec. 273. Alarm monitoring and telemessaging services by Bell operating companies.
"Sec. 274. Provision of payphone service.".

Sec. 103. Forbearance from regulation.
"Sec. 230. Forbearance from regulation.".

Sec. 104. Privacy of customer information.
"Sec. 222. Privacy of customer proprietary network information.".

Sec. 105. Pole attachments.
Sec. 106. Preemption of franchising authority regulation of telecommunications services.
Sec. 107. Facilities siting; radio frequency emission standards.
Sec. 108. Mobile service access to long distance carriers.
Sec. 109. Freedom from toll fraud.
Sec. 110. Report on means of restricting access to unwanted material in interactive telecommunications systems.
Sec. 111. Authorization of appropriations.

TITLE II—CABLE COMMUNICATIONS COMPETITIVENESS

Sec. 201. Cable service provided by telephone companies.

"PART V—VIDEO PROGRAMMING SERVICES PROVIDED BY TELEPHONE COMPANIES

"Sec. 651. Definitions.
"Sec. 652. Separate video programming affiliate.
"Sec. 653. Establishment of video platform.
"Sec. 654. Authority to prohibit cross-subsidization.
"Sec. 655. Prohibition on buy outs.
"Sec. 656. Applicability of parts I through IV.
"Sec. 657. Rural area exemption.".

Sec. 202. Competition from cable systems.
Sec. 203. Competitive availability of navigation devices.
"Sec. 713. Competitive availability of navigation devices.".
Sec. 204. Video programming accessibility.
Sec. 205. Technical amendments.

TITLE III—BROADCAST COMMUNICATIONS COMPETITIVENESS

Sec. 301. Broadcaster spectrum flexibility.
"Sec. 336. Broadcast spectrum flexibility.".
Sec. 302. Broadcast ownership.
"Sec. 337. Broadcast ownership.".
Sec. 303. Foreign investment and ownership.
Sec. 304. Term of licenses.
Sec. 305. Broadcast license renewal procedures.
Sec. 306. Exclusive Federal jurisdiction over direct broadcast satellite service.
Sec. 307. Automated ship distress and safety systems.
Sec. 308. Restrictions on over-the-air reception devices.
Sec. 309. DBS signal security.

TITLE IV—EFFECT ON OTHER LAWS

Sec. 401. Relationship to other laws.
Sec. 402. Preemption of local taxation with respect to DBS services.

TITLE V—DEFINITIONS

Sec. 501. Definitions.

TITLE VI—SMALL BUSINESS COMPLAINT PROCEDURE

Sec. 601. Complaint procedure.

TITLE I—DEVELOPMENT OF COMPETITIVE TELECOMMUNICATIONS MARKETS

SEC. 101. ESTABLISHMENT OF PART II OF TITLE II.

(a) AMENDMENT.—Title II of the Act is amended by inserting after section 229 (47 U.S.C. 229) the following new part:

"PART II—DEVELOPMENT OF COMPETITIVE MARKETS

"SEC. 241. INTERCONNECTION.

"The duty of a common carrier under section 201(a) includes the duty to interconnect with the facilities and equipment of other providers of telecommunications services and information services.

"SEC. 242. EQUAL ACCESS AND INTERCONNECTION TO THE LOCAL LOOP FOR COMPETING PROVIDERS.

"(a) OPENNESS AND ACCESSIBILITY OBLIGATIONS.—The duty under section 201(a) of a local exchange carrier includes the following duties:

"(1) INTERCONNECTION.—The duty to provide, in accordance with subsection (b), equal access to and interconnection with the facilities of the carrier's networks to any other carrier or person offering (or seeking to offer) telecommunications services or information services reasonably requesting such equal access and interconnection, so that such networks are fully interoperable with such telecommunications services and information services. For purposes of this paragraph, a request is not reasonable unless it contains a proposed plan, including a reasonable schedule, for the implementation of the requested access or interconnection.

"(2) UNBUNDLING OF NETWORK ELEMENTS.—The duty to offer unbundled services, elements, features, functions, and capabilities whenever technically feasible, at just, reasonable, and nondiscriminatory prices and in accordance with subsection (b)(4).

"(3) RESALE.—The duty to offer services, elements, features, functions, and capabilities for resale at economically feasible rates to the reseller, recognizing pricing structures for telephone exchange service in the State, and the duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale, on a bundled or unbundled basis, of services, elements, features, functions, and capabilities in conjunction with the furnishing of a telecommunications service or an information service.

"(4) NUMBER PORTABILITY.—The duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.

"(5) DIALING PARITY.—The duty to provide, in accordance with subsection (c), dialing parity to competing providers of telephone exchange service and telephone toll service.

"(6) ACCESS TO RIGHTS-OF-WAY.—The duty to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services in accordance with section 224(d).

"(7) NETWORK FUNCTIONALITY AND ACCESSIBILITY.—The duty not to install network features, functions, or capabilities that do not comply with any standards established pursuant to section 249.

"(8) GOOD FAITH NEGOTIATION.—The duty to negotiate in good faith, under the supervision of State commissions, the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (7). The other carrier or person requesting interconnection shall also be obligated to negotiate in good faith the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (7).

"(b) INTERCONNECTION, COMPENSATION, AND EQUAL ACCESS.—

"(1) INTERCONNECTION.—A local exchange carrier shall provide access to and interconnection with the facilities of the carrier's network at any technically feasible point within the carrier's network on just and reasonable terms and condi-

tions, to any other carrier or person offering (or seeking to offer) telecommunications services or information services requesting such access.

"(2) INTERCARRIER COMPENSATION BETWEEN FACILITIES-BASED CARRIERS.—

"(A) IN GENERAL.—For the purposes of paragraph (1), the terms and conditions for interconnection of the network facilities of a competing provider of telephone exchange service shall not be considered to be just and reasonable unless—

"(i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the termination on such carrier's network facilities of calls that originate on the network facilities of the other carrier;

"(ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls; and

"(iii) the recovery of costs permitted by such terms and conditions are reasonable in relation to the prices for termination of calls that would prevail in a competitive market.

"(B) RULES OF CONSTRUCTION.—This paragraph shall not be construed—

"(i) to preclude arrangements that afford such mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements); or

"(ii) to authorize the Commission or any State commission to engage in any rate regulation proceeding to establish with particularity the additional costs of terminating calls, or to require carriers to maintain records with respect to the additional costs of terminating calls.

"(3) EQUAL ACCESS.—A local exchange carrier shall afford, to any other carrier or person offering (or seeking to offer) a telecommunications service or an information service, reasonable and nondiscriminatory access on an unbundled basis—

"(A) to databases, signaling systems, billing and collection services, poles, ducts, conduits, and rights-of-way owned or controlled by a local exchange carrier, or other facilities, functions, or information (including subscriber numbers) integral to the efficient transmission, routing, or other provision of telephone exchange services or exchange access;

"(B) that is equal in type and quality to the access which the carrier affords to itself or to any other person, and is available at nondiscriminatory prices; and

"(C) that is sufficient to ensure the full interoperability of the equipment and facilities of the carrier and of the person seeking such access.

"(4) COMMISSION ACTION REQUIRED.—

"(A) IN GENERAL.—Within 15 months after the date of enactment of this part, the Commission shall complete all actions necessary (including any reconsideration) to establish regulations to implement the requirements of this section. The Commission shall establish such regulations after consultation with the Joint Board established pursuant to section 247.

"(B) COLLOCATION.—Such regulations shall provide for actual collocation of equipment necessary for interconnection for telecommunications services at the premises of a local exchange carrier, except that the regulations shall provide for virtual collocation where the local exchange carrier demonstrates that actual collocation is not practical for technical reasons or because of space limitations.

"(C) USER PAYMENT OF COSTS.—Such regulations shall require that the costs that a carrier incurs in offering access, interconnection, number portability, or unbundled services, elements, features, functions, and capabilities shall be borne by the users of such access, interconnection, number portability, or services, elements, features, functions, and capabilities.

"(D) IMPUTED CHARGES TO CARRIER.—Such regulations shall require the carrier, to the extent it provides a telecommunications service or an information service that requires access or interconnection to its network facilities, to impute such access and interconnection charges to itself.

"(c) NUMBER PORTABILITY AND DIALING PARITY.—

"(1) AVAILABILITY.—A local exchange carrier shall ensure that—

"(A) number portability shall be available on request in accordance with subsection (a)(4); and

"(B) dialing parity shall be available upon request, except that, in the case of a Bell operating company, such company shall ensure that dialing

parity for intraLATA telephone toll service shall be available not later than the date such company is authorized to provide interLATA services.

"(2) NUMBER ADMINISTRATION.—The Commission shall designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis. The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States. Nothing in this paragraph shall preclude the Commission from delegating to State commissions or other entities any portion of such jurisdiction.

"(d) JOINT MARKETING OF RESOLD ELEMENTS.—

"(1) RESTRICTION.—Except as provided in paragraph (2), no service, element, feature, function, or capability that is made available for resale in any State by a Bell operating company may be jointly marketed directly or indirectly with any interLATA telephone toll service until such Bell operating company is authorized pursuant to section 245(d) to provide interLATA services in such State.

"(2) EXISTING PROVIDERS.—Paragraph (1) shall not prohibit joint marketing of services, elements, features, functions, or capabilities acquired from a Bell operating company by another provider if that provider jointly markets services, elements, features, functions, and capabilities acquired from a Bell operating company anywhere in the telephone service territory of such Bell operating company, or in the telephone service territory of any affiliate of such Bell operating company that provides telephone exchange service, pursuant to any agreement, tariff, or other arrangement entered into or in effect before the date of enactment of this part.

"(e) MODIFICATIONS AND WAIVERS.—The Commission may modify or waive the requirements of this section for any local exchange carrier (or class or category of such carriers) that has, in the aggregate nationwide, fewer than 500,000 access lines installed, to the extent that the Commission determines that compliance with such requirements (without such modification) would be unduly economically burdensome, technologically infeasible, or otherwise not in the public interest.

"(f) WAIVER FOR RURAL TELEPHONE COMPANIES.—A State commission may waive the requirements of this section with respect to any rural telephone company.

"(g) EXEMPTION FOR CERTAIN RURAL TELEPHONE COMPANIES.—Subsections (a) through (d) of this section shall not apply to a carrier that has fewer than 50,000 access lines in a local exchange study area, if such carrier does not provide video programming services over its telephone exchange facilities in such study area, except that a State commission may terminate the exemption under this subsection if the State commission determines that the termination of such exemption is consistent with the public interest, convenience, and necessity.

"(h) AVOIDANCE OF REDUNDANT REGULATIONS.—Nothing in this section shall be construed to prohibit the Commission or any State commission from enforcing regulations prescribed prior to the date of enactment of this part in fulfilling the requirements of this section, to the extent that such regulations are consistent with the provisions of this section.

"SEC. 243. PREEMPTION.

"(a) REMOVAL OF BARRIERS TO ENTRY.—Except as provided in subsection (b) of this section, no State or local statute, regulation, or other legal requirement shall—

"(1) effectively prohibit any carrier or other person from entering the business of providing interstate or intrastate telecommunications services or information services; or

"(2) effectively prohibit any carrier or other person providing (or seeking to provide) interstate or intrastate telecommunications services or information services from exercising the access and interconnection rights provided under this part.

"(b) STATE AND LOCAL AUTHORITY.—Nothing in this section shall affect the ability of State or local officials to impose, on a nondiscriminatory basis, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, ensure that a provider's business practices are consistent with consumer protection laws and regulations, and ensure just and reasonable rates, provided that such requirements do not effectively prohibit any carrier or person from providing interstate or intrastate telecommunications services or information services.

"(c) CONSTRUCTION PERMITS.—Subsection (a) shall not be construed to prohibit a local government from requiring a person or carrier to obtain ordinary and usual construction or similar permits for its operations if—

"(1) such permit is required without regard to the nature of the business; and

"(2) requiring such permit does not effectively prohibit any person or carrier from providing any interstate or intrastate telecommunications service or information service.

"(d) EXCEPTION.—In the case of commercial mobile services, the provisions of section 332(c)(3) shall apply in lieu of the provisions of this section.

"(e) PARITY OF FRANCHISE AND OTHER CHARGES.—Notwithstanding section 2(b), no local government may impose or collect any franchise, license, permit, or right-of-way fee or any assessment, rental, or any other charge or equivalent thereof as a condition for operating in the locality or for obtaining access to, occupying, or crossing public rights-of-way from any provider of telecommunications services that distinguishes between or among providers of telecommunications services, including the local exchange carrier. For purposes of this subsection, a franchise, license, permit, or right-of-way fee or an assessment, rental, or any other charge or equivalent thereof does not include any imposition of general applicability which does not distinguish between or among providers of telecommunications services, or any tax.

"SEC. 244. STATEMENTS OF TERMS AND CONDITIONS FOR ACCESS AND INTERCONNECTION.

"(a) IN GENERAL.—Within 18 months after the date of enactment of this part, and from time to time thereafter, a local exchange carrier shall prepare and file with a State commission statements of the terms and conditions that such carrier generally offers within that State with respect to the services, elements, features, functions, or capabilities provided to comply with the requirements of section 242 and the regulations thereunder. Any such statement pertaining to the charges for interstate services, elements, features, functions, or capabilities shall be filed with the Commission.

"(b) REVIEW.—

"(1) STATE COMMISSION REVIEW.—A State commission to which a statement is submitted under subsection (a) shall review such statement in accordance with State law. A State commission may not approve such statement unless such statement complies with section 242 and the regulations thereunder. Except as provided in section 243, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of such statement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

"(2) FCC REVIEW.—The Commission shall review such statements to ensure that—

"(A) the charges for interstate services, elements, features, functions, or capabilities are just, reasonable, and nondiscriminatory; and

"(B) the terms and conditions for such interstate services or elements unbundle any separable services, elements, features, functions, or capabilities in accordance with section 242(a)(2) and any regulations thereunder.

"(c) TIME FOR REVIEW.—

"(1) SCHEDULE FOR REVIEW.—The Commission and the State commission to which a statement is submitted shall, not later than 60 days after the date of such submission—

"(A) complete the review of such statement under subsection (b) (including any reconsideration thereof), unless the submitting carrier agrees to an extension of the period for such review; or

"(B) permit such statement to take effect.

"(2) AUTHORITY TO CONTINUE REVIEW.—Paragraph (1) shall not preclude the Commission or a State commission from continuing to review a statement that has been permitted to take effect under subparagraph (B) of such paragraph.

"(d) EFFECT OF AGREEMENTS.—Nothing in this section shall prohibit a carrier from filing an agreement to provide services, elements, features, functions, or capabilities affording access and interconnection as a statement of terms and conditions that the carrier generally offers for purposes of this section. An agreement affording access and interconnection shall not be approved under this section unless the agreement contains a plan, including a reasonable schedule, for the implementation of the requested access or interconnection. The approval of a statement under this section shall not operate to prohibit a carrier from entering into subsequent agreements that contain terms and conditions that differ from those contained in a statement that has been reviewed and approved under this section, but—

"(1) each such subsequent agreement shall be filed under this section; and

"(2) such carrier shall be obligated to offer access to such services, elements, features, functions, or capabilities to other carriers and persons (including carriers and persons covered by previously approved statements) requesting such access on terms and conditions that, in relation to the terms and conditions in such subsequent agreements, are not discriminatory.

"(e) SUNSET.—The provisions of this section shall cease to apply in any local exchange market, defined by geographic area and class or category of service, that the Commission and the State determines has become subject to full and open competition.

"SEC. 245. BELL OPERATING COMPANY ENTRY INTO INTERLATA SERVICES.

"(a) VERIFICATION OF ACCESS AND INTERCONNECTION COMPLIANCE.—At any time after 18 months after the date of enactment of this part, a Bell operating company may provide to the Commission verification by such company with respect to one or more States that such company is in compliance with the requirements of this part. Such verification shall contain the following:

"(1) CERTIFICATION.—A certification by each State commission of such State or States that such carrier has fully implemented the conditions described in subsection (b), except as provided in subsection (d)(2).

"(2) AGREEMENT OR STATEMENT.—For each such State, either of the following:

"(A) PRESENCE OF A FACILITIES-BASED COMPETITOR.—An agreement that has been approved under section 244 specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities in accordance with section 242 for an unaffiliated competing provider of telephone exchange service that is comparable in price, features, and scope and that is provided over the competitor's own network facilities to residential and business subscribers.

"(B) FAILURE TO REQUEST ACCESS.—If no such provider has requested such access and interconnection before the date which is 3 months before the date the company makes its submission under this subsection, a statement of the terms and conditions that the carrier generally offers to provide such access and interconnection that has been approved or permitted to take effect by the State commission under section 243.

For purposes of subparagraph (B), a Bell operating company shall be considered not to have received any request for access or interconnection if the State commission of such State or States certifies that the only provider or providers making such request have (i) failed to bargain in good faith under the supervision of such State commission pursuant to section 242(a)(8), or (ii) have violated the terms of their agreement by failure to comply, within a reasonable period of time, with the implementation schedule contained in such agreement.

"(b) CERTIFICATION OF COMPLIANCE WITH PART II.—For the purposes of subsection (a)(1), a Bell operating company shall submit to the Commission a certification by a State commission of compliance with each of the following conditions in any area where such company provides local exchange service or exchange access in such State:

"(1) INTERCONNECTION.—The Bell operating company provides access and interconnection in accordance with subsections (a)(1) and (b) of section 242 to any other carrier or person offering telecommunications services requesting such access and interconnection, and complies with the Commission regulations pursuant to such section concerning such access and interconnection.

"(2) UNBUNDLING OF NETWORK ELEMENTS.—The Bell operating company provides unbundled services, elements, features, functions, and capabilities in accordance with subsection (a)(2) of section 242 and the regulations prescribed by the Commission pursuant to such section.

"(3) RESALE.—The Bell operating company offers services, elements, features, functions, and capabilities for resale in accordance with section 242(a)(3), and neither the Bell operating company, nor any unit of State or local government within the State, imposes any restrictions on resale or sharing of telephone exchange service (or unbundled services, elements, features, or functions of telephone exchange service) in violation of section 242(a)(3).

"(4) NUMBER PORTABILITY.—The Bell operating company provides number portability in compliance with the Commission's regulations pursuant to subsections (a)(4) and (c) of section 242.

"(5) DIALING PARITY.—The Bell operating company provides dialing parity in accordance with subsections (a)(5) and (c) of section 242, and will, not later than the effective date of its authority to commence providing interLATA services, take such actions as are necessary to provide dialing parity for intraLATA telephone toll service in accordance with such subsections.

"(6) ACCESS TO CONDUITS AND RIGHTS OF WAY.—The poles, ducts, conduits, and rights of way of such Bell operating company are available to competing providers of telecommunications services in accordance with the requirements of sections 242(a)(6) and 224(d).

"(7) ELIMINATION OF FRANCHISE LIMITATIONS.—No unit of the State or local government in such State or States enforces any prohibition or limitation in violation of section 243.

"(8) NETWORK FUNCTIONALITY AND ACCESSIBILITY.—The Bell operating company will not install network features, functions, or capabilities that do not comply with the standards established pursuant to section 249.

"(9) NEGOTIATION OF TERMS AND CONDITIONS.—The Bell operating company has negotiated in good faith, under the supervision of the State commission, in accordance with the requirements of section 242(a)(8) with any other carrier or person requesting access or interconnection.

"(c) APPLICATION FOR INTERIM INTERLATA AUTHORITY.—

"(1) APPLICATION SUBMISSION AND CONTENTS.—At any time after the date of enactment of this part, and prior to the completion by the Commission of all actions necessary to establish regulations under section 242, a Bell operating company may apply to the Commission for interim authority to provide interLATA services. Such application shall specify the LATA or LATAs for which the company is requesting authority to provide interim interLATA services. Such application shall contain, with respect to each LATA within a State for which authorization is requested, the following:

"(A) PRESENCE OF A FACILITIES-BASED COMPETITOR.—An agreement that the State commission has determined complies with section 242 (without regard to any regulations thereunder) and that specifies the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities for an unaffiliated competing provider of telephone exchange service that is comparable in price, features, and scope and that is provided over the competitor's own network facilities to residential and business subscribers.

"(B) CERTIFICATION.—A certification by the State commission of the State within which such LATA is located that such company is in compliance with State laws, rules, and regulations providing for the implementation of the standards described in subsection (b) as of the date of certification, including certification that such company is offering services, elements, features, functions, and capabilities for resale at economically feasible rates to the reseller, recognizing pricing structures for telephone exchange service in such State.

"(2) STATE TO PARTICIPATE.—The company shall serve a copy of the application on the relevant State commission within 5 days of filing its application. The State shall file comments to the Commission on the company's application within 40 days of receiving a copy of the company's application.

"(3) DEADLINES FOR COMMISSION ACTION.—The Commission shall make a determination on such application not more than 90 days after such application is filed.

"(4) EXPIRATION OF INTERIM AUTHORITY.—Any interim authority granted pursuant to this subsection shall cease to be effective 180 days after the completion by the Commission of all actions necessary to establish regulations under section 242.

"(d) COMMISSION REVIEW.—

"(1) REVIEW OF STATE DECISIONS AND CERTIFICATIONS.—The Commission shall review any verification submitted by a Bell operating company pursuant to subsection (a). The Commission may require such company to submit such additional information as is necessary to validate any of the items of such verification.

"(2) DE NOVO REVIEW.—If—

"(A) a State commission does not have the jurisdiction or authority to make the certification required by subsection (b);

"(B) the State commission has failed to act within 90 days after the date a request for such certification is filed with such State commission; or

"(C) the State commission has sought to impose a term or condition in violation of section 243;

the local exchange carrier may request the Commission to certify the carrier's compliance with the conditions specified in subsection (b).

"(3) TIME FOR DECISION; PUBLIC COMMENT.—Unless such Bell operating company consents to a longer period of time, the Commission shall approve, disapprove, or approve with conditions such verification within 90 days after the date of its submission. During such 90 days, the Commission shall afford interested persons an opportunity to present information and evidence concerning such verification.

"(4) STANDARD FOR DECISION.—The Commission shall not approve such verification unless the Commission determines that—

"(A) the Bell operating company meets each of the conditions required to be certified under subsection (b); and

"(B) the agreement or statement submitted under subsection (a)(2) complies with the requirements of section 242 and the regulations thereunder.

"(e) ENFORCEMENT OF CONDITIONS.—

"(1) COMMISSION AUTHORITY.—If at any time after the approval of a verification under subsection (d), the Commission determines that a Bell operating company has ceased to meet any of the conditions required to be certified under subsection (b), the Commission may, after notice and opportunity for a hearing—

"(A) issue an order to such company to correct the deficiency;

"(B) impose a penalty on such company pursuant to title V; or

"(C) suspend or revoke such approval.

"(2) RECEIPT AND REVIEW OF COMPLAINTS.—The Commission shall establish procedures for the review of complaints concerning failures by Bell operating companies to meet conditions required to be certified under subsection (b). Unless the parties otherwise agree, the Commission shall act on such complaint within 90 days.

"(3) STATE AUTHORITY.—The authority of the Commission under this subsection shall not be construed to preempt any State commission from taking actions to enforce the conditions required to be certified under subsection (b).

"(f) AUTHORITY TO PROVIDE INTERLATA SERVICES.—

"(1) PROHIBITION.—Except as provided in paragraph (2) and subsections (g) and (h), a Bell operating company or affiliate thereof may not provide interLATA services.

"(2) AUTHORITY SUBJECT TO CERTIFICATION.—A Bell operating company or affiliate thereof may, in any States to which its verification under subsection (a) applies, provide interLATA services—

"(A) during any period after the effective date of the Commission's approval of such verification pursuant to subsection (d), and

"(B) until the approval of such verification is suspended or revoked by the Commission pursuant to subsection (d).

"(g) EXCEPTION FOR PREVIOUSLY AUTHORIZED ACTIVITIES.—Subsection (f) shall not prohibit a Bell operating company or affiliate from engaging, at any time after the date of the enactment of this part, in any activity as authorized by an order entered by the United States District Court for the District of Columbia pursuant to section VII or VIII(C) of the Modification of Final Judgment, if—

"(1) such order was entered on or before the date of the enactment of this part, or

"(2) a request for such authorization was pending before such court on the date of the enactment of this part.

"(h) EXCEPTIONS FOR INCIDENTAL SERVICES.—Subsection (f) shall not prohibit a Bell operating company or affiliate thereof, at any time after the date of the enactment of this part, from providing interLATA services for the purpose of—

"(1)(A) providing audio programming, video programming, or other programming services to subscribers to such services of such company;

"(B) providing the capability for interaction by such subscribers to select or respond to such audio programming, video programming, or other programming services; or

"(C) providing to distributors audio programming or video programming that such company owns or controls, or is licensed by the copyright owner of such programming (or by an assignee of such owner) to distribute;

"(2) providing a telecommunications service, using the transmission facilities of a cable system that is an affiliate of such company, between local access and transport areas within a cable system franchise area in which such company is not, on the date of the enactment of this part, a provider of wireline telephone exchange service;

"(3) providing commercial mobile services in accordance with section 332(c) of this Act and with the regulations prescribed by the Commission pursuant to paragraph (8) of such section;

"(4) providing a service that permits a customer that is located in one local access and transport area to retrieve stored information from, or file information for storage in, information storage facilities of such company that are located in another local access and transport area;

"(5) providing signaling information used in connection with the provision of telephone exchange services to a local exchange carrier that, together with any

affiliated local exchange carriers, has aggregate annual revenues of less than $100,000,000; or

"(6) providing network control signaling information to, and receiving such signaling information from, common carriers offering interLATA services at any location within the area in which such Bell operating company provides telephone exchange services or exchange access.

"(i) INTRALATA TOLL DIALING PARITY.—Neither the Commission nor any State may order any Bell operating company to provide dialing parity for intraLATA telephone toll service in any State before the date such company is authorized to provide interLATA services in such State pursuant to this section.

"(j) FORBEARANCE.—The Commission may not, pursuant to section 230, forbear from applying any provision of this section or any regulation thereunder until at least 5 years after the date of enactment of this part.

"(k) SUNSET.—The provisions of this section shall cease to apply in any local exchange market, defined by geographic area and class or category of service, that the Commission and the State determines has become subject to full and open competition.

"(l) DEFINITIONS.—As used in this section—

"(1) AUDIO PROGRAMMING.—The term 'audio programming' means programming provided by, or generally considered comparable to programming provided by, a radio broadcast station.

"(2) VIDEO PROGRAMMING.—The term 'video programming' has the meaning provided in section 602.

"(3) OTHER PROGRAMMING SERVICES.—The term 'other programming services' means information (other than audio programming or video programming) that the person who offers a video programming service makes available to all subscribers generally. For purposes of the preceding sentence, the terms 'information' and 'makes available to all subscribers generally' have the same meaning such terms have under section 602(13) of this Act.

"SEC. 246. COMPETITIVE SAFEGUARDS.

"(a) IN GENERAL.—In accordance with the requirements of this section and the regulations adopted thereunder, a Bell operating company or any affiliate thereof providing any interLATA telecommunications or information service, shall do so through a subsidiary that is separate from the Bell operating company or any affiliate thereof that provides telephone exchange service.

"(b) TRANSACTION REQUIREMENTS.—Any transaction between such a subsidiary and a Bell operating company and any other affiliate of such company shall be conducted on an arm's-length basis, in the same manner as the Bell operating company conducts business with unaffiliated persons, and shall not be based upon any preference or discrimination in favor of the subsidiary arising out of the subsidiary's affiliation with such company.

"(c) SEPARATE OPERATION AND PROPERTY.—A subsidiary required by this section shall—

"(1) operate independently from the Bell operating company or any affiliate thereof,

"(2) have separate officers, directors, and employees who may not also serve as officers, directors, or employees of the Bell operating company or any affiliate thereof,

"(3) not enter into any joint venture activities or partnership with a Bell operating company or any affiliate thereof,

"(4) not own any telecommunications transmission or switching facilities in common with the Bell operating company or any affiliate thereof, and

"(5) not jointly own or share the use of any other property with the Bell operating company or any affiliate thereof.

"(d) BOOKS, RECORDS, AND ACCOUNTS.—Any subsidiary required by this section shall maintain books, records, and accounts in a manner prescribed by the Commission which shall be separate from the books, records, and accounts maintained by a Bell operating company or any affiliate thereof.

"(e) PROVISION OF SERVICES AND INFORMATION.—A Bell operating company or any affiliate thereof may not discriminate between a subsidiary required by this section and any other person in the provision or procurement of goods, services, facilities, or information, or in the establishment of standards, and shall not provide any goods, services, facilities or information to a subsidiary required by this section unless such goods, services, facilities or information are made available to others on reasonable, nondiscriminatory terms and conditions.

"(f) PREVENTION OF CROSS-SUBSIDIES.—A Bell operating company or any affiliate thereof required to maintain a subsidiary under this section shall establish and ad-

minister, in accordance with the requirements of this section and the regulations prescribed thereunder, a cost allocation system that prohibits any cost of providing interLATA telecommunications or information services from being subsidized by revenue from telephone exchange services and telephone exchange access services. The cost allocation system shall employ a formula that ensures that—

"(1) the rates for telephone exchange services and exchange access are no greater than they would have been in the absence of such investment in interLATA telecommunications or information services (taking into account any decline in the real costs of providing such telephone exchange services and exchange access); and

"(2) such interLATA telecommunications or information services bear a reasonable share of the joint and common costs of facilities used to provide telephone exchange, exchange access, and competitive services.

"(g) ASSETS.—The Commission shall, by regulation, ensure that the economic risks associated with the provision of interLATA telecommunications or information services by a Bell operating company or any affiliate thereof (including any increases in such company's cost of capital that occur as a result of the provision of such services) are not borne by customers of telephone exchange services and exchange access in the event of a business loss or failure. Investments or other expenditures assigned to interLATA telecommunications or information services shall not be reassigned to telephone exchange service or exchange access.

"(h) DEBT.—A subsidiary required by this section shall not obtain credit under any arrangement that would—

"(1) permit a creditor, upon default, to have resource to the assets of a Bell operating company; or

"(2) induce a creditor to rely on the tangible or intangible assets of a Bell operating company in extending credit.

"(i) FULFILLMENT OF CERTAIN REQUESTS.—A Bell operating company or an affiliate thereof shall—

"(1) fulfill any requests from an unaffiliated entity for telephone exchange service and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or to its affiliates;

"(2) fulfill any such requests with telephone exchange service and exchange access of a quality that meets or exceeds the quality of telephone exchange services and exchange access provided by the Bell operating company or its affiliates to itself or its affiliates; and

"(3) provide telephone exchange service and exchange access to all providers of intraLATA or interLATA telephone toll services and interLATA information services at cost-based rates that are not unreasonably discriminatory.

"(j) CHARGES FOR ACCESS SERVICES.—A Bell operating company or an affiliate thereof shall charge the subsidiary required by this section an amount for telephone exchange services, exchange access, and other necessary associated inputs no less than the rate charged to any unaffiliated entity for such access and inputs.

"(k) SUNSET.—The provisions of this section shall cease to apply in any local exchange market 3 years after the date of enactment of this part.

"SEC. 247. UNIVERSAL SERVICE.

"(a) JOINT BOARD TO PRESERVE UNIVERSAL SERVICE.—Within 30 days after the date of enactment of this part, the Commission shall convene a Federal-State Joint Board under section 410(c) for the purpose of recommending actions to the Commission and State commissions for the preservation of universal service in furtherance of the purposes set forth in section 1 of this Act. In addition to the members required under section 410(c), one member of the Joint Board shall be a State-appointed utility consumer advocate nominated by a national organization of State utility consumer advocates.

"(b) PRINCIPLES.—The Joint Board shall base policies for the preservation of universal service on the following principles:

"(1) JUST AND REASONABLE RATES.—A plan adopted by the Commission and the States should ensure the continued viability of universal service by maintaining quality services at just and reasonable rates.

"(2) DEFINITIONS OF INCLUDED SERVICES; COMPARABILITY IN URBAN AND RURAL AREAS.—Such plan should recommend a definition of the nature and extent of the services encompassed within carriers' universal service obligations. Such plan should seek to promote access to advanced telecommunications services and capabilities, and to promote reasonably comparable services for the general public in urban and rural areas, while maintaining just and reasonable rates.

"(3) ADEQUATE AND SUSTAINABLE SUPPORT MECHANISMS.—Such plan should recommend specific and predictable mechanisms to provide adequate and sustainable support for universal service.

"(4) EQUITABLE AND NONDISCRIMINATORY CONTRIBUTIONS.—All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation of universal service.

"(5) EDUCATIONAL ACCESS TO ADVANCED TELECOMMUNICATIONS SERVICES.—To the extent that a common carrier establishes advanced telecommunications services, such plan should include recommendations to ensure access to advanced telecommunications services for students in elementary and secondary schools.

"(6) ADDITIONAL PRINCIPLES.—Such other principles as the Board determines are necessary and appropriate for the protection of the public interest, convenience, and necessity and consistent with the purposes of this Act.

"(c) DEFINITION OF UNIVERSAL SERVICE.—In recommending a definition of the nature and extent of the services encompassed within carriers' universal service obligations under subsection (b)(2), the Joint Board shall consider the extent to which—

"(1) a telecommunications service has, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers;

"(2) such service or capability is essential to public health, public safety, or the public interest;

"(3) such service has been deployed in the public switched telecommunications network; and

"(4) inclusion of such service within carriers' universal service obligations is otherwise consistent with the public interest, convenience, and necessity.

The Joint Board may, from time to time, recommend to the Commission modifications in the definition proposed under subsection (b).

"(d) REPORT; COMMISSION RESPONSE.—The Joint Board convened pursuant to subsection (a) shall report its recommendations within 270 days after the date of enactment of this part. The Commission shall complete any proceeding to act upon such recommendations and to comply with the principles set forth in subsection (b) within one year after such date of enactment.

"(e) STATE AUTHORITY.—Nothing in this section shall be construed to restrict the authority of any State to adopt regulations imposing universal service obligations on the provision of intrastate telecommunications services.

"(f) SUNSET.—The Joint Board established by this section shall cease to exist 5 years after the date of enactment of this part.

"SEC. 248. PRICING FLEXIBILITY AND ABOLITION OF RATE-OF-RETURN REGULATION.

"(a) PRICING FLEXIBILITY.—

"(1) COMMISSION CRITERIA.—Within 270 days after the date of enactment of this part, the Commission shall complete all actions necessary (including any reconsideration) to establish—

"(A) criteria for determining whether a telecommunications service or provider of such service has become, or is substantially certain to become, subject to competition, either within a geographic area or within a class or category of service; and

"(B) appropriate flexible pricing procedures that afford a regulated provider of a service described in subparagraph (A) the opportunity to respond fairly to such competition and that are consistent with the protection of subscribers and the public interest, convenience, and necessity.

"(2) STATE SELECTION.—A State commission may utilize the flexible pricing procedures or procedures (established under paragraph (1)(B)) that are appropriate in light of the criteria established under paragraph (1)(A).

"(3) DETERMINATIONS.—The Commission, with respect to rates for interstate or foreign communications, and State commissions, with respect to rates for intrastate communications, shall, upon application—

"(A) render determinations in accordance with the criteria established under paragraph (1)(A) concerning the services or providers that are the subject of such application; and

"(B) upon a proper showing, implement appropriate flexible pricing procedures consistent with paragraphs (1)(B) and (2) with respect to such services or providers.

The Commission and such State commission shall approve or reject any such application within 180 days after the date of its submission.

"(b) ABOLITION OF RATE-OF-RETURN REGULATION.—Notwithstanding any other provision of law, to the extent that a carrier has complied with sections 242 and

244 of this part, the Commission, with respect to rates for interstate or foreign communications, and State commissions, with respect to rates for intrastate communications, shall not require rate-of-return regulation.

"(c) TERMINATION OF PRICE AND OTHER REGULATION.—Notwithstanding any other provision of law, to the extent that a carrier has complied with sections 242 and 244 of this part, the Commission, with respect to interstate or foreign communications, and State commissions, with respect to intrastate communications, shall not, for any service that is determined, in accordance with the criteria established under subsection (a)(1)(A), to be subject to competition that effectively prevents prices for such service that are unjust or unreasonable or unjustly or unreasonably discriminatory—

"(1) regulate the prices for such service;

"(2) require the filing of a schedule of charges for such service;

"(3) require the filing of any cost or revenue projections for such service;

"(4) regulate the depreciation charges for facilities used to provide such service; or

"(5) require prior approval for the construction or extension of lines or other equipment for the provision of such service.

"(d) ABILITY TO CONTINUE AFFORDABLE VOICE-GRADE SERVICE.—Notwithstanding subsections (a), (b), and (c), each State commission shall, for a period of not more than 3 years, permit residential subscribers to continue to receive only basic voice-grade local telephone service equivalent to the service generally available to residential subscribers on the date of enactment of this part, at just, reasonable, and affordable rates. Determinations concerning the affordability of rates for such services shall take into account the rates generally available to residential subscribers on such date of enactment and the pricing rules established by the States. Any increases in the rates for such services for residential subscribers that are not attributable to changes in consumer prices generally shall be permitted in any proceeding commenced after the date of enactment of this section upon a showing that such increase is necessary to ensure the continued availability of universal service, prevent economic disadvantages for one or more service providers, and is in the public interest. Such increase in rates shall be minimized to the greatest extent practical and shall be implemented over a time period of not more than 3 years after the the date of enactment of this section. The requirements of this subsection shall not apply to any rural telephone company if the rates for basic voice-grade local telephone service of that company are not subject to regulation by a State commission on the date of enactment of this part.

"(e) INTERSTATE INTEREXCHANGE SERVICE.—The rates charged by providers of interstate interexchange telecommunications service to customers in rural and high cost areas shall be maintained at levels no higher than those charged by each such provider to its customers in urban areas.

"(f) EXCEPTION.—In the case of commercial mobile services, the provisions of section 332(c)(1) shall apply in lieu of the provisions of this section.

"(g) AVOIDANCE OF REDUNDANT REGULATIONS.—Nothing in this section shall be construed to prohibit the Commission or a State commission from enforcing regulations prescribed prior to the date of enactment of this part in fulfilling the requirements of this section, to the extent that such regulations are consistent with the provisions of this section.

"SEC. 249. NETWORK FUNCTIONALITY AND ACCESSIBILITY.

"(a) FUNCTIONALITY AND ACCESSIBILITY.—The duty of a common carrier under section 201(a) to furnish communications service includes the duty to furnish that service in accordance with any standards established pursuant to this section.

"(b) COORDINATION FOR INTERCONNECTIVITY.—The Commission—

"(1) shall establish procedures for Commission oversight of coordinated network planning by common carriers and other providers of telecommunications services for the effective and efficient interconnection of public switched networks; and

"(2) may participate, in a manner consistent with its authority and practice prior to the date of enactment of this section, in the development by appropriate industry standards-setting organizations of interconnection standards that promote access to—

"(A) network capabilities and services by individuals with disabilities; and

"(B) information services by subscribers to telephone exchange service furnished by a rural telephone company.

"(c) ACCESSIBILITY FOR INDIVIDUALS WITH DISABILITIES.—

"(1) ACCESSIBILITY.—Within 1 year after the date of enactment of this section, the Commission shall prescribe such regulations as are necessary to ensure

that, if readily achievable, advances in network services deployed by common carriers, and telecommunications equipment and customer premises equipment manufactured for use in conjunction with network services, shall be accessible and usable by individuals with disabilities, including individuals with functional limitations of hearing, vision, movement, manipulation, speech, and interpretation of information. Such regulations shall permit the use of both standard and special equipment, and seek to minimize the need of individuals to acquire additional devices beyond those used by the general public to obtain such access. Throughout the process of developing such regulations, the Commission shall coordinate and consult with representatives of individuals with disabilities and interested equipment and service providers to ensure their concerns and interests are given full consideration in such process.

"(2) COMPATIBILITY.—Such regulations shall require that whenever an undue burden or adverse competitive impact would result from the requirements in paragraph (1), the local exchange carrier that deploys the network service shall ensure that the network service in question is compatible with existing peripheral devices or specialized customer premises equipment commonly used by persons with disabilities to achieve access, unless doing so would result in an undue burden or adverse competitive impact.

"(3) UNDUE BURDEN.—The term 'undue burden' means significant difficulty or expense. In determining whether the activity necessary to comply with the requirements of this subsection would result in an undue burden, the factors to be considered include the following:

"(A) The nature and cost of the activity.

"(B) The impact on the operation of the facility involved in the deployment of the network service.

"(C) The financial resources of the local exchange carrier.

"(D) The type of operations of the local exchange carrier.

"(4) ADVERSE COMPETITIVE IMPACT.—In determining whether the activity necessary to comply with the requirements of this subsection would result in adverse competitive impact, the following factors shall be considered:

"(A) Whether such activity would raise the cost of the network service in question beyond the level at which there would be sufficient consumer demand by the general population to make the network service profitable.

"(B) Whether such activity would, with respect to the network service in question, put the local exchange carrier at a competitive disadvantage. This factor may be considered so long as competing network service providers are not held to the same obligation with respect to access by persons with disabilities.

"(5) EFFECTIVE DATE.—The regulations required by this subsection shall become effective 18 months after the date of enactment of this part.

"(d) PRIVATE RIGHTS OF ACTIONS PROHIBITED.—Nothing in this section shall be construed to authorize any private right of action to enforce any requirement of this section or any regulation thereunder. The Commission shall have exclusive jurisdiction with respect to any complaint under this section.

"SEC. 250. MARKET ENTRY BARRIERS.

"(a) ELIMINATION OF BARRIERS.—Within 15 months after the date of enactment of this part, the Commission shall complete a proceeding for the purpose of identifying and eliminating, by regulations pursuant to its authority under this Act (other than this section), market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services, or in the provision of parts or services to providers of telecommunications services and information services.

"(b) NATIONAL POLICY.—In carrying out subsection (a), the Commission shall seek to promote the policies and purposes of this Act favoring diversity of points of view, vigorous economic competition, technological advancement, and promotion of the public interest, convenience, and necessity.

"(c) PERIODIC REVIEW.—Every 3 years following the completion of the proceeding required by subsection (a), the Commission shall review and report to Congress on—

"(1) any regulations prescribed to eliminate barriers within its jurisdiction that are identified under subsection (a) and that can be prescribed consistent with the public interest, convenience, and necessity; and

"(2) the statutory barriers identified under subsection (a) that the Commission recommends be eliminated, consistent with the public interest, convenience, and necessity.

"SEC. 251. ILLEGAL CHANGES IN SUBSCRIBER CARRIER SELECTIONS.

"No common carrier shall submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe. Nothing in this section shall preclude any State commission from enforcing such procedures with respect to intrastate services.

"SEC. 252. STUDY.

"At least once every three years, the Commission shall conduct a study that—

"(1) reviews the definition of, and the adequacy of support for, universal service, and evaluates the extent to which universal service has been protected and access to advanced services has been facilitated pursuant to this part and the plans and regulations thereunder;

"(2) evaluates the extent to which access to advanced telecommunications services for students in elementary and secondary school classrooms has been attained pursuant to section 247(b)(5); and

"(3) determines whether the regulations established under section 249(c) have ensured that advances in network services by providers of telecommunications services and information services are accessible and usable by individuals with disabilities.

"SEC. 253. TERRITORIAL EXEMPTION.

"Until 5 years after the date of enactment of this part, the provisions of this part shall not apply to any local exchange carrier in any territory of the United States if (1) the local exchange carrier is owned by the government of such territory, and (2) on the date of enactment of this part, the number of households in such territory subscribing to telephone service is less than 85 percent of the total households located in such territory.".

(b) CONSOLIDATED RULEMAKING PROCEEDING.—The Commission shall conduct a single consolidated rulemaking proceeding to prescribe or amend regulations necessary to implement the requirements of—

(1) part II of title II of the Act as added by subsection (a) of this section;

(2) section 222 as amended by section 104 of this Act; and

(3) section 224 as amended by section 105 of this Act.

(c) DESIGNATION OF PART I.—Title II of the Act is further amended by inserting before the heading of section 201 the following new heading:

"PART I—REGULATION OF DOMINANT COMMON CARRIERS".

(d) SYLISTIC CONSISTENCY.—

The Act is amended so that—

(1) the designation and heading of each title of the Act shall be in the form and typeface of the designation and heading of this title of this Act; and

(2) the designation and heading of each part of each title of the Act shall be in the form and typeface of the designation and heading of part I of title II of the Act, as amended by subsection (c).

(e) CONFORMING AMENDMENTS.

(1) FEDERAL-STATE JURISDICTION.—Section 2(b) of the Act (47 U.S.C. 152(b)) is amended by inserting "part II of title II," after "227, inclusive,".

(2) FORFEITURES.—Sections 503(b)(1) and 504(b) of such Act (47 U.S.C. 503(b)) are each amended by inserting "part I of" before "title II".

SEC. 102. COMPETITION IN MANUFACTURING, INFORMATION SERVICES, ALARM SERVICES, AND PAY-PHONE SERVICES.

(a) COMPETITION IN MANUFACTURING, INFORMATION SERVICES, AND ALARM SERVICES.—Title II of the Act is amended by adding at the end of part II (as added by section 101) the following new part:

"PART III—SPECIAL AND TEMPORARY PROVISIONS

"SEC. 271. MANUFACTURING BY BELL OPERATING COMPANIES.

"(a) ACCESS AND INTERCONNECTION.—It shall be unlawful for a Bell operating company, directly or through an affiliate, to manufacture telecommunications equipment or customer premises equipment, until the Commission has approved under section 245(c) verifications that such Bell operating company, and each Bell operat-

ing company with which it is affiliated, are in compliance with the access and interconnection requirements of part II of this title.

"(b) COLLABORATION.—Subsection (a) shall not prohibit a Bell operating company from engaging in close collaboration with any manufacturer of customer premises equipment or telecommunications equipment during the design and development of hardware, software, or combinations thereof related to such equipment.

"(c) INFORMATION REQUIREMENTS.—

"(1) INFORMATION ON PROTOCOLS AND TECHNICAL REQUIREMENTS.—Each Bell operating company shall, in accordance with regulations prescribed by the Commission, maintain and file with the Commission full and complete information with respect to the protocols and technical requirements for connection with and use of its telephone exchange service facilities. Each such company shall report promptly to the Commission any material changes or planned changes to such protocols and requirements, and the schedule for implementation of such changes or planned changes.

"(2) DISCLOSURE OF INFORMATION.—A Bell operating company shall not disclose any information required to be filed under paragraph (1) unless that information has been filed promptly, as required by regulation by the Commission.

"(3) ACCESS BY COMPETITORS TO INFORMATION.—The Commission may prescribe such additional regulations under this subsection as may be necessary to ensure that manufacturers have access to the information with respect to the protocols and technical requirements for connection with and use of telephone exchange service facilities that a Bell operating company makes available to any manufacturing affiliate or any unaffiliated manufacturer.

"(4) PLANNING INFORMATION.—Each Bell operating company shall provide, to contiguous common carriers providing telephone exchange service, timely information on the planned deployment of telecommunications equipment.

"(d) MANUFACTURING LIMITATIONS FOR STANDARD-SETTING ORGANIZATIONS.—

"(1) BELL COMMUNICATIONS RESEARCH.—The Bell Communications Research Corporation, or any successor entity, shall not engage in manufacturing telecommunications equipment or customer premises equipment so long as—

"(A) such Corporation or entity is owned, in whole or in part, by one or more Bell operating companies; or

"(B) such Corporation or entity engages in establishing standards for telecommunications equipment, customer premises equipment, or telecommunications services, or any product certification activities with respect to telecommunications equipment or customer premises equipment.

"(2) PARTICIPATION IN STANDARD SETTING; PROTECTION OF PROPRIETARY INFORMATION.—Any entity (including such Corporation) that engages in establishing standards for—

"(A) telecommunications equipment, customer premises equipment, or telecommunications services, or

"(B) any product certification activities with respect to telecommunications equipment or customer premises equipment,

for one or more Bell operating companies shall allow any other person to participate fully in such activities on a nondiscriminatory basis. Any such entity shall protect proprietary information submitted for review in the standards-setting and certification processes from release not specifically authorized by the owner of such information, even after such entity ceases to be so engaged.

"(e) BELL OPERATING COMPANY EQUIPMENT PROCUREMENT AND SALES.—

"(1) OBJECTIVE BASIS.—Each Bell operating company and any entity acting on behalf of a Bell operating company shall make procurement decisions and award all supply contracts for equipment, services, and software on the basis of an objective assessment of price, quality, delivery, and other commercial factors.

"(2) SALES RESTRICTIONS.—A Bell operating company engaged in manufacturing may not restrict sales to any local exchange carrier of telecommunications equipment, including software integral to the operation of such equipment and related upgrades.

"(3) PROTECTION OF PROPRIETARY INFORMATION.—A Bell operating company and any entity it owns or otherwise controls shall protect the proprietary information submitted for procurement decisions from release not specifically authorized by the owner of such information.

"(f) ADMINISTRATION AND ENFORCEMENT AUTHORITY.—For the purposes of administering and enforcing the provisions of this section and the regulations prescribed thereunder, the Commission shall have the same authority, power, and functions with respect to any Bell operating company or any affiliate thereof as the Commis-

sion has in administering and enforcing the provisions of this title with respect to any common carrier subject to this Act.

"(g) EXCEPTION FOR PREVIOUSLY AUTHORIZED ACTIVITIES.—Nothing in this section shall prohibit a Bell operating company or affiliate from engaging, at any time after the date of the enactment of this part, in any activity as authorized by an order entered by the United States District Court for the District of Columbia pursuant to section VII or VIII(C) of the Modification of Final Judgment, if—

"(1) such order was entered on or before the date of the enactment of this part, or

"(2) a request for such authorization was pending before such court on the date of the enactment of this part.

"(h) ANTITRUST LAWS.—Nothing in this section shall be construed to modify, impair, or supersede the applicability of any of the antitrust laws.

"(i) DEFINITION.—As used in this section, the term 'manufacturing' has the same meaning as such term has under the Modification of Final Judgment.

"SEC. 272. ELECTRONIC PUBLISHING BY BELL OPERATING COMPANIES.

"(a) LIMITATIONS.—No Bell operating company or any affiliate may engage in the provision of electronic publishing that is disseminated by means of such Bell operating company's or any of its affiliates' basic telephone service, except that nothing in this section shall prohibit a separated affiliate or electronic publishing joint venture operated in accordance with this section from engaging in the provision of electronic publishing.

"(b) SEPARATED AFFILIATE OR ELECTRONIC PUBLISHING JOINT VENTURE REQUIREMENTS.—A separated affiliate or electronic publishing joint venture shall be operated independently from the Bell operating company. Such separated affiliate or joint venture and the Bell operating company with which it is affiliated shall—

"(1) maintain separate books, records, and accounts and prepare separate financial statements;

"(2) not incur debt in a manner that would permit a creditor of the separated affiliate or joint venture upon default to have recourse to the assets of the Bell operating company;

"(3) carry out transactions (A) in a manner consistent with such independence, (B) pursuant to written contracts or tariffs that are filed with the Commission and made publicly available, and (C) in a manner that is auditable in accordance with generally accepted auditing standards;

"(4) value any assets that are transferred directly or indirectly from the Bell operating company to a separated affiliate or joint venture, and record any transactions by which such assets are transferred, in accordance with such regulations as may be prescribed by the Commission or a State commission to prevent improper cross subsidies;

"(5) between a separated affiliate and a Bell operating company—

"(A) have no officers, directors, and employees in common after the effective date of this section; and

"(B) own no property in common;

"(6) not use for the marketing of any product or service of the separated affiliate or joint venture, the name, trademarks, or service marks of an existing Bell operating company except for names, trademarks, or service marks that are or were used in common with the entity that owns or controls the Bell operating company;

"(7) not permit the Bell operating company—

"(A) to perform hiring or training of personnel on behalf of a separated affiliate;

"(B) to perform the purchasing, installation, or maintenance of equipment on behalf of a separated affiliate, except for telephone service that it provides under tariff or contract subject to the provisions of this section; or

"(C) to perform research and development on behalf of a separated affiliate;

"(8) each have performed annually a compliance review—

"(A) that is conducted by an independent entity for the purpose of determining compliance during the preceding calendar year with any provision of this section; and

"(B) the results of which are maintained by the separated affiliate or joint venture and the Bell operating company for a period of 5 years subject to review by any lawful authority;

"(9) within 90 days of receiving a review described in paragraph (8), file a report of any exceptions and corrective action with the Commission and allow any person to inspect and copy such report subject to reasonable safeguards to pro-

tect any proprietary information contained in such report from being used for purposes other than to enforce or pursue remedies under this section.

"(c) JOINT MARKETING.—

"(1) IN GENERAL.—Except as provided in paragraph (2)—

"(A) a Bell operating company shall not carry out any promotion, marketing, sales, or advertising for or in conjunction with a separated affiliate; and

"(B) a Bell operating company shall not carry out any promotion, marketing, sales, or advertising for or in conjunction with an affiliate that is related to the provision of electronic publishing.

"(2) PERMISSIBLE JOINT ACTIVITIES.—

"(A) JOINT TELEMARKETING.—A Bell operating company may provide inbound telemarketing or referral services related to the provision of electronic publishing for a separated affiliate, electronic publishing joint venture, affiliate, or unaffiliated electronic publisher, provided that if such services are provided to a separated affiliate, electronic publishing joint venture, or affiliate, such services shall be made available to all electronic publishers on request, on nondiscriminatory terms.

"(B) TEAMING ARRANGEMENTS.—A Bell operating company may engage in nondiscriminatory teaming or business arrangements to engage in electronic publishing with any separated affiliate or with any other electronic publisher if (i) the Bell operating company only provides facilities, services, and basic telephone service information as authorized by this section, and (ii) the Bell operating company does not own such teaming or business arrangement.

"(C) ELECTRONIC PUBLISHING JOINT VENTURES.—A Bell operating company or affiliate may participate on a nonexclusive basis in electronic publishing joint ventures with entities that are not any Bell operating company, affiliate, or separated affiliate to provide electronic publishing services, if the Bell operating company or affiliate has not more than a 50 percent direct or indirect equity interest (or the equivalent thereof) or the right to more than 50 percent of the gross revenues under a revenue sharing or royalty agreement in any electronic publishing joint venture. Officers and employees of a Bell operating company or affiliate participating in an electronic publishing joint venture may not have more than 50 percent of the voting control over the electronic publishing joint venture. In the case of joint ventures with small, local electronic publishers, the Commission for good cause shown may authorize the Bell operating company or affiliate to have a larger equity interest, revenue share, or voting control but not to exceed 80 percent. A Bell operating company participating in an electronic publishing joint venture may provide promotion, marketing, sales, or advertising personnel and services to such joint venture.

"(d) PRIVATE RIGHT OF ACTION.—

"(1) DAMAGES.—Any person claiming that any act or practice of any Bell operating company, affiliate, or separated affiliate constitutes a violation of this section may file a complaint with the Commission or bring suit as provided in section 207 of this Act, and such Bell operating company, affiliate, or separated affiliate shall be liable as provided in section 206 of this Act; except that damages may not be awarded for a violation that is discovered by a compliance review as required by subsection (b)(7) of this section and corrected within 90 days.

"(2) CEASE AND DESIST ORDERS.—In addition to the provisions of paragraph (1), any person claiming that any act or practice of any Bell operating company, affiliate, or separated affiliate constitutes a violation of this section may make application to the Commission for an order to cease and desist such violation or may make application in any district court of the United States of competent jurisdiction for an order enjoining such acts or practices or for an order compelling compliance with such requirement.

"(e) SEPARATED AFFILIATE REPORTING REQUIREMENT.—Any separated affiliate under this section shall file with the Commission annual reports in a form substantially equivalent to the Form 10–K required by regulations of the Securities and Exchange Commission.

"(f) EFFECTIVE DATES.—

"(1) TRANSITION.—Any electronic publishing service being offered to the public by a Bell operating company or affiliate on the date of enactment of this section shall have one year from such date of enactment to comply with the requirements of this section.

"(2) SUNSET.—The provisions of this section shall not apply to conduct occurring after June 30, 2000.

"(g) DEFINITION OF ELECTRONIC PUBLISHING.—

"(1) IN GENERAL.—The term 'electronic publishing' means the dissemination, provision, publication, or sale to an unaffiliated entity or person, of any one or more of the following: news (including sports); entertainment (other than interactive games); business, financial, legal, consumer, or credit materials; editorials, columns, or features; advertising; photos or images; archival or research material; legal notices or public records; scientific, educational, instructional, technical, professional, trade, or other literary materials; or other like or similar information.

"(2) EXCEPTIONS.—The term 'electronic publishing' shall not include the following services:

"(A) Information access, as that term is defined by the Modification of Final Judgment.

"(B) The transmission of information as a common carrier.

"(C) The transmission of information as part of a gateway to an information service that does not involve the generation or alteration of the content of information, including data transmission, address translation, protocol conversion, billing management, introductory information content, and navigational systems that enable users to access electronic publishing services, which do not affect the presentation of such electronic publishing services to users.

"(D) Voice storage and retrieval services, including voice messaging and electronic mail services.

"(E) Data processing or transaction processing services that do not involve the generation or alteration of the content of information.

"(F) Electronic billing or advertising of a Bell operating company's regulated telecommunications services.

"(G) Language translation or data format conversion.

"(H) The provision of information necessary for the management, control, or operation of a telephone company telecommunications system.

"(I) The provision of directory assistance that provides names, addresses, and telephone numbers and does not include advertising.

"(J) Caller identification services.

"(K) Repair and provisioning databases and credit card and billing validation for telephone company operations.

"(L) 911–E and other emergency assistance databases.

"(M) Any other network service of a type that is like or similar to these network services and that does not involve the generation or alteration of the content of information.

"(N) Any upgrades to these network services that do not involve the generation or alteration of the content of information.

"(O) Video programming or full motion video entertainment on demand.

"(h) ADDITIONAL DEFINITIONS.—As used in this section—

"(1) The term 'affiliate' means any entity that, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with, a Bell operating company. Such term shall not include a separated affiliate.

"(2) The term 'basic telephone service' means wireline telephone exchange service provided by a Bell operating company in a telephone exchange area, except that such term does not include—

"(A) a competitive wireline telephone exchange service provided in a telephone exchange area where another entity provides a wireline telephone exchange service that was provided on January 1, 1984, and

"(B) a commercial mobile service.

"(3) The term 'basic telephone service information' means network and customer information of a Bell operating company and other information acquired by a Bell operating company as a result of its engaging in the provision of basic telephone service.

"(4) The term 'control' has the meaning that it has in 17 C.F.R. 240.12b–2, the regulations promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or any successor provision to such section.

"(5) The term 'electronic publishing joint venture' means a joint venture owned by a Bell operating company or affiliate that engages in the provision of electronic publishing which is disseminated by means of such Bell operating company's or any of its affiliates' basic telephone service.

"(6) The term 'entity' means any organization, and includes corporations, partnerships, sole proprietorships, associations, and joint ventures.

"(7) The term 'inbound telemarketing' means the marketing of property, goods, or services by telephone to a customer or potential customer who initiated the call.

"(8) The term 'own' with respect to an entity means to have a direct or indirect equity interest (or the equivalent thereof) of more than 10 percent of an entity, or the right to more than 10 percent of the gross revenues of an entity under a revenue sharing or royalty agreement.

"(9) The term 'separated affiliate' means a corporation under common ownership or control with a Bell operating company that does not own or control a Bell operating company and is not owned or controlled by a Bell operating company and that engages in the provision of electronic publishing which is disseminated by means of such Bell operating company's or any of its affiliates' basic telephone service.

"(10) The term 'Bell operating company' has the meaning provided in section 3, except that such term includes any entity or corporation that is owned or controlled by such a company (as so defined) but does not include an electronic publishing joint venture owned by such an entity or corporation.

"SEC. 273. ALARM MONITORING AND TELEMESSAGING SERVICES BY BELL OPERATING COMPANIES.

"(a) DELAYED ENTRY INTO ALARM MONITORING.—

"(1) PROHIBITION.—No Bell operating company or affiliate thereof shall engage in the provision of alarm monitoring services before the date which is 6 years after the date of enactment of this part.

"(2) EXISTING ACTIVITIES.—Paragraph (1) shall not apply to any provision of alarm monitoring services in which a Bell operating company or affiliate is lawfully engaged as of January 1, 1995, except that such Bell operating company or any affiliate may not acquire or otherwise obtain control of additional entities providing alarm monitoring services after such date.

"(b) NONDISCRIMINATION.—A common carrier engaged in the provision of alarm monitoring services or telemessaging services shall—

"(1) provide nonaffiliated entities, upon reasonable request, with the network services it provides to its own alarm monitoring or telemessaging operations, on nondiscriminatory terms and conditions; and

"(2) not subsidize its alarm monitoring services or its telemessaging services either directly or indirectly from telephone exchange service operations.

"(c) EXPEDITED CONSIDERATION OF COMPLAINTS.—The Commission shall establish procedures for the receipt and review of complaints concerning violations of subsection (b) or the regulations thereunder that result in material financial harm to a provider of alarm monitoring service or telemessaging service. Such procedures shall ensure that the Commission will make a final determination with respect to any such complaint within 120 days after receipt of the complaint. If the complaint contains an appropriate showing that the alleged violation occurred, as determined by the Commission in accordance with such regulations, the Commission shall, within 60 days after receipt of the complaint, order the common carrier and its affiliates to cease engaging in such violation pending such final determination.

"(d) DEFINITIONS.—As used in this section:

"(1) ALARM MONITORING SERVICE.—The term 'alarm monitoring service' means a service that uses a device located at a residence, place of business, or other fixed premises—

"(A) to receive signals from other devices located at or about such premises regarding a possible threat at such premises to life, safety, or property, from burglary, fire, vandalism, bodily injury, or other emergency, and

"(B) to transmit a signal regarding such threat by means of transmission facilities of a Bell operating company or one of its affiliates to a remote monitoring center to alert a person at such center of the need to inform the customer or another person or police, fire, rescue, security, or public safety personnel of such threat,

but does not include a service that uses a medical monitoring device attached to an individual for the automatic surveillance of an ongoing medical condition.

"(2) TELEMESSAGING SERVICES.—The term 'telemessaging services' means voice mail and voice storage and retrieval services provided over telephone lines for telemessaging customers and any live operator services used to answer, record, transcribe, and relay messages (other than telecommunications relay services) from incoming telephone calls on behalf of the telemessaging customers (other than any service incidental to directory assistance).

"SEC. 274. PROVISION OF PAYPHONE SERVICE.

"(a) NONDISCRIMINATION SAFEGUARDS.—After the effective date of the rules prescribed pursuant to subsection (b), any Bell operating company that provides payphone service—

"(1) shall not subsidize its payphone service directly or indirectly with revenue from its telephone exchange service or its exchange access service; and

"(2) shall not prefer or discriminate in favor of it payphone service.

"(b) REGULATIONS.—

"(1) CONTENTS OF REGULATIONS.—In order to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public, within 9 months after the date of enactment of this section, the Commission shall take all actions necessary (including any reconsideration) to prescribe regulations that—

"(A) establish a per call compensation plan to ensure that all payphone services providers are fairly compensated for each and every completed intrastate and interstate call using their payphone, except that emergency calls and telecommunications relay service calls for hearing disabled individuals shall not be subject to such compensation;

"(B) discontinue the intrastate and interstate carrier access charge payphone service elements and payments in effect on the date of enactment of this section, and all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues, in favor of a compensation plan as specified in subparagraph (A);

"(C) prescribe a set of nonstructural safeguards for Bell operating company payphone service to implement the provisions of paragraphs (1) and (2) of subsection (a), which safeguards shall, at a minimum, include the nonstructural safeguards equal to those adopted in the Computer Inquiry-III CC Docket No. 90–623 proceeding; and

"(D) provide for Bell operating company payphone service providers to have the same right that independent payphone providers have to negotiate with the location provider on selecting and contracting with, and, subject to the terms of any agreement with the location provider, to select and contract with the carriers that carry interLATA calls from their payphones, and provide for all payphone service providers to have the right to negotiate with the location provider on selecting and contracting with, and, subject to the terms of any agreement with the location provider, to select and contract with the carriers that carry intraLATA calls from their payphones.

"(2) PUBLIC INTEREST TELEPHONES.—In the rulemaking conducted pursuant to paragraph (1), the Commission shall determine whether public interest payphones, which are provided in the interest of public health, safety, and welfare, in locations where there would otherwise not be a payphone, should be maintained, and if so, ensure that such public interest payphones are supported fairly and equitably.

"(3) EXISTING CONTRACTS.—Nothing in this section shall affect any existing contracts between location providers and payphone service providers or interLATA or intraLATA carriers that are in force and effect as of the date of the enactment of this Act.

"(c) STATE PREEMPTION.—To the extent that any State requirements are inconsistent with the Commission's regulations, the Commission's regulations on such matters shall preempt State requirements.

"(d) DEFINITION.—As used in this section, the term 'payphone service' means the provision of public or semi-public pay telephones, the provision of inmate telephone service in correctional institutions, and any ancillary services.".

SEC. 103. FORBEARANCE FROM REGULATION.

Part I of title II of the Act (as redesignated by section 101(c) of this Act) is amended by inserting after section 229 (47 U.S.C. 229) the following new section:

"SEC. 230. FORBEARANCE FROM REGULATION.

"(a) AUTHORITY TO FORBEAR.—The Commission shall forbear from applying any provision of this part or part II (other than sections 201, 202, 208, 243, and 248), or any regulation thereunder, to a common carrier or service, or class of carriers or services, in any or some of its or their geographic markets, if the Commission determines that—

"(1) enforcement of such provision or regulation is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that carrier or service are just and reasonable and are not unjustly or unreasonably discriminatory;

"(2) enforcement of such regulation or provision is not necessary for the protection of consumers; and

"(3) forbearance from applying such provision or regulation is consistent with the public interest.

"(b) COMPETITIVE EFFECT TO BE WEIGHED.—In making the determination under subsection (a)(3), the Commission shall consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services. If the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest.".

SEC. 104. PRIVACY OF CUSTOMER INFORMATION.

(a) PRIVACY OF CUSTOMER PROPRIETARY NETWORK INFORMATION.—Title II of the Act is amended by inserting after section 221 (47 U.S.C. 221) the following new section:

"SEC. 222. PRIVACY OF CUSTOMER PROPRIETARY NETWORK INFORMATION.

"(a) SUBSCRIBER LIST INFORMATION.—Notwithstanding subsections (b), (c), and (d), a carrier that provides local exchange service shall provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format.

"(b) PRIVACY REQUIREMENTS FOR COMMON CARRIERS.—A carrier—

"(1) shall not, except as required by law or with the approval of the customer to which the information relates—

"(A) use customer proprietary network information in the provision of any service except to the extent necessary (i) in the provision of common carrier services, (ii) in the provision of a service necessary to or used in the provision of common carrier services, including the publishing of directories, or (iii) to continue to provide a particular information service that the carrier provided as of May 1, 1995, to persons who were customers of such service on that date;

"(B) use customer proprietary network information in the identification or solicitation of potential customers for any service other than the telephone exchange service or telephone toll service from which such information is derived;

"(C) use customer proprietary network information in the provision of customer premises equipment; or

"(D) disclose customer proprietary network information to any person except to the extent necessary to permit such person to provide services or products that are used in and necessary to the provision by such carrier of the services described in subparagraph (A);

"(2) shall disclose customer proprietary network information, upon affirmative written request by the customer, to any person designated by the customer;

"(3) shall, whenever such carrier provides any aggregate information, notify the Commission of the availability of such aggregate information and shall provide such aggregate information on reasonable terms and conditions to any other service or equipment provider upon reasonable request therefor; and

"(4) except for disclosures permitted by paragraph (1)(D), shall not unreasonably discriminate between affiliated and unaffiliated service or equipment providers in providing access to, or in the use and disclosure of, individual and aggregate information made available consistent with this subsection.

"(c) RULE OF CONSTRUCTION.—This section shall not be construed to prohibit the use or disclosure of customer proprietary network information as necessary—

"(1) to render, bill, and collect for the services identified in subsection (b)(1)(A);

"(2) to render, bill, and collect for any other service that the customer has requested;

"(3) to protect the rights or property of the carrier;

"(4) to protect users of any of those services and other carriers from fraudulent, abusive, or unlawful use of or subscription to such service; or

"(5) to provide any inbound telemarketing, referral, or administrative services to the customer for the duration of the call if such call was initiated by the customer and the customer approves of the use of such information to provide such service.

"(d) EXEMPTION PERMITTED.—The Commission may, by rule, exempt from the requirements of subsection (b) carriers that have, together with any affiliated carriers,

in the aggregate nationwide, fewer than 500,000 access lines installed if the Commission determines that such exemption is in the public interest or if compliance with the requirements would impose an undue economic burden on the carrier.

"(e) DEFINITIONS.—As used in this section:

"(1) CUSTOMER PROPRIETARY NETWORK INFORMATION.—The term 'customer proprietary network information' means—

"(A) information which relates to the quantity, technical configuration, type, destination, and amount of use of telephone exchange service or telephone toll service subscribed to by any customer of a carrier, and is made available to the carrier by the customer solely by virtue of the carrier-customer relationship;

"(B) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier; and

"(C) such other information concerning the customer as is available to the local exchange carrier by virtue of the customer's use of the carrier's telephone exchange service or telephone toll services, and specified as within the definition of such term by such rules as the Commission shall prescribe consistent with the public interest;

except that such term does not include subscriber list information.

"(2) SUBSCRIBER LIST INFORMATION.—The term 'subscriber list information' means any information—

"(A) identifying the listed names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses, or classifications; and

"(B) that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format.

"(3) AGGREGATE INFORMATION.—The term 'aggregate information' means collective data that relates to a group or category of services or customers, from which individual customer identities and characteristics have been removed.".

(b) CONVERGING COMMUNICATIONS TECHNOLOGIES AND CONSUMER PRIVACY.—

(1) COMMISSION EXAMINATION.—Within one year after the date of enactment of this Act, the Commission shall commence a proceeding—

(A) to examine the impact of the integration into interconnected communications networks of wireless telephone, cable, satellite, and other technologies on the privacy rights and remedies of the consumers of those technologies;

(B) to examine the impact that the globalization of such integrated communications networks has on the international dissemination of consumer information and the privacy rights and remedies to protect consumers;

(C) to propose changes in the Commission's regulations to ensure that the effect on consumer privacy rights is considered in the introduction of new telecommunications services and that the protection of such privacy rights is incorporated as necessary in the design of such services or the rules regulating such services;

(D) to propose changes in the Commission's regulations as necessary to correct any defects identified pursuant to subparagraph (A) in such rights and remedies; and

(E) to prepare recommendations to the Congress for any legislative changes required to correct such defects.

(2) SUBJECTS FOR EXAMINATION.—In conducting the examination required by paragraph (1), the Commission shall determine whether consumers are able, and, if not, the methods by which consumers may be enabled—

(A) to have knowledge that consumer information is being collected about them through their utilization of various communications technologies;

(B) to have notice that such information could be used, or is intended to be used, by the entity collecting the data for reasons unrelated to the original communications, or that such information could be sold (or is intended to be sold) to other companies or entities; and

(C) to stop the reuse or sale of that information.

(3) SCHEDULE FOR COMMISSION RESPONSES.—The Commission shall, within 18 months after the date of enactment of this Act—

(A) complete any rulemaking required to revise Commission regulations to correct defects in such regulations identified pursuant to paragraph (1); and

(B) submit to the Congress a report containing the recommendations required by paragraph (1)(C).

SEC. 105. POLE ATTACHMENTS.

Section 224 of the Act (47 U.S.C. 224) is amended—

(1) in subsection (a)(4)—

(A) by inserting after "system" the following: "or a provider of telecommunications service"; and

(B) by inserting after "utility" the following: ", which attachment may be used by such entities to provide cable service or any telecommunications service";

(2) in subsection (c)(2)(B), by striking "cable television services" and inserting "the services offered via such attachments";

(3) by redesignating subsection (d)(2) as subsection (d)(4); and

(4) by striking subsection (d)(1) and inserting the following:

"(d)(1) For purposes of subsection (b) of this section, the Commission shall, no later than 1 year after the date of enactment of the Communications Act of 1995, prescribe regulations for ensuring that utilities charge just and reasonable and nondiscriminatory rates for pole attachments provided to all providers of telecommunications services, including such attachments used by cable television systems to provide telecommunications services (as defined in section 3 of this Act). Such regulations shall—

"(A) recognize that the entire pole, duct, conduit, or right-of-way other than the usable space is of equal benefit all entities attaching to the pole and therefore apportion the cost of the space other than the usable space equally among all such attachments;

"(B) recognize that the usable space is of proportional benefit to all entities attaching to the pole, duct, conduit or right-of-way and therefore apportion the cost of the usable space according to the percentage of usable space required for each entity; and

"(C) allow for reasonable terms and conditions relating to health, safety, and the provision of reliable utility service.

"(2) The final regulations prescribed by the Commission pursuant to paragraph (1) shall not apply to a cable television system that solely provides cable service as defined in section 602(6) of this Act; instead, the pole attachment rate for such systems shall assure a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way.

"(3) Whenever the owner of a conduit or right-of-way intends to modify or alter such conduit or right-of-way, the owner shall provide written notification of such action to any entity that has obtained an attachment to such conduit or right-of-way so that such entity may have a reasonable opportunity to add to or modify its existing attachment. Any entity that adds to or modifies its existing attachment after receiving such notification shall bear a proportionate share of the costs incurred by the owner in making such conduit or right-of-way accessible.".

SEC. 106. PREEMPTION OF FRANCHISING AUTHORITY REGULATION OF TELECOMMUNICATIONS SERVICES.

(a) TELECOMMUNICATIONS SERVICES.—Section 621(b) of the Act (47 U.S.C. 541(c)) is amended by adding at the end thereof the following new paragraph:

"(3)(A) To the extent that a cable operator or affiliate thereof is engaged in the provision of telecommunications services—

"(i) such cable operator or affiliate shall not be required to obtain a franchise under this title; and

"(ii) the provisions of this title shall not apply to such cable operator or affiliate.

"(B) A franchising authority may not impose any requirement that has the purpose or effect of prohibiting, limiting, restricting, or conditioning the provision of a telecommunications service by a cable operator or an affiliate thereof.

"(C) A franchising authority may not order a cable operator or affiliate thereof—

"(i) to discontinue the provision of a telecommunications service, or

"(ii) to discontinue the operation of a cable system, to the extent such cable system is used for the provision of a telecommunications service, by reason of the failure of such cable operator or affiliate thereof to obtain a franchise or franchise renewal under this title with respect to the provision of such telecommunications service.

"(D) A franchising authority may not require a cable operator to provide any telecommunications service or facilities as a condition of the initial grant of a franchise or a franchise renewal.".

(b) FRANCHISE FEES.—Section 622(b) of the Act (47 U.S.C. 542(b)) is amended by inserting "to provide cable services" immediately before the period at the end of the first sentence thereof.

SEC. 107. FACILITIES SITING; RADIO FREQUENCY EMISSION STANDARDS.

(a) NATIONAL WIRELESS TELECOMMUNICATIONS SITING POLICY.—Section 332(c) of the Act (47 U.S.C. 332(c)) is amended by adding at the end the following new paragraph:

"(7) FACILITIES SITING POLICIES.—(A) Within 180 days after enactment of this paragraph, the Commission shall prescribe and make effective a policy regarding State and local regulation of the placement, construction, modification, or operation of facilities for the provision of commercial mobile services.

"(B) Pursuant to subchapter III of chapter 5, title 5, United States Code, the Commission shall establish a negotiated rulemaking committee to negotiate and develop a proposed policy to comply with the requirements of this paragraph. Such committee shall include representatives from State and local governments, affected industries, and public safety agencies. In negotiating and developing such a policy, the committee shall take into account—

"(i) the desirability of enhancing the coverage and quality of commercial mobile services and fostering competition in the provision of such services;

"(ii) the legitimate interests of State and local governments in matters of exclusively local concern;

"(iii) the effect of State and local regulation of facilities siting on interstate commerce; and

"(iv) the administrative costs to State and local governments of reviewing requests for authorization to locate facilities for the provision of commercial mobile services.

"(C) The policy prescribed pursuant to this paragraph shall ensure that—

"(i) regulation of the placement, construction, and modification of facilities for the provision of commercial mobile services by any State or local government or instrumentality thereof—

"(I) is reasonable, nondiscriminatory, and limited to the minimum necessary to accomplish the State or local government's legitimate purposes; and

"(II) does not prohibit or have the effect of precluding any commercial mobile service; and

"(ii) a State or local government or instrumentality thereof shall act on any request for authorization to locate, construct, modify, or operate facilities for the provision of commercial mobile services within a reasonable period of time after the request is fully filed with such government or instrumentality; and

"(iii) any decision by a State or local government or instrumentality thereof to deny a request for authorization to locate, construct, modify, or operate facilities for the provision of commercial mobile services shall be in writing and shall be supported by substantial evidence contained in a written record.

"(D) The policy prescribed pursuant to this paragraph shall provide that no State or local government or any instrumentality thereof may regulate the placement, construction, modification, or operation of such facilities on the basis of the environmental effects of radio frequency emissions, to the extent that such facilities comply with the Commission's regulations concerning such emissions.

"(E) In accordance with subchapter III of chapter 5, title 5, United States Code, the Commission shall periodically establish a negotiated rulemaking committee to review the policy prescribed by the Commission under this paragraph and to recommend revisions to such policy.".

(b) RADIO FREQUENCY EMISSIONS.—Within 180 days after the enactment of this Act, the Commission shall complete action in ET Docket 93–62 to prescribe and make effective rules regarding the environmental effects of radio frequency emissions.

(c) AVAILABILITY OF PROPERTY.—Within 180 days of the enactment of this Act, the Commission shall prescribe procedures by which Federal departments and agencies may make available on a fair, reasonable, and nondiscriminatory basis, property, rights-of-way, and easements under their control for the placement of new telecommunications facilities by duly licensed providers of telecommunications services

that are dependent, in whole or in part, upon the utilization of Federal spectrum rights for the transmission or reception of such services. These procedures may establish a presumption that requests for the use of property, rights-of-way, and easements by duly authorized providers should be granted absent unavoidable direct conflict with the department or agency's mission, or the current or planned use of the property, rights-of-way, and easements in question. Reasonable cost-based fees may be charged to providers of such telecommunications services for use of property, rights-of-way, and easements. The Commission shall provide technical support to States to encourage them to make property, rights-of-way, and easements under their jurisdiction available for such purposes.

SEC. 108. MOBILE SERVICE ACCESS TO LONG DISTANCE CARRIERS.

(a) AMENDMENT.—Section 332(c) of the Act (47 U.S.C. 332(c)) is amended by adding at the end the following new paragraph:

"(8) MOBILE SERVICES ACCESS.—(A) The Commission shall prescribe regulations to afford subscribers of two-way switched voice commercial mobile radio services access to a provider of telephone toll service of the subscriber's choice, except to the extent that the commercial mobile radio service is provided by satellite. The Commission may exempt carriers or classes of carriers from the requirements of such regulations to the extent the Commission determines such exemption is consistent with the public interest, convenience, and necessity. For purposes of this paragraph, 'access' shall mean access to a provider of telephone toll service through the use of carrier identification codes assigned to each such provider.

"(B) The regulations prescribed by the Commission pursuant to subparagraph (A) shall supersede any inconsistent requirements imposed by the Modification of Final Judgment or any order in United States v. AT&T Corp. and McCaw Cellular Communications, Inc., Civil Action No. 94–01555 (United States District Court, District of Columbia).".

(b) EFFECTIVE DATE CONFORMING AMENDMENT.—Section 6002(c)(2)(B) of the Omnibus Budget Reconciliation Act of 1993 is amended by striking "section 332(c)(6)" and inserting "paragraphs (6) and (8) of section 332(c)".

SEC. 109. FREEDOM FROM TOLL FRAUD.

(a) AMENDMENT.—Section 228(c) of the Act (47 U.S.C. 228(c)) is amended—

(1) by striking subparagraph (C) of paragraph (7) and inserting the following:

"(C) the calling party being charged for information conveyed during the call unless—

"(i) the calling party has a written subscription agreement with the information provider that meets the requirements of paragraph (8); or

"(ii) the calling party is charged in accordance with paragraph (9); or"; and

(2) by adding at the end the following new paragraphs:

"(8) SUBSCRIPTION AGREEMENTS FOR BILLING FOR INFORMATION PROVIDED VIA TOLL-FREE CALLS.—

"(A) IN GENERAL.—For purposes of paragraph (7)(C)(i), a written subscription agreement shall specify the terms and conditions under which the information is offered and include—

"(i) the rate at which charges are assessed for the information;

"(ii) the information provider's name;

"(iii) the information provider's business address;

"(iv) the information provider's regular business telephone number;

"(v) the information provider's agreement to notify the subscriber at least 30 days in advance of all future changes in the rates charged for the information;

"(vi) the signature of a legally competent subscriber agreeing to the terms of the agreement; and

"(vii) the subscriber's choice of payment method, which may be by phone bill or credit, prepaid, or calling card.

"(B) BILLING ARRANGEMENTS.—If a subscriber elects, pursuant to subparagraph (A)(vii), to pay by means of a phone bill—

"(i) the agreement shall clearly explain that the subscriber will be assessed for calls made to the information service from the subscriber's phone line;

"(ii) the phone bill shall include, in prominent type, the following disclaimer:

'Common carriers may not disconnect local or long distance telephone service for failure to pay disputed charges for information services.'; and

"(iii) the phone bill shall clearly list the 800 number dialed.

"(C) USE OF PIN'S TO PREVENT UNAUTHORIZED USE.—A written agreement does not meet the requirements of this paragraph unless it provides the subscriber a personal identification number to obtain access to the information provided, and includes instructions on its use.

"(D) EXCEPTIONS.—Notwithstanding paragraph (7)(C), a written agreement that meets the requirements of this paragraph is not required—

"(i) for services provided pursuant to a tariff that has been approved or permitted to take effect by the Commission or a State commission; or

"(ii) for any purchase of goods or of services that are not information services.

"(E) TERMINATION OF SERVICE.—On complaint by any person, a carrier may terminate the provision of service to an information provider unless the provider supplies evidence of a written agreement that meets the requirements of this section. The remedies provided in this paragraph are in addition to any other remedies that are available under title V of this Act.

"(9) CHARGES BY CREDIT, PREPAID, OR CALLING CARD IN ABSENCE OF AGREEMENT.—For purposes of paragraph (7)(C)(ii), a calling party is not charged in accordance with this paragraph unless the calling party is charged by means of a credit, prepaid, or calling card and the information service provider includes in response to each call an introductory disclosure message that—

"(A) clearly states that there is a charge for the call;

"(B) clearly states the service's total cost per minute and any other fees for the service or for any service to which the caller may be transferred;

"(C) explains that the charges must be billed on either a credit, prepaid, or calling card;

"(D) asks the caller for the credit or calling card number;

"(E) clearly states that charges for the call begin at the end of the introductory message; and

"(F) clearly states that the caller can hang up at or before the end of the introductory message without incurring any charge whatsoever.

"(10) DEFINITION OF CALLING CARD.—As used in this subsection, the term 'calling card' means an identifying number or code unique to the individual, that is issued to the individual by a common carrier and enables the individual to be charged by means of a phone bill for charges incurred independent of where the call originates.".

(b) REGULATIONS.—The Federal Communications Commission shall revise its regulations to comply with the amendment made by subsection (a) of this section within 180 days after the date of enactment of this Act.

SEC. 110. REPORT ON MEANS OF RESTRICTING ACCESS TO UNWANTED MATERIAL IN INTERACTIVE TELECOMMUNICATIONS SYSTEMS.

(a) REPORT.—Not later than 150 days after the date of the enactment of this Act, the Attorney General shall submit to the Committees on the Judiciary and Commerce, Science, and Transportation of the Senate and the Committees on the Judiciary and Commerce of the House of Representatives a report containing—

(1) an evaluation of the enforceability with respect to interactive media of current criminal laws governing the distribution of obscenity over computer networks and the creation and distribution of child pornography by means of computers;

(2) an assessment of the Federal, State, and local law enforcement resources that are currently available to enforce such laws;

(3) an evaluation of the technical means available—

(A) to enable parents to exercise control over the information that their children receive by interactive telecommunications systems so that children may avoid violent, sexually explicit, harassing, offensive, and other unwanted material on such systems;

(B) to enable other users of such systems to exercise control over the commercial and noncommercial information that they receive by such systems so that such users may avoid violent, sexually explicit, harassing, offensive, and other unwanted material on such systems; and

(C) to promote the free flow of information, consistent with the values expressed in the Constitution, in interactive media; and

(4) recommendations on means of encouraging the development and deployment of technology, including computer hardware and software, to enable parents and other users of interactive telecommunications systems to exercise the control described in subparagraphs (A) and (B) of paragraph (3).

(b) CONSULTATION.—In preparing the report under subsection (a), the Attorney General shall consult with the Assistant Secretary of Commerce for Communications and Information.

SEC. 111. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—In addition to any other sums authorized by law, there are authorized to be appropriated to the Federal Communications Commission such sums as may be necessary to carry out this Act and the amendments made by this Act.

(b) EFFECT ON FEES.—For the purposes of section 9(b)(2) of the Act (47 U.S.C. 159(b)(2)), additional amounts appropriated pursuant to subsection (a) shall be construed to be changes in the amounts appropriated for the performance of activities described in section 9(a) of such Act.

TITLE II—CABLE COMMUNICATIONS COMPETITIVENESS

SEC. 201. CABLE SERVICE PROVIDED BY TELEPHONE COMPANIES.

(a) GENERAL REQUIREMENT.—

(1) AMENDMENT.—Section 613(b) of the Act (47 U.S.C. 533(b)) is amended to read as follows:

"(b)(1) Subject to the requirements of part V and the other provisions of this title, any common carrier subject in whole or in part to title II of this Act may, either through its own facilities or through an affiliate, provide video programming directly to subscribers in its telephone service area.

"(2) Subject to the requirements of part V and the other provisions of this title, any common carrier subject in whole or in part to title II of this Act may provide channels of communications or pole, line, or conduit space, or other rental arrangements, to any entity which is directly or indirectly owned, operated, or controlled by, or under common control with, such common carrier, if such facilities or arrangements are to be used for, or in connection with, the provision of video programming directly to subscribers in its telephone service area.

"(3)(A) Notwithstanding paragraphs (1) and (2), an affiliate described in subparagraph (B) shall not be subject to the requirements of part V, but—

"(i) if providing video programming as a cable service using a cable system, shall be subject to the requirements of this part and parts III and IV; and

"(ii) if providing such video programming by means of radio communication, shall be subject to the requirements of title III.

"(B) For purposes of subparagraph (A), an affiliate is described in this subparagraph if such affiliate—

"(i) is, consistently with section 655, owned, operated, or controlled by, or under common control with, a common carrier subject in whole or in part to title II of this Act;

"(ii) provides video programming to subscribers in the telephone service area of such carrier; and

"(iii) does not utilize the local exchange facilities or services of any affiliated common carrier in distributing such programming.".

(2) CONFORMING AMENDMENT.—Section 602 of the Act (47 U.S.C. 531) is amended—

(A) by redesignating paragraphs (18) and (19) as paragraphs (19) and (20) respectively; and

(B) by inserting after paragraph (17) the following new paragraph:

"(18) the term 'telephone service area' when used in connection with a common carrier subject in whole or in part to title II of this Act means the area within which such carrier provides telephone exchange service as of January 1, 1993, but if any common carrier after such date transfers its exchange service facilities to another common carrier, the area to which such facilities provide telephone exchange service shall be treated as part of the telephone service area of the acquiring common carrier and not of the selling common carrier;".

(b) PROVISIONS FOR REGULATION OF CABLE SERVICE PROVIDED BY TELEPHONE COMPANIES.—Title VI of the Act (47 U.S.C. 521 et seq.) is amended by adding at the end the following new part:

"PART V—VIDEO PROGRAMMING SERVICES PROVIDED BY TELEPHONE COMPANIES

"SEC. 651. DEFINITIONS.

"For purposes of this part—

"(1) the term 'control' means—

"(A) an ownership interest in which an entity has the right to vote more than 50 percent of the outstanding common stock or other ownership interest; or

"(B) if no single entity directly or indirectly has the right to vote more than 50 percent of the outstanding common stock or other ownership interest, actual working control, in whatever manner exercised, as defined by the Commission by regulation on the basis of relevant factors and circumstances, which shall include partnership and direct ownership interests, voting stock interests, the interests of officers and directors, and the aggregation of voting interests; and

"(2) the term 'rural area' means a geographic area that does not include either—

"(A) any incorporated or unincorporated place of 10,000 inhabitants or more, or any part thereof; or

"(B) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census.

"SEC. 652. SEPARATE VIDEO PROGRAMMING AFFILIATE.

"(a) IN GENERAL.—Except as provided in subsection (d) of this section and section 613(b)(3), a common carrier subject to title II of this Act shall not provide video programming directly to subscribers in its telephone service area unless such video programming is provided through a video programming affiliate that is separate from such carrier.

"(b) BOOKS AND MARKETING.—

"(1) IN GENERAL.—A video programming affiliate of a common carrier shall—

"(A) maintain books, records, and accounts separate from such carrier which identify all transactions with such carrier;

"(B) carry out directly (or through any nonaffiliated person) its own promotion, except that institutional advertising carried out by such carrier shall be permitted so long as each party bears its pro rata share of the costs; and

"(C) not own real or personal property in common with such carrier.

"(2) INBOUND TELEMARKETING AND REFERRAL.—Notwithstanding paragraph (1)(B), a common carrier may provide telemarketing or referral services in response to the call of a customer or potential customer related to the provision of video programming by a video programming affiliate of such carrier. If such services are provided to a video programming affiliate, such services shall be made available to any video programmer or cable operator on request, on nondiscriminatory terms, at just and reasonable prices.

"(3) JOINT MARKETING.—Notwithstanding paragraph (1)(B) or section 613(b)(3), a common carrier may market video programming directly upon a showing to the Commission that a cable operator or other entity directly or indirectly provides telecommunications services within the telephone service area of the common carrier, and markets such telecommunications services jointly with video programming services. The common carrier shall specify the geographic region covered by the showing. The Commission shall approve or disapprove such showing within 60 days after the date of its submission.

"(c) BUSINESS TRANSACTIONS WITH CARRIER.—Any contract, agreement, arrangement, or other manner of conducting business, between a common carrier and its video programming affiliate, providing for—

"(1) the sale, exchange, or leasing of property between such affiliate and such carrier,

"(2) the furnishing of goods or services between such affiliate and such carrier, or

"(3) the transfer to or use by such affiliate for its benefit of any asset or resource of such carrier,

shall be on a fully compensatory and auditable basis, shall be without cost to the telephone service ratepayers of the carrier, and shall be in compliance with regulations established by the Commission that will enable the Commission to assess the compliance of any transaction.

"(d) WAIVER.—

"(1) CRITERIA FOR WAIVER.—The Commission may waive any of the requirements of this section for small telephone companies or telephone companies serving rural areas, if the Commission determines, after notice and comment, that—

"(A) such waiver will not affect the ability of the Commission to ensure that all video programming activity is carried out without any support from telephone ratepayers;

"(B) the interests of telephone ratepayers and cable subscribers will not be harmed if such waiver is granted;

"(C) such waiver will not adversely affect the ability of persons to obtain access to the video platform of such carrier; and

"(D) such waiver otherwise is in the public interest.

"(2) DEADLINE FOR ACTION.—The Commission shall act to approve or disapprove a waiver application within 180 days after the date it is filed.

"(3) CONTINUED APPLICABILITY OF SECTION 656.—In the case of a common carrier that obtains a waiver under this subsection, any requirement that section 656 applies to a video programming affiliate shall instead apply to such carrier.

"(e) SUNSET OF REQUIREMENTS.—The provisions of this section shall cease to be effective on July 1, 2000.

"SEC. 653. ESTABLISHMENT OF VIDEO PLATFORM.

"(a) VIDEO PLATFORM.—

"(1) IN GENERAL.—Except as provided in section 613(b)(3), any common carrier subject to title II of this Act, and that provides video programming directly to subscribers in its telephone service area, shall establish a video platform. This paragraph shall not apply to any carrier to the extent that it provides video programming directly to subscribers in its telephone service area solely through a cable system acquired in accordance with section 655(b).

"(2) IDENTIFICATION OF DEMAND FOR CARRIAGE.—Any common carrier subject to the requirements of paragraph (1) shall, prior to establishing a video platform, submit a notice to the Commission of its intention to establish channel capacity for the provision of video programming to meet the bona fide demand for such capacity. Such notice shall—

"(A) be in such form and contain information concerning the geographic area intended to be served and such information as the Commission may require by regulations pursuant to subsection (b);

"(B) specify the methods by which any entity seeking to use such channel capacity should submit to such carrier a specification of its channel capacity requirements; and

"(C) specify the procedures by which such carrier will determine (in accordance with the Commission's regulations under subsection (b)(1)(B)) whether such requests for capacity are bona fide.

The Commission shall submit any such notice for publication in the Federal Register within 5 working days.

"(3) RESPONSE TO REQUEST FOR CARRIAGE.—After receiving and reviewing the requests for capacity submitted pursuant to such notice, such common carrier shall establish channel capacity that is sufficient to provide carriage for—

"(A) all bona fide requests submitted pursuant to such notice,

"(B) any additional channels required pursuant to section 656, and

"(C) any additional channels required by the Commission's regulations under subsection (b)(1)(C).

"(4) RESPONSES TO CHANGES IN DEMAND FOR CAPACITY.—Any common carrier that establishes a video platform under this section shall—

"(A) immediately notify the Commission and each video programming provider of any delay in or denial of channel capacity or service, and the reasons therefor;

"(B) continue to receive and grant, to the extent of available capacity, carriage in response to bona fide requests for carriage from existing or additional video programming providers;

"(C) if at any time the number of channels required for bona fide requests for carriage may reasonably be expected soon to exceed the existing capacity of such video platform, immediately notify the Commission of such expectation and of the manner and date by which such carrier will provide sufficient capacity to meet such excess demand; and

"(D) construct such additional capacity as may be necessary to meet such excess demand.

"(5) DISPUTE RESOLUTION.—The Commission shall have the authority to resolve disputes under this section and the regulations prescribed thereunder.

Any such dispute shall be resolved within 180 days after notice of such dispute is submitted to the Commission. At that time or subsequently in a separate damages proceeding, the Commission may award damages sustained in consequence of any violation of this section to any person denied carriage, or require carriage, or both. Any aggrieved party may seek any other remedy available under this Act.

"(b) COMMISSION ACTIONS.—

"(1) IN GENERAL.—Within 15 months after the date of the enactment of this section, the Commission shall complete all actions necessary (including any reconsideration) to prescribe regulations that—

"(A) consistent with the requirements of section 656, prohibit a common carrier from discriminating among video programming providers with regard to carriage on its video platform, and ensure that the rates, terms, and conditions for such carriage are just, reasonable, and nondiscriminatory;

"(B) prescribe definitions and criteria for the purposes of determining whether a request shall be considered a bona fide request for purposes of this section;

"(C) permit a common carrier to carry on only one channel any video programming service that is offered by more than one video programming provider (including the common carrier's video programming affiliate), provided that subscribers have ready and immediate access to any such video programming service;

"(D) extend to the distribution of video programming over video platforms the Commission's regulations concerning network nonduplication (47 C.F.R. 76.92 et seq.) and syndicated exclusivity (47 C.F.R. 76.151 et seq.);

"(E) require the video platform to provide service, transmission, and interconnection for unaffiliated or independent video programming providers that is equivalent to that provided to the common carrier's video programming affiliate, except that the video platform shall not discriminate between analog and digital video programming offered by such unaffiliated or independent video programming providers;

"(F)(i) prohibit a common carrier from unreasonably discriminating in favor of its video programming affiliate with regard to material or information provided by the common carrier to subscribers for the purposes of selecting programming on the video platform, or in the way such material or information is presented to subscribers;

"(ii) require a common carrier to ensure that video programming providers or copyright holders (or both) are able suitably and uniquely to identify their programming services to subscribers; and

"(iii) if such identification is transmitted as part of the programming signal, require the carrier to transmit such identification without change or alteration; and

"(G) prohibit a common carrier from excluding areas from its video platform service area on the basis of the ethnicity, race, or income of the residents of that area, and provide for public comments on the adequacy of the proposed service area on the basis of the standards set forth under this subparagraph.

Nothing in this section prohibits a common carrier or its affiliate from negotiating mutually agreeable terms and conditions with over-the-air broadcast stations and other unaffiliated video programming providers to allow consumer access to their signals on any level or screen of any gateway, menu, or other program guide, whether provided by the carrier or its affiliate.

"(2) APPLICABILITY TO OTHER HIGH CAPACITY SYSTEMS.—The Commission shall apply the requirements of this section, in lieu of the requirements of section 612, to any cable operator of a cable system that has installed a switched, broadband video programming delivery system, except that the Commission shall not apply the requirements of the regulations prescribed pursuant to subsection (b)(1)(D) or any other requirement that the Commission determines is inappropriate.

"(c) REGULATORY STREAMLINING.—With respect to the establishment and operation of a video platform, the requirements of this section shall apply in lieu of, and not in addition to, the requirements of title II.

"(d) COMMISSION INQUIRY.—The Commission shall conduct a study of whether it is in the public interest to extend the requirements of subsection (a) to any other cable operators in lieu of the requirements of section 612. The Commission shall submit to the Congress a report on the results of such study not later than 2 years after the date of enactment of this section.

"SEC. 654. AUTHORITY TO PROHIBIT CROSS-SUBSIDIZATION.

"Nothing in this part shall prohibit a State commission that regulates the rates for telephone exchange service or exchange access based on the cost of providing such service or access from—

"(1) prescribing regulations to prohibit a common carrier from engaging in any practice that results in the inclusion in rates for telephone exchange service or exchange access of any operating expenses, costs, depreciation charges, capital investments, or other expenses directly associated with the provision of competing video programming services by the common carrier or affiliate; or

"(2) ensuring such competing video programming services bear a reasonable share of the joint and common costs of facilities used to provide telephone exchange service or exchange access and competing video programming services.

"SEC. 655. PROHIBITION ON BUY OUTS.

"(a) GENERAL PROHIBITION.—No common carrier that provides telephone exchange service, and no entity owned by or under common ownership or control with such carrier, may purchase or otherwise obtain control over any cable system that is located within its telephone service area and is owned by an unaffiliated person.

"(b) EXCEPTIONS.—Notwithstanding subsection (a), a common carrier may—

"(1) obtain a controlling interest in, or form a joint venture or other partnership with, a cable system that serves a rural area;

"(2) obtain, in addition to any interest, joint venture, or partnership obtained or formed pursuant to paragraph (1), a controlling interest in, or form a joint venture or other partnership with, any cable system or systems if—

"(A) such systems in the aggregate serve less than 10 percent of the households in the telephone service area of such carrier; and

"(B) no such system serves a franchise area with more than 35,000 inhabitants, except that a common carrier may obtain such interest or form such joint venture or other partnership with a cable system that serves a franchise area with more than 35,000 but not more than 50,000 inhabitants if such system is not affiliated with any other system whose franchise area is contiguous to the franchise area of the acquired system;

"(3) obtain, with the concurrence of the cable operator on the rates, terms, and conditions, the use of that part of the transmission facilities of such a cable system extending from the last multi-user terminal to the premises of the end user, if such use is reasonably limited in scope and duration, as determined by the Commission; or

"(4) obtain a controlling interest in, or form a joint venture or other partnership with, or provide financing to, a cable system (hereinafter in this paragraph referred to as 'the subject cable system'), if—

"(A) the subject cable system operates in a television market that is not in the top 25 markets, and that has more than 1 cable system operator, and the subject cable system is not the largest cable system in such television market;

"(B) the subject cable system and the largest cable system in such television market held on May 1, 1995, cable television franchises from the largest municipality in the television market and the boundaries of such franchises were identical on such date;

"(C) the subject cable system is not owned by or under common ownership or control of any one of the 50 largest cable system operators as existed on May 1, 1995; and

"(D) the largest system in the television market is owned by or under common ownership or control of any one of the 10 largest cable system operators as existed on May 1, 1995.

"(c) WAIVER.—

"(1) CRITERIA FOR WAIVER.—The Commission may waive the restrictions in subsection (a) of this section only upon a showing by the applicant that—

"(A) because of the nature of the market served by the cable system concerned—

"(i) the incumbent cable operator would be subjected to undue economic distress by the enforcement of such subsection; or

"(ii) the cable system would not be economically viable if such subsection were enforced; and

"(B) the local franchising authority approves of such waiver.

"(2) DEADLINE FOR ACTION.—The Commission shall act to approve or disapprove a waiver application within 180 days after the date it is filed.

"SEC. 656. APPLICABILITY OF PARTS I THROUGH IV.

"(a) IN GENERAL.—Any provision that applies to a cable operator under—

"(1) sections 613 (other than subsection (a)(2) thereof), 616, 617, 628, 631, 632, and 634 of this title, shall apply,

"(2) sections 611, 612, 614, and 615 of this title, and section 325 of title III, shall apply in accordance with the regulations prescribed under subsection (b), and

"(3) parts III and IV (other than sections 628, 631, 632, and 634) of this title shall not apply,

to any video programming affiliate established by a common carrier in accordance with the requirements of this part.

"(b) IMPLEMENTATION.—

"(1) COMMISSION ACTION.—The Commission shall prescribe regulations to ensure that a common carrier in the operation of its video platform shall provide (A) capacity, services, facilities, and equipment for public, educational, and governmental use, (B) capacity for commercial use, (C) carriage of commercial and non-commercial broadcast television stations, and (D) an opportunity for commercial broadcast stations to choose between mandatory carriage and reimbursement for retransmission of the signal of such station. In prescribing such regulations, the Commission shall, to the extent possible, impose obligations that are no greater or lesser than the obligations contained in the provisions described in subsection (a)(2) of this section.

"(2) FEES.—A video programming affiliate of any common carrier that establishes a video platform under this part, and any multichannel video programming distributor offering a competing service using such video platform (as determined in accordance with regulations of the Commission), shall be subject to the payment of fees imposed by a local franchising authority, in lieu of the fees required under section 622. The rate at which such fees are imposed shall not exceed the rate at which franchise fees are imposed on any cable operator transmitting video programming in the same service area.

"SEC. 657. RURAL AREA EXEMPTION.

"The provisions of sections 652, 653, and 655 shall not apply to video programming provided in a rural area by a common carrier that provides telephone exchange service in the same area.".

SEC. 202. COMPETITION FROM CABLE SYSTEMS.

(a) DEFINITION OF CABLE SERVICE.—Section 602(6)(B) of the Act (47 U.S.C. 522(6)(B)) is amended by inserting "or use" after "the selection".

(b) CLUSTERING.—Section 613 of the Act (47 U.S.C. 533) is amended by adding at the end the following new subsection:

"(i) ACQUISITION OF CABLE SYSTEMS.—Except as provided in section 655, the Commission may not require divestiture of, or restrict or prevent the acquisition of, an ownership interest in a cable system by any person based in whole or in part on the geographic location of such cable system.".

(c) EQUIPMENT.—Section 623(a) of the Act (47 U.S.C. 543(a)) is amended—

(1) in paragraph (6)—

(A) by striking "paragraph (4)" and inserting "paragraph (5)";

(B) by striking "paragraph (5)" and inserting "paragraph (6)"; and

(C) by striking "paragraph (3)" and inserting "paragraph (4)";

(2) by redesignating paragraphs (3) through (6) as paragraphs (4) through (7), respectively; and

(3) by inserting after paragraph (2) the following new paragraph:

"(3) EQUIPMENT.—If the Commission finds that a cable system is subject to effective competition under subparagraph (D) of subsection (l)(1), the rates for equipment, installations, and connections for additional television receivers (other than equipment, installations, and connections furnished by such system to subscribers who receive only a rate regulated basic service tier) shall not be subject to regulation by the Commission or by a State or franchising authority. If the Commission finds that a cable system is subject to effective competition under subparagraph (A), (B), or (C) of subsection (*l*)(1), the rates for any equipment, installations, and connections furnished by such system to any subscriber shall not be subject to regulation by the Commission, or by a State or franchising authority. No Federal agency, State, or franchising authority may establish the price or rate for the installation, sale, or lease of any equipment furnished to any subscriber by a cable system solely in connection with video programming offered on a per channel or per program basis.".

(d) LIMITATION ON BASIC TIER RATE INCREASES; SCOPE OF REVIEW.—Section 623(a) of the Act (47 U.S.C. 543(a)) is further amended by adding at the end the following new paragraph:

"(8) LIMITATION ON BASIC TIER RATE INCREASES; SCOPE OF REVIEW.—A cable operator may not increase its basic service tier rate more than once every 6 months. Such increase may be implemented, using any reasonable billing or proration method, 30 days after providing notice to subscribers and the appropriate regulatory authority. The rate resulting from such increase shall be deemed reasonable and shall not be subject to reduction or refund if the franchising authority or the Commission, as appropriate, does not complete its review and issue a final order within 90 days after implementation of such increase. The review by the franchising authority or the Commission of any future increase in such rate shall be limited to the incremental change in such rate effected by such increase.".

(e) NATIONAL INFORMATION INFRASTRUCTURE DEVELOPMENT.—Section 623(a) of the Act (47 U.S.C. 543) is further amended by adding at the end the following new paragraph:

"(9) NATIONAL INFORMATION INFRASTRUCTURE.—

"(A) PURPOSE.—It is the purpose of this paragraph to—

"(i) promote the development of the National Information Infrastructure;

"(ii) enhance the competitiveness of the National Information Infrastructure by ensuring that cable operators have incentives comparable to other industries to develop such infrastructure; and

"(iii) encourage the rapid deployment of digital technology necessary to the development of the National Information Infrastructure.

"(B) AGGREGATION OF EQUIPMENT COSTS.—The Commission shall allow cable operators, pursuant to any rules promulgated under subsection (b)(3), to aggregate, on a franchise, system, regional, or company level, their equipment costs into broad categories, such as converter boxes, regardless of the varying levels of functionality of the equipment within each such broad category. Such aggregation shall not be permitted with respect to equipment used by subscribers who receive only a rate regulated basic service tier.

"(C) REVISION TO COMMISSION RULES; FORMS.—Within 120 days of the date of enactment of this paragraph, the Commission shall issue revisions to the appropriate rules and forms necessary to implement subparagraph (B).".

(f) COMPLAINT THRESHOLD; SCOPE OF COMMISSION REVIEW.—Section 623(c) of the Act (47 U.S.C. 543(c)) is amended—

(1) by striking paragraph (3) and inserting the following:

"(3) REVIEW OF COMPLAINTS.—

"(A) COMPLAINT THRESHOLD.—The Commission shall have the authority to review any increase in the rates for cable programming services implemented after the date of enactment of the Communications Act of 1995 only if, within 90 days after such increase becomes effective, at least 10 subscribers to such services or 5 percent of the subscribers to such services, whichever is greater, file separate, individual complaints against such increase with the Commission in accordance with the requirements established under paragraph (1)(B).

"(B) TIME PERIOD FOR COMMISSION REVIEW.—The Commission shall complete its review of any such increase and issue a final order within 90 days after it receives the number of complaints required by subparagraph (A).

"(4) TREATMENT OF PENDING CABLE PROGRAMMING SERVICES COMPLAINTS.—Upon enactment of the Communications Act of 1995, the Commission shall suspend the processing of all pending cable programming services rate complaints. These pending complaints shall be counted by the Commission toward the complaint threshold specified in paragraph (3)(A). Parties shall have an additional 90 days from the date of enactment of such Act to file complaints about prior increases in cable programming services rates if such rate increases were already subject to a valid, pending complaint on such date of enactment. At the expiration of such 90-day period, the Commission shall dismiss all pending cable programming services rate cases for which the complaint threshold has not been met, and may resume its review of those pending cable programming services rate cases for which the complaint threshold has been met, which review shall be completed within 180 days after the date of enactment of the Communications Act of 1995.

"(5) SCOPE OF COMMISSION REVIEW.—A cable programming services rate shall be deemed not unreasonable and shall not be subject to reduction or refund if—

"(A) such rate was not the subject of a pending complaint at the time of enactment of the Communications Act of 1995;

"(B) such rate was the subject of a complaint that was dismissed pursuant to paragraph (4);

"(C) such rate resulted from an increase for which the complaint threshold specified in paragraph (3)(A) has not been met;

"(D) the Commission does not complete its review and issue a final order in the time period specified in paragraph (3)(B) or (4); or

"(E) the Commission issues an order finding such rate to be not unreasonable.

The review by the Commission of any future increase in such rate shall be limited to the incremental change in such rate effected by such increase.";

(2) in paragraph (1)(B) by striking "obtain Commission consideration and resolution of whether the rate in question is unreasonable" and inserting "be counted toward the complaint threshold specified in paragraph (3)(A)"; and

(3) in paragraph (1)(C) by striking "such complaint" and inserting in lieu thereof "the first complaint".

(g) UNIFORM RATE STRUCTURE.—Section 623(d) of the Act (47 U.S.C. 543(d)) is amended to read as follows:

"(d) UNIFORM RATE STRUCTURE.—A cable operator shall have a uniform rate structure throughout its franchise area for the provision of cable services that are regulated by the Commission or the franchising authority. Bulk discounts to multiple dwelling units shall not be subject to this requirement.".

(h) EFFECTIVE COMPETITION.—Section 623(l)(1) of the Act (47 U.S.C. 543(l)(1)) is amended—

(1) in subparagraph (B)(ii)—

(A) by inserting "all" before "multichannel video programming distributors"; and

(B) by striking "or" at the end thereof;

(2) by striking the period at the end of subparagraph (C) and inserting "; or"; and

(3) by adding at the end the following:

"(D) with respect to cable programming services and subscriber equipment, installations, and connections for additional television receivers (other than equipment, installations, and connections furnished to subscribers who receive only a rate regulated basic service tier)—

"(i) a common carrier has been authorized by the Commission to construct facilities to provide video dialtone service in the cable operator's franchise area;

"(ii) a common carrier has been authorized by the Commission or pursuant to a franchise to provide video programming directly to subscribers in the franchise area; or

"(iii) the Commission has completed all actions necessary (including any reconsideration) to prescribe regulations pursuant to section 653(b)(1) relating to video platforms.".

(i) RELIEF FOR SMALL CABLE OPERATORS.—Section 623 of the Act (47 U.S.C. 543) is amended by adding at the end the following new subsection:

"(m) SMALL CABLE OPERATORS.—

"(1) SMALL CABLE OPERATOR RELIEF.—A small cable operator shall not be subject to subsections (a), (b), (c), or (d) in any franchise area with respect to the provision of cable programming services, or a basic service tier where such tier was the only tier offered in such area on December 31, 1994.

"(2) DEFINITION OF SMALL CABLE OPERATOR.—For purposes of this subsection, 'small cable operator' means a cable operator that—

"(A) directly or through an affiliate, serves in the aggregate fewer than 1 percent of all cable subscribers in the United States; and

"(B) is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.".

(j) TECHNICAL STANDARDS.—Section 624(e) of the Act (47 U.S.C. 544(e)) is amended by striking the last two sentences and inserting the following: "No State or franchising authority may prohibit, condition, or restrict a cable system's use of any type of subscriber equipment or any transmission technology.".

(k) CABLE SECURITY SYSTEMS.—Section 624A(b)(2) of the Act (47 U.S.C. 544a(b)(2)) is amended to read as follows:

"(2) CABLE SECURITY SYSTEMS.—No Federal agency, State, or franchising authority may prohibit a cable operator's use of any security system (including scrambling, encryption, traps, and interdiction), except that the Commission may prohibit the use of any such system solely with respect to the delivery of a basic service tier that, as of January 1, 1995, contained only the signals and

programming specified in section 623(b)(7)(A), unless the use of such system is necessary to prevent the unauthorized reception of such tier.".

(l) CABLE EQUIPMENT COMPATIBILITY.—Section 624A of the Act (47 U.S.C. 544A), is amended—

(1) in subsection (a) by striking "and" at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting "; and"; and by adding at the end the following new paragraph:

"(4) compatibility among televisions, video cassette recorders, and cable systems can be assured with narrow technical standards that mandate a minimum degree of common design and operation, leaving all features, functions, protocols, and other product and service options for selection through open competition in the market.";

(2) in subsection (c)(1)—

(A) by redesignating subparagraphs (A) and (B) as subparagraphs (B) and (C), respectively; and

(B) by inserting before such redesignated subparagraph (B) the following new subparagraph:

"(A) the need to maximize open competition in the market for all features, functions, protocols, and other product and service options of converter boxes and other cable converters unrelated to the descrambling or decryption of cable television signals;"; and

(3) in subsection (c)(2)—

(A) by redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F), respectively; and

(B) by inserting after subparagraph (C) the following new subparagraph:

"(D) to ensure that any standards or regulations developed under the authority of this section to ensure compatibility between televisions, video casette recorders, and cable systems do not affect features, functions, protocols, and other product and service options other than those specified in paragraph (1)(B), including telecommunications interface equipment, home automation communications, and computer network services;".

(m) RETIERING OF BASIC TIER SERVICES.—Section 625(d) of the Act (47 U.S.C. 543(d)) is amended by adding at the end the following new sentence: "Any signals or services carried on the basic service tier but not required under section 623(b)(7)(A) may be moved from the basic service tier at the operator's sole discretion, provided that the removal of such a signal or service from the basic service tier is permitted by contract. The movement of such signals or services to an unregulated package of services shall not subject such package to regulation.".

(n) SUBSCRIBER NOTICE.—Section 632 of the Act (47 U.S.C. 552) is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following new subsection:

"(c) SUBSCRIBER NOTICE.—A cable operator may provide notice of service and rate changes to subscribers using any reasonable written means at its sole discretion. Notwithstanding section 623(b)(6) or any other provision of this Act, a cable operator shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, State, or franchising authority on the transaction between the operator and the subscriber.".

(o) TREATMENT OF PRIOR YEAR LOSSES.—

(1) AMENDMENT.—Section 623 (48 U.S.C. 543) is amended by adding at the end thereof the following:

"(n) TREATMENT OF PRIOR YEAR LOSSES.—Notwithstanding any other provision of this section or of section 612, losses (including losses associated with the acquisitions of such franchise) that were incurred prior to September 4, 1992, with respect to a cable system that is owned and operated by the original franchisee of such system shall not be disallowed, in whole or in part, in the determination of whether the rates for any tier of service or any type of equipment that is subject to regulation under this section are lawful.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date of enactment of this Act and shall be applicable to any rate proposal filed on or after September 4, 1993.

SEC. 203. COMPETITIVE AVAILABILITY OF NAVIGATION DEVICES.

Title VII of the Act is amended by adding at the end the following new section:

"SEC. 713. COMPETITIVE AVAILABILITY OF NAVIGATION DEVICES.

"(a) DEFINITIONS.—As used in this section:

"(1) The term 'telecommunications subscription service' means the provision directly to subscribers of video, voice, or data services for which a subscriber charge is made.

"(2) The term 'telecommunications system' or a 'telecommunications system operator' means a provider of telecommunications subscription service.

"(b) COMPETITIVE CONSUMER AVAILABILITY OF CUSTOMER PREMISES EQUIPMENT.—The Commission shall adopt regulations to assure competitive availability, to consumers of telecommunications subscription services, of converter boxes, interactive communications devices, and other customer premises equipment from manufacturers, retailers, and other vendors not affiliated with any telecommunications system operator. Such regulations shall take into account the needs of owners and distributors of video programming and information services to ensure system and signal security and prevent theft of service. Such regulations shall not prohibit any telecommunications system operator from also offering devices and customer premises equipment to consumers, provided that the system operator's charges to consumers for such devices and equipment are separately stated and not bundled with or subsidized by charges for any telecommunications subscription service.

"(c) WAIVER FOR NEW NETWORK SERVICES.—The Commission may waive a regulation adopted pursuant to subsection (b) for a limited time upon an appropriate showing by a telecommunications system operator that such waiver is necessary to the introduction of a new telecommunications subscription service.

"(d) SUNSET.—The regulations adopted pursuant to this section shall cease to apply to any market for the acquisition of converter boxes, interactive communications devices, or other customer premises equipment when the Commission determines that such market is competitive.".

SEC. 204. VIDEO PROGRAMMING ACCESSIBILITY.

(a) COMMISSION INQUIRY.—Within 180 days after the date of enactment of this section, the Federal Communications Commission shall complete an inquiry to ascertain the level at which video programming is closed captioned. Such inquiry shall examine the extent to which existing or previously published programming is closed captioned, the size of the video programming provider or programming owner providing closed captioning, the size of the market served, the relative audience shares achieved, or any other related factors. The Commission shall submit to the Congress a report on the results of such inquiry.

(b) ACCOUNTABILITY CRITERIA.—Within 18 months after the date of enactment, the Commission shall prescribe such regulations as are necessary to implement this section. Such regulations shall ensure that—

(1) video programming first published or exhibited after the effective date of such regulations is fully accessible through the provision of closed captions, except as provided in subsection (d); and

(2) video programming providers or owners maximize the accessibility of video programming first published or exhibited prior to the effective date of such regulations through the provision of closed captions, except as provided in subsection (d).

(c) DEADLINES FOR CAPTIONING.—Such regulations shall include an appropriate schedule of deadlines for the provision of closed captioning of video programming.

(d) EXEMPTIONS.—Notwithstanding subsection (b)—

(1) the Commission may exempt by regulation programs, classes of programs, or services for which the Commission has determined that the provision of closed captioning would be economically burdensome to the provider or owner of such programming;

(2) a provider of video programming or the owner of any program carried by the provider shall not be obligated to supply closed captions if such action would be inconsistent with contracts in effect on the date of enactment of this Act, except that nothing in this section shall be construed to relieve a video programming provider of its obligations to provide services required by Federal law; and

(3) a provider of video programming or program owner may petition the Commission for an exemption from the requirements of this section, and the Commission may grant such petition upon a showing that the requirements contained in this section would result in an undue burden.

(e) UNDUE BURDEN.—The term "undue burden" means significant difficulty or expense. In determining whether the closed captions necessary to comply with the requirements of this paragraph would result in an undue economic burden, the factors to be considered include—

(1) the nature and cost of the closed captions for the programming;

(2) the impact on the operation of the provider or program owner;

(3) the financial resources of the provider or program owner; and

(4) the type of operations of the provider or program owner.

(f) VIDEO DESCRIPTIONS INQUIRY.—Within 6 months after the date of enactment of this Act, the Commission shall commence an inquiry to examine the use of video descriptions on video programming in order to ensure the accessibility of video programming to persons with visual impairments, and report to Congress on its findings. The Commission's report shall assess appropriate methods and schedules for phasing video descriptions into the marketplace, technical and quality standards for video descriptions, a definition of programming for which video descriptions would apply, and other technical and legal issues that the Commission deems appropriate. Following the completion of such inquiry, the Commission may adopt regulation it deems necessary to promote the accessibility of video programming to persons with visual impairments.

(g) VIDEO DESCRIPTION.—For purposes of this section, "video description" means the insertion of audio narrated descriptions of a television program's key visual elements into natural pauses between the program's dialogue.

(h) PRIVATE RIGHTS OF ACTIONS PROHIBITED.—Nothing in this section shall be construed to authorize any private right of action to enforce any requirement of this section or any regulation thereunder. The Commission shall have exclusive jurisdiction with respect to any complaint under this section.

SEC. 205. TECHNICAL AMENDMENTS.

(a) RETRANSMISSION.—Section 325(b)(2)(D) of the Act (47 U.S.C. 325(b)(2)(D)) is amended to read as follows:

"(D) retransmission by a cable operator or other multichannel video programming distributor of the signal of a superstation if (i) the customers served by the cable operator or other multichannel video programming distributor reside outside the originating station's television market, as defined by the Commission for purposes of section 614(h)(1)(C); (ii) such signal was obtained from a satellite carrier or terrestrial microwave common carrier; and (iii) and the origination station was a superstation on May 1, 1991.".

(b) MARKET DETERMINATIONS.—Section 614(h)(1)(C)(i) of the Act (47 U.S.C. 534(h)(1)(C)(i)) is amended by striking out "in the manner provided in section 73.3555(d)(3)(i) of title 47, Code of Federal Regulations, as in effect on May 1, 1991," and inserting "by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns,".

(c) TIME FOR DECISION.—Section 614(h)(1)(C)(iv) of such Act is amended to read as follows:

"(iv) Within 120 days after the date a request is filed under this subparagraph, the Commission shall grant or deny the request.".

(d) PROCESSING OF PENDING COMPLAINTS.—The Commission shall, unless otherwise informed by the person making the request, assume that any person making a request to include or exclude additional communities under section 614(h)(1)(C) of such Act (as in effect prior to the date of enactment of this Act) continues to request such inclusion or exclusion under such section as amended under subsection (b).

TITLE III—BROADCAST COMMUNICATIONS COMPETITIVENESS

SEC. 301. BROADCASTER SPECTRUM FLEXIBILITY.

Title III of the Act is amended by inserting after section 335 (47 U.S.C. 335) the following new section:

"SEC. 336. BROADCAST SPECTRUM FLEXIBILITY.

"(a) COMMISSION ACTION.—If the Commission determines to issue additional licenses for advanced television services, the Commission shall—

"(1) limit the initial eligibility for such licenses to persons that, as of the date of such issuance, are licensed to operate a television broadcast station or hold a permit to construct such a station (or both); and

"(2) adopt regulations that allow such licensees or permittees to offer such ancillary or supplementary services on designated frequencies as may be consistent with the public interest, convenience, and necessity.

"(b) CONTENTS OF REGULATIONS.—In prescribing the regulations required by subsection (a), the Commission shall—

"(1) only permit such licensee or permittee to offer ancillary or supplementary services if the use of a designated frequency for such services is consistent with

the technology or method designated by the Commission for the provision of advanced television services;

"(2) limit the broadcasting of ancillary or supplementary services on designated frequencies so as to avoid derogation of any advanced television services, including high definition television broadcasts, that the Commission may require using such frequencies;

"(3) apply to any other ancillary or supplementary service such of the Commission's regulations as are applicable to the offering of analogous services by any other person, except that no ancillary or supplementary service shall have any rights to carriage under section 614 or 615 or be deemed a multichannel video programming distributor for purposes of section 628;

"(4) adopt such technical and other requirements as may be necessary or appropriate to assure the quality of the signal used to provide advanced television services, and may adopt regulations that stipulate the minimum number of hours per day that such signal must be transmitted; and

"(5) prescribe such other regulations as may be necessary for the protection of the public interest, convenience, and necessity.

"(c) RECOVERY OF LICENSE.—

"(1) CONDITIONS REQUIRED.—If the Commission grants a license for advanced television services to a person that, as of the date of such issuance, is licensed to operate a television broadcast station or holds a permit to construct such a station (or both), the Commission shall, as a condition of such license, require that, upon a determination by the Commission pursuant to the regulations prescribed under paragraph (2), either the additional license or the original license held by the licensee be surrendered to the Commission in accordance with such regulations for reallocation or reassignment (or both) pursuant to Commission regulation.

"(2) CRITERIA.—The Commission shall prescribe criteria for rendering determinations concerning license surrender pursuant to license conditions required by paragraph (1). Such criteria shall—

"(A) require such determinations to be based, on a market-by-market basis, on whether the substantial majority of the public have obtained television receivers that are capable of receiving advanced television services; and

"(B) not require the cessation of the broadcasting under either the original or additional license if such cessation would render the television receivers of a substantial portion of the public useless, or otherwise cause undue burdens on the owners of such television receivers.

"(3) AUCTION OF RETURNED SPECTRUM.—Any license surrendered under the requirements of this subsection shall be subject to assignment by use of competitive bidding pursuant to section 309(j), notwithstanding any limitations contained in paragraph (2) of such section.

"(d) FEES.—

"(1) SERVICES TO WHICH FEES APPLY.—If the regulations prescribed pursuant to subsection (a) permit a licensee to offer ancillary or supplementary services on a designated frequency—

"(A) for which the payment of a subscription fee is required in order to receive such services, or

"(B) for which the licensee directly or indirectly receives compensation from a third party in return for transmitting material furnished by such third party (other than commercial advertisements used to support broadcasting for which a subscription fee is not required),

the Commission shall establish a program to assess and collect from the licensee for such designated frequency an annual fee or other schedule or method of payment that promotes the objectives described in subparagraphs (A) and (B) of paragraph (2).

"(2) COLLECTION OF FEES.—The program required by paragraph (1) shall—

"(A) be designed (i) to recover for the public a portion of the value of the public spectrum resource made available for such commercial use, and (ii) to avoid unjust enrichment through the method employed to permit such uses of that resource;

"(B) recover for the public an amount that, to the extent feasible, equals but does not exceed (over the term of the license) the amount that would have been recovered had such services been licensed pursuant to the provisions of section 309(j) of this Act and the Commission's regulations thereunder; and

"(C) be adjusted by the Commission from time to time in order to continue to comply with the requirements of this paragraph.

"(3) TREATMENT OF REVENUES.—

"(A) GENERAL RULE.—Except as provided in subparagraph (B), all proceeds obtained pursuant to the regulations required by this subsection shall be deposited in the Treasury in accordance with chapter 33 of title 31, United States Code.

"(B) RETENTION OF REVENUES.—Notwithstanding subparagraph (A), the salaries and expenses account of the Commission shall retain as an offsetting collection such sums as may be necessary from such proceeds for the costs of developing and implementing the program required by this section and regulating and supervising advanced television services. Such offsetting collections shall be available for obligation subject to the terms and conditions of the receiving appropriations account, and shall be deposited in such accounts on a quarterly basis.

"(4) REPORT.—Within 5 years after the date of the enactment of this section, the Commission shall report to the Congress on the implementation of the program required by this subsection, and shall annually thereafter advise the Congress on the amounts collected pursuant to such program.

"(e) EVALUATION.—Within 10 years after the date the Commission first issues additional licenses for advanced television services, the Commission shall conduct an evaluation of the advanced television services program. Such evaluation shall include—

"(1) an assessment of the willingness of consumers to purchase the television receivers necessary to receive broadcasts of advanced television services;

"(2) an assessment of alternative uses, including public safety use, of the frequencies used for such broadcasts; and

"(3) the extent to which the Commission has been or will be able to reduce the amount of spectrum assigned to licensees.

"(f) DEFINITIONS.—As used in this section:

"(1) ADVANCED TELEVISION SERVICES.—The term 'advanced television services' means television services provided using digital or other advanced technology as further defined in the opinion, report, and order of the Commission entitled 'Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service', MM Docket 87–268, adopted September 17, 1992, and successor proceedings.

"(2) DESIGNATED FREQUENCIES.—The term 'designated frequency' means each of the frequencies designated by the Commission for licenses for advanced television services.

"(3) HIGH DEFINITION TELEVISION.—The term 'high definition television' refers to systems that offer approximately twice the vertical and horizontal resolution of receivers generally available on the date of enactment of this section, as further defined in the proceedings described in paragraph (1) of this subsection.".

SEC. 302. BROADCAST OWNERSHIP.

(a) AMENDMENT.—Title III of the Act is amended by inserting after section 336 (as added by section 301) the following new section:

"SEC. 337. BROADCAST OWNERSHIP.

"(a) LIMITATIONS ON COMMISSION RULEMAKING AUTHORITY.—Except as expressly permitted in this section, the Commission shall not prescribe or enforce any regulation—

"(1) prohibiting or limiting, either nationally or within any particular area, a person or entity from holding any form of ownership or other interest in two or more broadcasting stations or in a broadcasting station and any other medium of mass communication; or

"(2) prohibiting a person or entity from owning, operating, or controlling two or more networks of broadcasting stations or from owning, operating, or controlling a network of broadcasting stations and any other medium of mass communications.

"(b) TELEVISION OWNERSHIP LIMITATIONS.—

"(1) NATIONAL AUDIENCE REACH LIMITATIONS.—The Commission shall prohibit a person or entity from obtaining any license if such license would result in such person or entity directly or indirectly owning, operating, or controlling, or having a cognizable interest in, television stations which have an aggregate national audience reach exceeding—

"(A) 35 percent, for any determination made under this paragraph before one year after the date of enactment of this section; or

"(B) 50 percent, for any determination made under this paragraph on or after one year after such date of enactment.

Within 3 years after such date of enactment, the Commission shall conduct a study on the operation of this paragraph and submit a report to the Congress on the development of competition in the television marketplace and the need for any revisions to or elimination of this paragraph.

"(2) MULTIPLE LICENSES IN A MARKET.—

"(A) IN GENERAL.—The Commission shall prohibit a person or entity from obtaining any license if such license would result in such person or entity directly or indirectly owning, operating, or controlling, or having a cognizable interest in, two or more television stations within the same television market.

"(B) EXCEPTION FOR MULTIPLE UHF STATIONS AND FOR UHF-VHF COMBINATIONS.—Notwithstanding subparagraph (A), the Commission shall not prohibit a person or entity from directly or indirectly owning, operating, or controlling, or having a cognizable interest in, two television stations within the same television market if at least one of such stations is a UHF television, unless the Commission determines that permitting such ownership, operation, or control will harm competition or will harm the preservation of a diversity of media voices in the local television market.

"(C) EXCEPTION FOR VHF-VHF COMBINATIONS.—Notwithstanding subparagraph (A), the Commission may permit a person or entity to directly or indirectly own, operate, or control, or have a cognizable interest in, two VHF television stations within the same television market, if the Commission determines that permitting such ownership, operation, or control will not harm competition and will not harm the preservation of a diversity of media voices in the local television market.

"(c) LOCAL CROSS-MEDIA OWNERSHIP LIMITS.—In a proceeding to grant, renew, or authorize the assignment of any station license under this title, the Commission may deny the application if the Commission determines that the combination of such station and more than one other nonbroadcast media of mass communication would result in an undue concentration of media voices in the respective local market. In considering any such combination, the Commission shall not grant the application if all the media of mass communication in such local market would be owned, operated, or controlled by two or fewer persons or entities. This subsection shall not constitute authority for the Commission to prescribe regulations containing local cross-media ownership limitations. The Commission may not, under the authority of this subsection, require any person or entity to divest itself of any portion of any combination of stations and other media of mass communications that such person or entity owns, operates, or controls on the date of enactment of this section unless such person or entity acquires another station or other media of mass communications after such date in such local market.

"(d) TRANSITION PROVISIONS.—Any provision of any regulation prescribed before the date of enactment of this section that is inconsistent with the requirements of this section shall cease to be effective on such date of enactment. The Commission shall complete all actions (including any reconsideration) necessary to amend its regulations to conform to the requirements of this section not later than 6 months after such date of enactment. Nothing in this section shall be construed to prohibit the continuation or renewal of any television local marketing agreement that is in effect on such date of enactment and that is in compliance with Commission regulations on such date.".

(b) CONFORMING AMENDMENT.—Section 613(a) of the Act (47 U.S.C. 533(a)) is repealed.

SEC. 303. FOREIGN INVESTMENT AND OWNERSHIP.

(a) STATION LICENSES.—Section 310(a) (47 U.S.C. 310(a)) is amended to read as follows:

"(a) GRANT TO OR HOLDING BY FOREIGN GOVERNMENT OR REPRESENTATIVE.—No station license required under title III of this Act shall be granted to or held by any foreign government or any representative thereof. This subsection shall not apply to licenses issued under such terms and conditions as the Commission may prescribe to mobile earth stations engaged in occasional or short-term transmissions via satellite of audio or television program material and auxilliary signals if such transmissions are not intended for direct reception by the general public in the United States.".

(b) TERMINATION OF FOREIGN OWNERSHIP RESTRICTIONS.—Section 310 (47 U.S.C. 310) is amended by adding at the end thereof the following new subsection:

"(f) TERMINATION OF FOREIGN OWNERSHIP RESTRICTIONS.—

"(1) RESTRICTION NOT TO APPLY.—Subsection (b) shall not apply to any common carrier license granted, or for which application is made, after the date of

enactment of this subsection with respect to any alien (or representative thereof), corporation, or foreign government (or representative thereof) if—

"(A) the President determines that the foreign country of which such alien is a citizen, in which such corporation is organized, or in which the foreign government is in control is party to an international agreement which requires the United States to provide national or most-favored-nation treatment in the grant of common carrier licenses; or

"(B) the Commission determines that not applying subsection (b) would serve the public interest.

"(2) COMMISSION CONSIDERATIONS.—In making its determination, under paragraph (1)(B), the Commission may consider, among other public interest factors, whether effective competitive opportunities are available to United States nationals or corporations in the applicant's home market. In evaluating the public interest, the Commission shall exercise great deference to the President with respect to United States national security, law enforcement requirements, foreign policy, the interpretation of international agreements, and trade policy (as well as direct investment as it relates to international trade policy). Upon receipt of an application that requires a finding under this paragraph, the Commission shall cause notice thereof to be given to the President or any agencies designated by the President to receive such notification.

"(3) FURTHER COMMISSION REVIEW.—Except as otherwise provided in this paragraph, the Commission may determine that any foreign country with respect to which it has made a determination under paragraph (1) has ceased to meet the requirements for that determination. In making this determination, the Commission shall exercise great deference to the President with respect to United States national security, law enforcement requirements, foreign policy, the interpretation of international agreements, and trade policy (as well as direct investment as it relates to international trade policy). If a determination under this paragraph is made then—

"(A) subsection (b) shall apply with respect to such aliens, corporation, and government (or their representatives) on the date that the Commission publishes notice of its determination under this paragraph; and

"(B) any license held, or application filed, which could not be held or granted under subsection (b) shall be reviewed by the Commission under the provisions of paragraphs (1)(B) and (2).

"(4) OBSERVANCE OF INTERNATIONAL OBLIGATIONS.—Paragraph (3) shall not apply to the extent the President determines that it is inconsistent with any international agreement to which the United States is a party.

"(5) NOTIFICATIONS TO CONGRESS.—The President and the Commission shall notify the appropriate committees of the Congress of any determinations made under paragraph (1), (2), or (3).".

SEC. 304. TERM OF LICENSES.

Section 307(c) of the Act (47 U.S.C. 307(c)) is amended to read as follows:

"(c) TERMS OF LICENSES.—

"(1) INITIAL AND RENEWAL LICENSES.—Each license granted for the operation of a broadcasting station shall be for a term of not to exceed seven years. Upon application therefor, a renewal of such license may be granted from time to time for a term of not to exceed seven years from the date of expiration of the preceding license, if the Commission finds that public interest, convenience, and necessity would be served thereby. Consistent with the foregoing provisions of this subsection, the Commission may by rule prescribe the period or periods for which licenses shall be granted and renewed for particular classes of stations, but the Commission may not adopt or follow any rule which would preclude it, in any case involving a station of a particular class, from granting or renewing a license for a shorter period than that prescribed for stations of such class if, in its judgment, public interest, convenience, or necessity would be served by such action.

"(2) MATERIALS IN APPLICATION.—In order to expedite action on applications for renewal of broadcasting station licenses and in order to avoid needless expense to applicants for such renewals, the Commission shall not require any such applicant to file any information which previously has been furnished to the Commission or which is not directly material to the considerations that affect the granting or denial of such application, but the Commission may require any new or additional facts it deems necessary to make its findings.

"(3) CONTINUATION PENDING DECISION.—Pending any hearing and final decision on such an application and the disposition of any petition for rehearing pursuant to section 405, the Commission shall continue such license in effect.".

SEC. 305. BROADCAST LICENSE RENEWAL PROCEDURES.

(a) AMENDMENT.—Section 309 of the Act (47 U.S.C. 309) is amended by adding at the end thereof the following new subsection:

"(k) BROADCAST STATION RENEWAL PROCEDURES.—

"(1) STANDARDS FOR RENEWAL.—If the licensee of a broadcast station submits an application to the Commission for renewal of such license, the Commission shall grant the application if it finds, with respect to that station, during the preceding term of its license—

"(A) the station has served the public interest, convenience, and necessity;

"(B) there have been no serious violations by the licensee of this Act or the rules and regulations of the Commission; and

"(C) there have been no other violations by the licensee of this Act or the rules and regulations of the Commission which, taken together, would constitute a pattern of abuse.

"(2) CONSEQUENCE OF FAILURE TO MEET STANDARD.—If any licensee of a broadcast station fails to meet the requirements of this subsection, the Commission may deny the application for renewal in accordance with paragraph (3), or grant such application on terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted.

"(3) STANDARDS FOR DENIAL.—If the Commission determines, after notice and opportunity for a hearing as provided in subsection (e), that a licensee has failed to meet the requirements specified in paragraph (1) and that no mitigating factors justify the imposition of lesser sanctions, the Commission shall—

"(A) issue an order denying the renewal application filed by such licensee under section 308; and

"(B) only thereafter accept and consider such applications for a construction permit as may be filed under section 308 specifying the channel or broadcasting facilities of the former licensee.

"(4) COMPETITOR CONSIDERATION PROHIBITED.—In making the determinations specified in paragraph (1) or (2), the Commission shall not consider whether the public interest, convenience, and necessity might be served by the grant of a license to a person other than the renewal applicant.".

(b) CONFORMING AMENDMENT.—Section 309(d) of the Act (47 U.S.C. 309(d)) is amended by inserting after "with subsection (a)" each place such term appears the following: "(or subsection (k) in the case of renewal of any broadcast station license)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any application for renewal filed on or after May 31, 1995.

SEC. 306. EXCLUSIVE FEDERAL JURISDICTION OVER DIRECT BROADCAST SATELLITE SERVICE.

Section 303 of the Act (47 U.S.C. 303) is amended by adding at the end thereof the following new subsection:

"(v) Have exclusive jurisdiction over the regulation of the direct broadcast satellite service.".

SEC. 307. AUTOMATED SHIP DISTRESS AND SAFETY SYSTEMS.

Notwithstanding any provision of the Act, a ship documented under the laws of the United States operating in accordance with the Global Maritime Distress and Safety System provisions of the Safety of Life at Sea Convention shall not be required to be equipped with a radio telegraphy station operated by one or more radio officers or operators.

SEC. 308. RESTRICTIONS ON OVER-THE-AIR RECEPTION DEVICES.

Within 180 days after the enactment of this Act, the Commission shall, pursuant to section 303, promulgate regulations to prohibit restrictions that inhibit a viewer's ability to receive video programming services through signal receiving devices designed for off-the-air reception of television broadcast signals or direct broadcast satellite services.

SEC. 309. DBS SIGNAL SECURITY.

Section 705(e)(4) of the Act (47 U.S.C. 605(e)) is amended by inserting after "satellite cable programming" the following: "or programming of a licensee in the direct broadcast satellite service".

TITLE IV—EFFECT ON OTHER LAWS

SEC. 401. RELATIONSHIP TO OTHER LAWS.

(a) MODIFICATION OF FINAL JUDGMENT.—Parts II and III of title II of the Communications Act of 1934 (as added by this Act) shall supersede the Modification of Final Judgment, except that such part shall not affect—

(1) section I of the Modification of Final Judgment, relating to AT&T reorganization,

(2) section II(A) (including appendix B) and II(B) of the Modification of Final Judgment, relating to equal access and nondiscrimination,

(3) section IV(F) and IV(I) of the Modification of Final Judgment, with respect to the requirements included in the definitions of "exchange access" and "information access",

(4) section VIII(B) of the Modification of Final Judgment, relating to printed advertising directories,

(5) section VIII(E) of the Modification of Final Judgment, relating to notice to customers of AT&T,

(6) section VIII(F) of the Modification of Final Judgment, relating to less than equal exchange access,

(7) section VIII(G) of the Modification of Final Judgment, relating to transfer of AT&T assets, including all exceptions granted thereunder before the date of the enactment of this Act, and

(8) with respect to the parts of the Modification of Final Judgment described in paragraphs (1) through (7)—

(A) section III of the Modification of Final Judgment, relating to applicability and effect,

(B) section IV of the Modification of Final Judgment, relating to definitions,

(C) section V of the Modification of Final Judgment, relating to compliance,

(D) section VI of the Modification of Final Judgment, relating to visitorial provisions,

(E) section VII of the Modification of Final Judgment, relating to retention of jurisdiction, and

(F) section VIII(I) of the Modification of Final Judgment, relating to the court's sua sponte authority.

(b) ANTITRUST LAWS.—Nothing in this Act shall be construed to modify, impair, or supersede the applicability of any of the antitrust laws.

(c) FEDERAL, STATE, AND LOCAL LAW.—(1) Except as provided in paragraph (2), parts II and III of title II of the Communications Act of 1934 shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided in such part.

(2) Parts II and III of title II of the Communications Act of 1934 shall supersede State and local law to the extent that such law would impair or prevent the operation of such part.

(d) TERMINATION.—The provisions of the GTE consent decree shall cease to be effective on the date of enactment of this Act. For purposes of this subsection, the term "GTE consent decree" means the order entered on December 21, 1984 (as restated on January 11, 1985), in United States v. GTE Corporation, Civil Action No. 83–1298, in the United States District Court for the District of Columbia, and includes any judgment or order with respect to such action entered on or after December 21, 1984.

(e) INAPPLICABILITY OF FINAL JUDGMENT TO WIRELESS SUCCESSORS.—No person shall be subject to the provisions of the Modification of Final Judgment by reason of having acquired wireless exchange assets or operations previously owned by a Bell operating company or an affiliate of a Bell operating company.

(f) ANTITRUST LAWS.—As used in this section, the term "antitrust laws" has the meaning given it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes the Act of June 19, 1936 (49 Stat. 1526; 15 U.S.C. 13 et seq.), commonly known as the Robinson Patman Act, and section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that such section 5 applies to unfair methods of competition.

SEC. 402. PREEMPTION OF LOCAL TAXATION WITH RESPECT TO DBS SERVICES.

(a) PREEMPTION.—A provider of direct-to-home satellite service, or its agent or representative for the sale or distribution of direct-to-home satellite services, shall be exempt from the collection or remittance, or both, of any tax or fee, as defined

by subsection (b)(4), imposed by any local taxing jurisdiction with respect to the provision of direct-to-home satellite services. Nothing in this section shall be construed to exempt from collection or remittance any tax or fee on the sale of equipment.

(b) DEFINITIONS.—For the purposes of this section—

(1) DIRECT-TO-HOME SATELLITE SERVICE.—The term "direct-to-home satellite service" means the transmission or broadcasting by satellite of programming directly to the subscribers' premises without the use of ground receiving or distribution equipment, except at the subscribers' premises or in the uplink process to the satellite.

(2) DIRECT-TO-HOME SATELLITE SERVICE PROVIDER.—For purposes of this section, a "provider of direct-to-home satellite service" means a person who transmits or broadcasts direct-to-home satellite services.

(3) LOCAL TAXING JURISDICTION.—The term "local taxing jurisdiction" means any municipality, city, county, township, parish, transportation district, or assessment jurisdiction, or any other local jurisdiction with the authority to impose a tax or fee.

(4) TAX OR FEE.—The terms "tax" and "fee" mean any local sales tax, local use tax, local intangible tax, local income tax, business license tax, utility tax, privilege tax, gross receipts tax, excise tax, franchise fees, local telecommunications tax, or any other tax, license, or fee that is imposed for the privilege of doing business, regulating, or raising revenue for a local taxing jurisdiction.

(c) EFFECTIVE DATE.—This section shall be effective as of June 1, 1994.

TITLE V—DEFINITIONS

SEC. 501. DEFINITIONS.

(a) ADDITIONAL DEFINITIONS.—Section 3 of the Act (47 U.S.C. 153) is amended—

(1) in subsection (r)—

(A) by inserting "(A)" after "means"; and

(B) by inserting before the period at the end the following: ", or (B) service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service within a State but which does not result in the subscriber incurring a telephone toll charge"; and

(2) by adding at the end thereof the following:

"(35) AFFILIATE.—The term 'affiliate', when used in relation to any person or entity, means another person or entity who owns or controls, is owned or controlled by, or is under common ownership or control with, such person or entity.

"(36) BELL OPERATING COMPANY.—The term 'Bell operating company' means—

"(A) Bell Telephone Company of Nevada, Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, New England Telephone and Telegraph Company, New Jersey Bell Telephone Company, New York Telephone Company, U S West Communications Company, South Central Bell Telephone Company, Southern Bell Telephone and Telegraph Company, Southwestern Bell Telephone Company, The Bell Telephone Company of Pennsylvania, The Chesapeake and Potomac Telephone Company, The Chesapeake and Potomac Telephone Company of Maryland, The Chesapeake and Potomac Telephone Company of Virginia, The Chesapeake and Potomac Telephone Company of West Virginia, The Diamond State Telephone Company, The Ohio Bell Telephone Company, The Pacific Telephone and Telegraph Company, or Wisconsin Telephone Company;

"(B) any successor or assign of any such company that provides telephone exchange service.

"(37) CABLE SYSTEM.—The term 'cable system' has the meaning given such term in section 602(7) of this Act.

"(38) CUSTOMER PREMISES EQUIPMENT.—The term 'customer premises equipment' means equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications.

"(39) DIALING PARITY.—The term 'dialing parity' means that a person that is not an affiliated enterprise of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer's designation from among 2 or more telecommunications services providers (including such local exchange carrier).

"(40) EXCHANGE ACCESS.—The term 'exchange access' means the offering of telephone exchange services or facilities for the purpose of the origination or termination of interLATA services.

"(41) INFORMATION SERVICE.—The term 'information service' means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

"(42) INTERLATA SERVICE.—The term 'interLATA service' means telecommunications between a point located in a local access and transport area and a point located outside such area.

"(43) LOCAL ACCESS AND TRANSPORT AREA.—The term 'local access and transport area' or 'LATA' means a contiguous geographic area—

"(A) established by a Bell operating company such that no exchange area includes points within more than 1 metropolitan statistical area, consolidated metropolitan statistical area, or State, except as expressly permitted under the Modification of Final Judgment before the date of the enactment of this paragraph; or

"(B) established or modified by a Bell operating company after the date of enactment of this paragraph and approved by the Commission.

"(44) LOCAL EXCHANGE CARRIER.—The term 'local exchange carrier' means any person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under section 332(c), except to the extent that the Commission finds that such service as provided by such person in a State is a replacement for a substantial portion of the wireline telephone exchange service within such State.

"(45) MODIFICATION OF FINAL JUDGMENT.—The term 'Modification of Final Judgment' means the order entered August 24, 1982, in the antitrust action styled United States v. Western Electric, Civil Action No. 82–0192, in the United States District Court for the District of Columbia, and includes any judgment or order with respect to such action entered on or after August 24, 1982.

"(46) NUMBER PORTABILITY.—The term 'number portability' means the ability of users of telecommunications services to retain existing telecommunications numbers without impairment of quality, reliability, or convenience when changing from one provider of telecommunications services to another, as long as such user continues to be located within the area served by the same central office of the carrier from which the user is changing.

"(47) RURAL TELEPHONE COMPANY.—The term 'rural telephone company' means a local exchange carrier operating entity to the extent that such entity—

"(A) provides common carrier service to any local exchange carrier study area that does not include either—

"(i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recent available population statistics of the Bureau of the Census; or

"(ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

"(B) provides telephone exchange service, including telephone exchange access service, to fewer than 50,000 access lines;

"(C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

"(D) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of this paragraph.

"(48) TELECOMMUNICATIONS.—The term 'telecommunications' means the transmission, between or among points specified by the subscriber, of information of the subscriber's choosing, without change in the form or content of the information as sent and received, by means of an electromagnetic transmission medium, including all instrumentalities, facilities, apparatus, and services (including the collection, storage, forwarding, switching, and delivery of such information) essential to such transmission.

"(49) TELECOMMUNICATIONS EQUIPMENT.—The term 'telecommunications equipment' means equipment, other than customer premises equipment, used by a carrier to provide telecommunications services, and includes software integral to such equipment (including upgrades).

"(50) TELECOMMUNICATIONS SERVICE.—The term 'telecommunications service' means the offering, on a common carrier basis, of telecommunications facilities,

or of telecommunications by means of such facilities. Such term does not include an information service.".

(b) STYLISTIC CONSISTENCY.—Section 3 of the Act (47 U.S.C. 153) is amended—

(1) in subsections (e) and (n), by redesignating clauses (1), (2) and (3), as clauses (A), (B), and (C), respectively;

(2) in subsection (w), by redesignating paragraphs (1) through (5) as subparagraphs (A) through (E), respectively;

(3) in subsections (y) and (z), by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(4) by redesignating subsections (a) through (ff) as paragraphs (1) through (32);

(5) by indenting such paragraphs 2 em spaces;

(6) by inserting after the designation of each such paragraph—

(A) a heading, in a form consistent with the form of the heading of this subsection, consisting of the term defined by such paragraph, or the first term so defined if such paragraph defines more than one term; and

(B) the words "The term";

(7) by changing the first letter of each defined term in such paragraphs from a capital to a lower case letter (except for "United States", "State", "State commission", and "Great Lakes Agreement"); and

(8) by reordering such paragraphs and the additional paragraphs added by subsection (a) in alphabetical order based on the headings of such paragraphs and renumbering such paragraphs as so reordered.

(c) CONFORMING AMENDMENTS.—The Act is amended—

(1) in section 225(a)(1), by striking "section 3(h)" and inserting "section 3";

(2) in section 332(d), by striking "section 3(n)" each place it appears and inserting "section 3"; and

(3) in sections 621(d)(3), 636(d), and 637(a)(2), by striking "section 3(v)" and inserting "section 3".

TITLE VI—SMALL BUSINESS COMPLAINT PROCEDURE

SEC. 601. COMPLAINT PROCEDURE.

(a) PROCEDURE REQUIRED.—The Federal Communications Commission shall establish procedures for the receipt and review of complaints concerning violations of the Communications Act of 1934, and the rules and regulations thereunder, that are likely to result, or have resulted, as a result of the violation, in material financial harm to a provider of telemessaging service, or other small business engaged in providing an information service or other telecommunications service. Such procedures shall be established within 120 days after the date of enactment of this Act.

(b) DEADLINES FOR PROCEDURES; SANCTIONS.—The procedures under this section shall ensure that the Commission will make a final determination with respect to any such complaint within 120 days after receipt of the complaint. If the complaint contains an appropriate showing that the alleged violation occurred, as determined by the Commission in accordance with such regulations, the Commission shall, within 60 days after receipt of the complaint, order the common carrier and its affiliates to cease engaging in such violation pending such final determination. In addition, the Commission may exercise its authority to impose other penalties or sanctions, to the extent otherwise provided by law.

(c) DEFINITION.—For purposes of this section, a small business shall be any business entity that, along with any affiliate or subsidiary, has fewer than 300 employees.

PURPOSE AND SUMMARY

H.R. 1555, the Communications Act of 1995, as amended, promotes competition and reduces regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid development of new telecommunications technologies.

For decades, U.S. telecommunications policy has relied on heavily regulated monopolies to provide communications services to businesses and consumers. Advances in telecommunications have

greatly benefitted consumers and American businesses. Technological advances would be more rapid and services would be more widely available and at lower prices if telecommunications markets were competitive rather than regulated monopolies. Consequently, the Communications Act of 1995 opens all communications services to competition. The result will be lower prices to consumers and businesses, greater choice of services, more innovation, a competitive edge for American businesses, and less regulation. Indeed, the enormous benefits to American businesses and consumers from lifting the shackles of monopoly regulation will almost certainly earn the Communications Act of 1995 the distinction of being the most deregulatory bill in history.

The bill has three main components. First, the bill promotes competition in the market for local telephone service by requiring local telephone companies (or "local exchange carriers") to offer competitors access to parts of their networks. Second, the bill spurs competition in the multichannel video market by permitting telephone companies, through separate affiliates, to provide video programming to subscribers in its telephone service areas. This policy change also will provide a strong incentive for local exchange carriers (LECs) to invest in and upgrade their networks. Finally, the bill seeks to preserve and to promote the competitiveness of over-the-air broadcast stations.

BACKGROUND AND NEED FOR LEGISLATION

I. BACKGROUND

In 1974, the U.S. Department of Justice brought an antitrust lawsuit against the then-integrated AT&T. The Government alleged that AT&T had violated the Sherman Act by foreclosing markets to other corporations through its control over the local telephone networks. First, the Government alleged that AT&T and its manufacturing subsidiary, Western Electric, discriminated against other manufacturers in the procurement of network equipment and customer premises equipment (CPE). Later, the Government enlarged the scope of its complaint, and alleged that AT&T had also violated the Sherman Act with respect to long distance services. In each case, the Government alleged that it was AT&T's control over its 24 local telephone companies that enabled it to preclude entry by manufacturers and by long distance companies such as MCI. After several years of discovery and pre-trial activities, the case finally went to trial in 1978.

The suit was ultimately settled in 1982. Pursuant to the settlement, otherwise known as the Modification of the Final Judgment (MFJ) of the 1956 Antitrust Consent Decree, AT&T retained ownership of its manufacturing and long distance service operations but had to divest ownership of its 24 local telephone companies by January 1, 1984. All but two of the local telephone companies were subsequently restructured into seven Bell Operating Companies (BOCs). The remaining two, in which AT&T owned a minority interest, became separate corporations. In effect, the BOCs inherited AT&T's local exchange service, but because of concerns relating to the potential for discrimination by monopoly providers of local ex-

change service, the BOCs were prohibited from manufacturing telecommunications and CPE and from providing long distance service.

The MFJ also addressed a third issue that was not considered at trial: information services, e.g., electronic publishing and alarm monitoring services. While it had been manufacturing equipment and providing long distance service, AT&T had not been providing information services at the time the MFJ was negotiated. The prohibition against the BOCs providing information services was a prophylactic measure, given that the information services industry was just beginning to emerge. Judge Harold Greene, who oversaw and put into place the MFJ, felt that the underlying rationale for the two other MFJ restrictions led to the conclusion that a similar restriction was needed for the information services. In 1991, a Federal appeals court in Washington, D.C. overturned this restriction, and the BOCs were thus allowed to provide information services.

Local telephone service means local exchange service to residential and business customers and exchange access services to interexchange carriers such as AT&T, MCI and Sprint. The seven BOCs provide over 80% of local telephone service in the United States. Several hundred other carriers provide the balance of local service. While some competition has developed in the local business service and exchange access markets, local residential service remains a monopoly service. The MFJ designated exchange areas as Local Access and Transport Areas (LATAs), within which the Bell Operating Company (BOC) is the local telephone service provider. In most cases, LATAs correspond roughly with area code territories. As a result of these provisions, BOCs could provide local telephone services but were restricted from competing against interLATA or interexchange carriers. The MFJ required the BOCs to provide all interexchange carriers with access to all BOC exchange facilities on terms with type, quality and price equal to that provided to AT&T.

In providing local telephone service, telephone companies have historically been protected from competition by State and local government barriers to entry. The LECs are subject to extensive State government regulation of their business charges and practices. Customers receive an array of local services at prices influenced heavily by regulatory policies. In addition, LECs also have the obligation of maintaining "universal service" as codified by the Communications Act of 1934, and administered by Federal and State regulators.

In the overwhelming majority of markets today, because of their government-sanctioned-monopoly status, local providers maintain bottleneck control over the essential facilities needed for the provision of local telephone service. The bottleneck consists of the elements needed to originate or terminate a telephone call—the equipment with capabilities of routing and signaling calls, network capacity and network standards. The inability of other service providers to gain access to the local telephone companies equipment inhibits competition that could otherwise develop in the local exchange market. In contrast, in the exchange-access market, competition among facilities-based carriers emerged.

II. LOCAL COMPETITION

The local telephone service exchange connects callers within an exchange area, and also connects subscribers to the long distance company of their choice. This service is provided by over 1,400 local telephone companies. However, the seven BOCs control over 80 percent of the local telephone network. The top 10 telephone companies control 92 percent of the local telephone network. The Committee found that in the large number of markets for local telephone service, there was no instance where any of the top 10 telephone companies compete with one another.

For much of the past 60 years, the provision of local telephone service has been a monopoly service, and the telephone companies operating today have been the monopoly suppliers. Ironically, the infant telephone industry was not dominated by monopolies. In the early part of the century there was a period of active competition in local telephone service and in local telephone service markets. As recently as 1949, Philadelphia was served by two telephone companies. Unfortunately, competing systems in the early 20th century were not interconnected and subscribers had to subscribe to each competing system to have access to all available lines. Public dissatisfaction with this result partly led to the establishment of telephone as a monopoly service.

Today, LECs are subject to extensive government regulation of their business charges and practices. In addition, the carriers are frequently protected from competition by government barriers to entry. In fact, the Committee found that the majority of States restrict full and fair competition in the local exchange, either by statute or through the public utility commission's regulations. In return for this arrangement, customers receive an array of local services and associated prices, determined primarily by State Public Utility Commissions. In addition, LECs also have the obligation of "universal service" as established by the Communications Act of 1934, and administered by the Federal and State regulators. H.R. 1555 reflects the Committee's belief that more competition, rather than more regulation, will benefit all consumers.

III. TELEPHONE COMPANY/CABLE CROSS-OWNERSHIP

Under current law, telephone companies are prohibited from offering cable service within their telephone service areas. The statutory prohibition codified long-standing Federal Communications Commission (the Commission) policy keeping telephone companies out of the cable business.

Cable television service was introduced in this country in the early 1950s, originally marketed as a means of providing antenna service to communities that had difficulty receiving television broadcast signals. Cable technology continued to serve almost exclusively as an antenna service for many years, and was considered a fledgling industry until the early 1970s.

In the early 1970s, largely because cable had served primarily in this ancillary capacity, no national policy had been established to guide the development of the cable industry. Local authorities in charge of awarding franchises had asserted regulatory control over the cable companies, and as a result, cable regulatory policy had

been dictated on a case-by-case basis according to the needs of each community.

While there were varying degrees of State and Federal involvement in the local franchise process, the terms of the franchise contracts themselves were left largely to the discretion of local authorities. As service offerings increased, franchise authorities began adopting new rules to address such issues as rate regulation, amount of franchise fees, public access and customer service requirements. These rules varied from community to community, establishing an inconsistent approach to cable regulation.

By the early 1980s, this haphazard system was regarded as inhibiting the development of the industry. Congress recognized the need for a national policy to develop guidelines for the future of the cable television industry. In 1984, Congress enacted the "Cable Communications Policy Act of 1984"[1] (1984 Cable Act). While the primary function of the Act was to develop a national policy for the cable industry, the Act was also intended to deregulate the industry. Congress believed that deregulation would enable the industry to prosper, benefiting both consumers and industry participants alike.[2] One of the purposes for deregulating the industry was to facilitate further expansion of the cable industry.

By 1984, the need to maintain overall cross-ownership restrictions between cable and telephone companies was still strong. While the cable industry had evolved into a formidable communications force, the local telephone industry still maintained a strong competitive advantage in terms of its financial resources, monopoly control, and reach into every home. The Commission's regulations, as promulgated in the 1970 rules[3] and as modified in 1981,[4] were included into the 1984 Cable Act so as to preserve and enhance the viability of the cable industry and to limit the monopoly reach of the telephone industry.

Specifically, section 613 of the Communications Act of 1934 defined ownership rules designed to prohibit the development of local media monopolies, and to encourage a diversity of ownership and communications outlets. Common carriers were thus barred from providing video programming directly to subscribers within their telephone service areas, either directly or indirectly through an affiliate. Rules governing common carrier provision of video programming in rural areas were also clarified.

In July 1987, the Commission initiated an inquiry to reexamine its cross-ownership rules.[5] The original docket questioned the continued need to preserve an environment where, in light of the steady growth and high penetration of the cable industry, full competition between cable and telephone companies was limited. Specifically, the Commission questioned "whether the cable television industry [had] not matured to the point where telephone company competition in the provision of local cable service may spur, rather

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[1] Cable Communications Policy Act of 1984, P.L. No. 98–549, 98 Stat. 2779 (1984).
[2] H. Rept. No. 98–934, Second Sess., at 19–20.
[3] FCC Rules and Regulations, 47 C.F.R. Sec. 63.54–63.58, 22 FCC 2d 746 (1970).
[4] Report and Order in CC Docket No. 80–767, 88 FCC 2d 564, (1981).
[5] FCC Notice of Inquiry in the Matter of Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54–63.58, CC Docket No. 87–266, FCC 87–243 (1987).

than impede, the offering of a variety of video programming at reasonable rates.[6]

This docket remained inactive until October 1991, when the Commission, based upon the findings of a second Notice of Inquiry, asserted that, while there was still a strong need to maintain certain cross-subsidization limitations and pole and conduit control restrictions, changes within the marketplace may warrant a review of the cross-ownership rules. In an effort to provide the public with the greatest access to cable television, it became apparent that a relaxation of some of the restrictions was necessary.[7]

The Commission took the first significant step to ease the cross-ownership rules with its 1992 decision permitting local telephone companies to provide "video dialtone."[8] This decision authorized local telephone companies to provide a platform so that competing service providers could transmit a wide variety of video or any future telecommunications services to their subscribers.

The Commission included in its decision a recommendation that Congress repeal the cable-telephone cross-ownership rules, citing a changed communications environment. The Commission further asserted that the marketplace had evolved to a level where it was capable of facilitating equitable competition between the cable and telephone industries, largely due to the fact that the cable television industry had developed to a point where it could effectively compete against the monopoly-telephone provider in the delivery of video service.

In 1993, Bell Atlantic successfully challenged the telephone-cable cross-ownership prohibition in Federal district court. Numerous other parties then filed their own cases. In all cases, the courts found that prohibiting telephone companies from providing video programming was an unconstitutional burden on their First Amendment right to engage in free speech. Specifically, each court found that the statute swept too broadly in restricting telephone company free speech, and therefore failed the "intermediate scrutiny" test, which requires a restriction to be narrowly tailored to a significant government interest.[9]

The original rationale for adopting the prohibition of telephone company entry into video services has been satisfied, and given the

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[6] Id., at 2.

[7] See also NTIA: "Telecom 2000: Charting the Course for a New Century" (Oct. 1988) (study by the National Telecommunications and Information Administration which recommended reform of the cross-ownership restrictions).

[8] FCC Second Report and Order, Recommendation to Congress and Second Further Notice of Proposed Rule Making, FCC 92–327 and CC Docket 87–266 (1982).

[9] See *Chesapeake and Potomac Tel. Co.* v. *United States*, et. al., 830 F. Supp. 909 (E.D. Va (1993)), aff'd, 42F.3d 131 (4th Cir. 1994, cert. granted, 63 USLW 3899, No. 94–1893). The Supreme Court also granted certiorari to the Fourth Circuit in a related case: *National Cable Television Assn. Inc.* v. *Bell Atlantic Corp.*, cert. granted, 63 USLW 3899, No. 94–1900. See also *US West* v. *United States*, 855 F. Supp 1184 (W.D. Wash. 1994), aff'd, 48 F.3d 1092 (9th Cir. Dec. 30, 1994), petition for rehearing pending (Also grants relief to Pacific Telecom, and Washington Independent Telephone Association members); *Pacific Bell* v. *United States*, No. 94–16064, 48 F.3d 1106 (9th Cir. Sec. 30, 1994) (reversing district court order denying preliminary injunction in light of the *US West* decision); *Ameritech* v. *United States*, No. 93–C–6642 (October 27, 1994) (also grants relief to CCI, and Illinois Consolidated Tel. Co. as intervenors), appeal pending, No. 95–1223 (7th Cir.); *BellSouth Corp.* v. *United States*, 868 F. Supp. 1335 (N.D. Ala 1994), appeal pending, No. 94–7036 (11th Cir.); *NYNEX* v. *United States*, No. 92–323–P–C (D. Me. 1994), appeal pending, No. 95–1183 (1st Cir.); *GTE South, Inc.* v. *United States*, No. 94–1588–A (E.D. Va January 13, 1995), appeal pending, No. 95–1738 (4th Cir.); *USTA et. al.* v. *United States*, No. 94–1961 (D.D.C. January 27, 1995), appeal pending, No. 95–5117 (D.C. Cir.); *Southwestern Bell et. al.* v. *United States*, No. 3:94–CV–0193–D (N.D. Tex. March 27, 1995); and *Southern New England Tel.* v. *United States*, No. 3:94–CV–80 (DJS) (D. Conn. April 28, 1995).

changes in technology and the evolution of the cable industry, the prohibition is no longer valid. In fact, three governmental bodies, the Commission, the Commerce Department's National Telecommunications and Information Administration (NTIA) and the Department of Justice's Antitrust Division have expressly found that the statute impedes competition in the cable industry. Concern over the need to upgrade our Nation's telecommunications networks, the need to ensure the United States' competitive position internationally, and the need to promote competition in the video market, have provided a major impetus for lifting the restrictions.

Telephone company entry into the delivery of video services will encourage telephone companies to modernize their communications infrastructure. Specifically, the deployment of broadband networks would be accelerated if telephone companies were permitted to offer video programming. These networks would be capable of transmitting voice, data, and video to consumers. Without this incentive, telephone companies will build advanced networks more slowly. Moreover, telephone company entry into cable would encourage technological innovation. Telephone company entry into cable also would create a healthier communications marketplace. Telephone company competition with the entrenched cable operators would enable consumers to benefit from lower rates, better quality service, improved maintenance, and a larger diversity of new information services.

IV. COMPETITION FROM CABLE SYSTEMS

The 1984 Cable Act permitted franchising authorities to regulate basic cable rates only where the cable system was not subject to "effective competition." "Effective competition" was defined by the Commission to exist in franchise areas in which three or more unduplicated broadcasting signals were available. Under the Commission's criteria, most cable systems were not subject to rate regulation. By 1990, there was considerable demand for reregulation of cable rates. In 1990, the Commission adopted a stricter test for "effective competition" which was found to exist if either (a) six unduplicated over-the-air broadcast television signals are available in the cable community, or (b) an independently owned, competing multichannel video delivery system is available to 50 percent of the homes passed by the cable alternative system in the cable system's franchise area.[10] Despite this stricter test, most cable systems remained unregulated.

In 1992, Congress enacted the "Cable Television Consumer Protection and Competition Act" (referred to hereinafter as the 1992 Cable Act). The 1992 Cable Act was designed to rein in "renegade" cable operators that charged unreasonable rates. However, in implementing the Act, the Commission broadened the intent of the Act by adopting rate regulations that affected the rates of virtually all cable operators. In doing so, the Commission created a complicated regulatory structure and a large bureaucracy to manage it. Since passage of the 1992 Act, the Commission staff has increased by 30 percent. Much of this increase is directly attributable to the

[10] See Reexamination of the Effective Competition Standard for the Regulation of Cable Television Basic Service Rates, Report and Order and Second Further Notice of Proposed Rulemaking, MM Dkt. Nos. 90–94, 84–1296, 6 F.C.C. Rcd. 4545, (1991).

Cable Services Bureau, which was created for the express purpose of implementing the Act.

The complicated and intrusive regulatory structure created by the Commission has severely inhibited the industry's growth. During testimony at hearings on the legislation, the Committee heard evidence that the regulations have slowed development of new programming and dampened the industry's efforts to expand system capacity and introduce new technology. The Committee also heard testimony that the regulations have severely hampered the industry's ability to obtain capital from the financial community, which, in turn, has delayed cable operators' efforts to rebuild their systems and develop new infrastructures.

Under one of the most onerous Commission rules, a single complaint triggers the cumbersome rate regulation process. For example, in one cable system with 220,000 subscribers, *one* subscriber complaint forced the operator into a complex and costly rate case. Similarly, another cable company recently filed an affidavit with the Commission demonstrating that in a system franchise area where it serves over 40,000 customers, a rate complaint filed by one subscriber required a costly rate case. Further inquiry revealed that more than 100 of its franchises, representing over 500,000 subscribers, are subject to rate regulation because a single complaint was filed in the franchise area. The single complaint threshold imposes significant administrative and legal costs on cable operators that ultimately are borne by all subscribers.

The Committee finds that the impact of the complex rate regulations has been particularly harsh on small cable operators. The already strained resources of these companies have been further taxed by the burdensome regulations promulgated by the Commission. In addition, the reduced cash flows experienced by these companies as a result of the rate rules have made it exceedingly difficult for them to survive financially.

The Committee believes there is a need to enact reform legislation that deregulates the industry. The legislation eliminates the Commission rate regulations, and relies instead on the development of marketplace forces to ensure that consumers have diverse and high quality entertainment and information choices at affordable rates.

V. BROADCAST COMMUNICATIONS COMPETITIVENESS

Broadcast regulation, particularly restrictions on ownership created by Commission rules dating back, in many instances, to the 1940's, were promulgated to ensure that the American consumer received audio and video programming from a variety of sources utilizing a scare resource, the radio frequency spectrum. The audio and video marketplace, however, has undergone significant changes over the past fifty years and the scarcity rationale for government regulation no longer applies. Today, there are in excess of 11,000 radio stations and over 1,100 commercial television stations, a 30% increase in the number of stations from just ten years ago. In addition, a fourth network has developed and two new networks are being launched. There is also competition from cable systems as suppliers of video programming. Cable systems pass more than 95 percent of all U.S. television households and 63 percent of U.S. tel-

evision households subscribe to cable. In addition, other technologies such as wireless cable, low power television, backyard dishes, satellite master antenna television service (SMATV) and video cassette recorders (VCRs) provide consumers with additional program distribution outlets that compete with broadcast stations. To date, twenty four telephone companies have applied to provide "video dialtone service" to customers over telephone lines. As a result of H.R. 1555, competition from telephone companies providing video programming becomes a reality. This explosion of programming distribution sources calls for a substantial reform of Congressional and Commission oversight of the way the broadcasting industry develops and competes.

Despite the explosion of video distribution technologies and subscription-based programming sources, the Committee believes free over-the-air broadcasting should remain a vital element in the video market. To ensure the industry's ability to compete effectively in a multichannel media market, Congress and the Commission must reform Federal policy and the current regulatory framework to reflect the new marketplace realities. To accomplish this goal, the Committee chooses to depart from the traditional notions of broadcast regulation and to rely more on competitive market forces. In a competitive environment, arbitrary limitations on broadcast ownership and blanket prohibitions on mergers or joint ventures between distribution outlets are no longer necessary.

HEARINGS

The Committee's Subcommittee on Telecommunications and Finance held three days of hearings on H.R. 1555, the Communications Act of 1995, and related bills including H.R. 912, a bill to permit the utility holding companies to provide telecommunications services; H.R. 514, a bill to repeal section 310(b) of the Communications Act of 1934; and H.R. 1556, a bill to reform Broadcast Ownership Restrictions. Testimony was received from 49 witnesses.

On Wednesday, May 10, 1995, the Subcommittee received testimony from the following individuals: Robert E. Allen, Chairman and CEO, AT&T Corporation; Laurence Harris, Senior Vice President for Public Policy, MCI Communications Corporation; Charles Houser, CEO Telemanagers Group, Inc.; James Cullen, Vice Chairman, Bell Atlantic Corporation; Joe T. Ford, Chairman, President and CEO, Alltel Corporation; Brian T. Roberts, President, Comcast Corporation; Gerald Levin, Chairman and CEO, Time Warner Inc.; Bennett W. Hooks, Jr., President, Buford Television, Inc.; H. Brian Thompson, Chairman and CEO, LCI International, Inc.; Richard Devlin, Executive Vice President and General Counsel, Sprint Corporation; Wayne Perry, Vice Chairman, McCaw Cellular Communications, Inc.; Robert A. Boaldin, President, Elkhart Telephone Company; Royce J. Holland, President and Chief Operating Officer, MFS Communications Company; Ed Whitacre, Chairman and CEO, SBC Communications, Inc.; Richard H. Brown, Vice Chairman, Ameritech Corporation; Robert Annunziata, Chairman, President, and CEO, Teleport Communications Group; Thomas V. Shockley, III, Executive Vice President, Central and South West Corporation; and John Anderson, the Electricity Consumers Resource Council.

On Thursday, May 11, 1995, the Subcommittee received testimony from the following individuals: The Honorable Reed Hundt, Chairman, Federal Communications Commission (FCC); The Honorable Larry Irving, Assistant Secretary for the National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce; The Honorable Anne K. Bingaman, Assistant Attorney General for Antitrust, U.S. Department of Justice; Jane Scully, Council Member, City of Falls Church; Rochelle Specter, Council Member, City of Baltimore; Bradley Stillman, Telecommunications Policy Director, Consumer Federation of America; Julie Carroll, Director of Government Affairs, The American Council of the Blind; The Honorable Lisa Rosenblum, Deputy Chairman, New York Public Service Commission; Alfred A. Sonnenstrahl, Executive Director, Telecommunications for the Deaf, Inc.; Ronald E. Harrold, Manager for Strategic Programs, ARI Network Services, Inc.; Ronald J. Binz, Director, Colorado Office of Consumer Counsel; and Barbara J. Easterling, Secretary-Treasurer, Communications Workers of America.

On Friday, May 12, 1995, the Subcommittee received testimony from the following individuals: Peter Lund, President, CBS Broadcast Group; Dean Goodman, President, Paxon Communications Corporation; John Siegel, Senior Vice President, Chris Craft Industries, Inc.; Gary Chapman, President, LIN Television Corporation; Edward T. Reilly, President, McGraw-Hill Broadcasting Company; Richard Ferguson, President and CEO, New City Communications; Sherwin Grossman, President, Sherjan Broadcasting Company, Inc.; Michael Eigner, Executive Vice President and General Manager, WPIX–TV; Andy Schwartzman, Executive Director, Media Access Project; Jim Synk, Executive Director, National Burglar and Fire Alarm Association; Robert W. Decherd, Chairman, President and CEO, A.H. Belo Corporation; Chris Galvin, President and Chief Operating Officer, Motorola, Inc; Paul Weyrich, President and CEO, NET; Gail Thoma Patterson, President and CEO, Proxy Message Center; Terry Colbert, President and CEO, Communications Central, Inc.; John S. Hendricks, Chairman and CEO, Discovery Communications, Inc.; Donald Deutsch, Director of Strategic Standards Planning, Sybase, Inc.; Steven Katz, Chairman and CEO, Nationwide Cellular Service, Inc.; and Tom Gooch, Executive Vice President, Storage Technology Corporation.

COMMITTEE CONSIDERATION

On Wednesday, May 17, 1995, the Subcommittee on Telecommunications and Finance met in open session and approved H.R. 1555, as amended, for Full Committee consideration by a voice vote, a quorum being present. On Wednesday, May 24, 1995, and Thursday, May 25, 1995, the Committee met in open session to consider H.R. 1555. On May 25, 1995, the Committee ordered H.R. 1555 reported to the House, as amended, by a recorded vote of 38–5, a quorum being present.

ROLLCALL VOTES

Pursuant to clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, following are listed the recorded votes on the

motion to report H.R. 1555 and on amendments offered to the measure, including the names of those Members voting for and against.

COMMITTEE ON COMMERCE—104TH CONGRESS ROLLCALL VOTE NO. 46

Bill: H.R. 1555, Communications Act of 1995.

Amendment: Amendment by Mr. Tauzin re: resale.

Disposition: Not Agreed To, by a rollcall vote of 11 ayes to 35 nays.

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Bliley		X		Mr. Dingell	X		
Mr. Moorhead		X		Mr. Waxman		X	
Mr. Fields		X		Mr. Markey		X	
Mr. Oxley		X		Mr. Tauzin	X		
Mr. Bilirakis		X		Mr. Wyden	X		
Mr. Schaefer		X		Mr. Hall		X	
Mr. Barton		X		Mr. Bryant		X	
Mr. Hastert		X		Mr. Boucher	X		
Mr. Upton		X		Mr. Manton		X	
Mr. Stearns		X		Mr. Towns		X	
Mr. Paxon		X		Mr. Studds			
Mr. Gillmor		X		Mr. Pallone	X		
Mr. Klug		X		Mr. Brown	X		
Mr. Franks		X		Mrs. Lincoln	X		
Mr. Greenwood		X		Mr. Gordon		X	
Mr. Crapo		X		Ms. Furse	X		
Mr. Cox		X		Mr. Deutsch		X	
Mr. Deal		X		Mr. Rush	X		
Mr. Burr		X		Ms. Eshoo	X		
Mr. Bilbray		X		Mr. Klink		X	
Mr. Whitfield		X		Mr. Stupak	X		
Mr. Ganske		X					
Mr. Frisa		X					
Mr. Norwood		X					
Mr. White		X					
Mr. Coburn		X					

COMMITTEE ON COMMERCE—104TH CONGRESS ROLLCALL VOTE NO. 47

Bill: H.R. 1555, Communications Act of 1995.

Amendment: Amendment by Mr. Crapo re: affordable voice grade service.

Disposition: Agreed to, by a rollcall vote of 30 ayes to 13 nays.

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Bliley				Mr. Dingell		X	
Mr. Moorhead	X			Mr. Waxman		X	
Mr. Fields	X			Mr. Markey		X	
Mr. Oxley	X			Mr. Tauzin			
Mr. Bilirakis	X			Mr. Wyden		X	
Mr. Schaefer	X			Mr. Hall	X		
Mr. Barton	X			Mr. Bryant		X	
Mr. Hastert	X			Mr. Boucher	X		
Mr. Upton	X			Mr. Manton		X	
Mr. Stearns	X			Mr. Towns		X	
Mr. Paxon	X			Mr. Studds		X	
Mr. Gillmor	X			Mr. Pallone		X	
Mr. Klug	X			Mr. Brown	X		
Mr. Franks	X			Mrs. Lincoln	X		
Mr. Greenwood				Mr. Gordon	X		
Mr. Crapo	X			Ms. Furse	X		
Mr. Cox	X			Mr. Deutsch		X	

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Deal	X			Mr. Rush		X	
Mr. Burr	X			Ms. Eshoo		X	
Mr. Bilbray	X			Mr. Klink		X	
Mr. Whitfield				Mr. Stupak	X		
Mr. Ganske	X						
Mr. Frisa	X						
Mr. Norwood	X						
Mr. White	X						
Mr. Coburn	X						

COMMITTEE ON COMMERCE—104TH CONGRESS

ROLLCALL VOTE NO. 48

Bill: H.R. 1555, Communications Act of 1995.

Amendment: Amendment by Mr. Bryant re: separate subsidiary.

Disposition: Not Agreed To, by a rollcall vote of 22 ayes to 22 nays.

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Bliley	X			Mr. Dingell		X	
Mr. Moorhead		X		Mr. Waxman	X		
Mr. Fields	X			Mr. Markey	X		
Mr. Oxley		X		Mr. Tauzin		X	
Mr. Bilirakis	X			Mr. Wyden	X		
Mr. Schaefer	X			Mr. Hall	X		
Mr. Barton		X		Mr. Bryant	X		
Mr. Hastert				Mr. Boucher		X	
Mr. Upton		X		Mr. Manton	X		
Mr. Stearns	X			Mr. Towns	X		
Mr. Paxon		X		Mr. Studds			
Mr. Gillmor	X			Mr. Pallone	X		
Mr. Klug		X		Mr. Brown		X	
Mr. Franks		X		Mrs. Lincoln	X		
Mr. Greenwood				Mr. Gordon	X		
Mr. Crapo		X		Ms. Furse	X		
Mr. Cox	X			Mr. Deutsch		X	
Mr. Deal		X		Mr. Rush	X		
Mr. Burr		X		Ms. Eshoo	X		
Mr. Bilbray	X			Mr. Klink	X		
Mr. Whitfield		X		Mr. Stupak		X	
Mr. Ganske		X					
Mr. Frisa		X					
Mr. Norwood		X					
Mr. White		X					
Mr. Coburn		X					

COMMITTEE ON COMMERCE—104TH CONGRESS ROLLCALL VOTE NO. 49

Bill: H.R. 1555, Communications Act of 1995.

Amendment: Amendment by Mr. Towns re: interLATA alarm services.

Disposition: Not Agreed To, by a rollcall vote 9 ayes to 30 nays.

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Bliley	X			Mr. Dingell			
Mr. Moorhead				Mr. Waxman		X	
Mr. Fields		X		Mr. Markey		X	
Mr. Oxley		X		Mr. Tauzin		X	
Mr. Bilirakis		X		Mr. Wyden		X	
Mr. Schaefer		X		Mr. Hall	X		
Mr. Barton				Mr. Bryant		X	

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Hastert		X		Mr. Boucher		X	
Mr. Upton		X		Mr. Manton	X		
Mr. Stearns	X			Mr. Towns	X		
Mr. Paxon		X		Mr. Studds	X		
Mr. Gillmor				Mr. Pallone	X		
Mr. Klug	X			Mr. Brown		X	
Mr. Franks		X		Mrs. Lincoln			
Mr. Greenwood				Mr. Gordon		X	
Mr. Crapo		X		Ms. Furse		X	
Mr. Cox				Mr. Deutsch		X	
Mr. Deal		X		Mr. Rush		X	
Mr. Burr		X		Ms. Eshoo		X	
Mr. Bilbray				Mr. Klink	X		
Mr. Whitfield		X		Mr. Stupak		X	
Mr. Ganske		X					
Mr. Frisa		X					
Mr. Norwood		X					
Mr. White		X					
Mr. Coburn		X					

COMMITTEE ON COMMERCE—104TH CONGRESS ROLLCALL VOTE NO. 50

Bill: H.R. 1555, Communications Act of 1995.
Amendment: Amendment by Mr. Bryant re: separate subsidiary.
Disposition: Agreed to, by a rollcall vote of 29 ayes to 15 nays.

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Bliley	X			Mr. Dingell			
Mr. Moorhead		X		Mr. Waxman	X		
Mr. Fields	X			Mr. Markey	X		
Mr. Oxley	X			Mr. Tauzin		X	
Mr. Bilirakis	X			Mr. Wyden	X		
Mr. Schaefer	X			Mr. Hall	X		
Mr. Barton		X		Mr. Bryant	X		
Mr. Hastert				Mr. Boucher		X	
Mr. Upton	X			Mr. Manton	X		
Mr. Stearns	X			Mr. Towns	X		
Mr. Paxon		X		Mr. Studds		X	
Mr. Gillmor	X			Mr. Pallone	X		
Mr. Klug	X			Mr. Brown		X	
Mr. Franks		X		Mrs. Lincoln			
Mr. Greenwood		X		Mr. Gordon	X		
Mr. Crapo	X			Ms. Furse	X		
Mr. Cox		X		Mr. Deutsch		X	
Mr. Deal		X		Mr. Rush	X		
Mr. Burr	X			Ms. Eshoo	X		
Mr. Bilbray	X			Mr. Klink	X		
Mr. Whitfield	X			Mr. Stupak		X	
Mr. Ganske		X					
Mr. Frisa	X						
Mr. Norwood		X					
Mr. White	X						
Mr. Coburn	X						

COMMITTEE ON COMMERCE—104TH CONGRESS ROLLCALL VOTE NO. 51

Bill: H.R. 1555, Communications Act of 1995.
Amendment: Amendment by Mr. Markey re: cable regulation.
Disposition: Not Agreed To, by a rollcall vote of 14 ayes to 32 nays.

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Bliley		X		Mr. Dingell	X		
Mr. Moorhead		X		Mr. Waxman	X		
Mr. Fields		X		Mr. Markey	X		
Mr. Oxley		X		Mr. Tauzin		X	
Mr. Bilirakis		X		Mr. Wyden	X		
Mr. Schaefer		X		Mr. Hall		X	
Mr. Barton		X		Mr. Bryant		X	
Mr. Hastert		X		Mr. Boucher	X		
Mr. Upton		X		Mr. Manton		X	
Mr. Stearns		X		Mr. Towns		X	
Mr. Paxon		X		Mr. Studds	X		
Mr. Gillmor		X		Mr. Pallone	X		
Mr. Klug		X		Mr. Brown	X		
Mr. Franks		X		Mrs. Lincoln	X		
Mr. Greenwood		X		Mr. Gordon	X		
Mr. Crapo		X		Ms. Furse	X		
Mr. Cox				Mr. Deutsch		X	
Mr. Deal		X		Mr. Rush	X		
Mr. Burr		X		Ms. Eshoo		X	
Mr. Bilbray		X		Mr. Klink	X		
Mr. Whitfield		X		Mr. Stupak	X		
Mr. Ganske		X					
Mr. Frisa		X					
Mr. Norwood		X					
Mr. White		X					
Mr. Coburn		X					

COMMITTEE ON COMMERCE—104TH CONGRESS ROLLCALL VOTE NO. 52

Bill: H.R. 1555, Communications Act of 1995.

Amendment: Amendment to the Stearns Amendment by Mr. Markey re: limitations on Commission rulemaking authority.

Disposition: Not Agreed to, by a rollcall vote of 21 ayes to 26 nays.

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Bliley		X		Mr. Dingell	X		
Mr. Moorhead		X		Mr. Waxman	X		
Mr. Fields		X		Mr. Markey	X		
Mr. Oxley		X		Mr. Tauzin	X		
Mr. Bilirakis		X		Mr. Wyden	X		
Mr. Schaefer		X		Mr. Hall	X		
Mr. Barton		X		Mr. Bryant	X		
Mr. Hastert		X		Mr. Boucher	X		
Mr. Upton		X		Mr. Manton		X	
Mr. Stearns		X		Mr. Towns	X		
Mr. Paxon		X		Mr. Studds	X		
Mr. Gillmor		X		Mr. Pallone		X	
Mr. Klug	X			Mr. Brown		X	
Mr. Franks		X		Mrs. Lincoln	X		
Mr. Greenwood		X		Mr. Gordon	X		
Mr. Crapo	X			Ms. Furse	X		
Mr. Cox		X		Mr. Deutsch		X	
Mr. Deal		X		Mr. Rush	X		
Mr. Burr	X			Ms. Eshoo	X		
Mr. Bilbray		X		Mr. Klink	X		
Mr. Whitfield	X			Mr. Stupak	X		
Mr. Ganske		X					
Mr. Frisa		X					
Mr. Norwood		X					
Mr. White		X					
Mr. Coburn		X					

COMMITTEE ON COMMERCE—104TH CONGRESS

ROLLCALL VOTE NO. 53

Bill: H.R. 1555, Communications Act of 1995.

Amendment: Amendment to the Stearns Amendment by Mr. Markey re: local cross-media ownership limits, children's programming, and signal blocking.

Disposition: Not Agreed To, by a rollcall vote of 15 ayes to 32 nays.

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Bliley		X		Mr. Dingell	X		
Mr. Moorhead		X		Mr. Waxman	X		
Mr. Fields		X		Mr. Markey	X		
Mr. Oxley		X		Mr. Tauzin		X	
Mr. Bilirakis		X		Mr. Wyden	X		
Mr. Schaefer		X		Mr. Hall	X		
Mr. Barton		X		Mr. Bryant	X		
Mr. Hastert		X		Mr. Boucher		X	
Mr. Upton		X		Mr. Manton		X	
Mr. Stearns		X		Mr. Towns	X		
Mr. Paxon		X		Mr. Studds	X		
Mr. Gillmor		X		Mr. Pallone	X		
Mr. Klug		X		Mr. Brown	X		
Mr. Franks		X		Mrs. Lincoln		X	
Mr. Greenwood		X		Mr. Gordon	X		
Mr. Crapo		X		Ms. Furse	X		
Mr. Cox		X		Mr. Deutsch		X	
Mr. Deal		X		Mr. Rush	X		
Mr. Burr		X		Ms. Eshoo	X		
Mr. Bilbray		X		Mr. Klink	X		
Mr. Whitfield		X		Mr. Stupak		X	
Mr. Ganske		X					
Mr. Frisa		X					
Mr. Norwood		X					
Mr. White		X					
Mr. Coburn		X					

COMMITTEE ON COMMERCE—104TH CONGRESS ROLLCALL VOTE NO. 54

Bill: H.R. 1555, Communications Act of 1995.

Amendment: Amendment by Mr. Stearns re: broadcast ownership.

Disposition: Agreed To, by a rollcall vote of 34 ayes to 13 nays.

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Bliley	X			Mr. Dingell	X		
Mr. Moorhead	X			Mr. Waxman		X	
Mr. Fields	X			Mr. Markey		X	
Mr. Oxley	X			Mr. Tauzin	X		
Mr. Bilirakis	X			Mr. Wyden		X	
Mr. Schaefer	X			Mr. Hall	X		
Mr. Barton	X			Mr. Bryant		X	
Mr. Hastert	X			Mr. Boucher	X		
Mr. Upton	X			Mr. Manton	X		
Mr. Stearns	X			Mr. Towns	X		
Mr. Paxon	X			Mr. Studds		X	
Mr. Gillmor	X			Mr. Pallone	X		
Mr. Klug	X			Mr. Brown	X		
Mr. Franks	X			Mrs. Lincoln		X	
Mr. Greenwood	X			Mr. Gordon		X	
Mr. Crapo		X		Ms. Furse		X	
Mr. Cox	X			Mr. Deutsch	X		

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Deal	X			Mr. Rush	X		
Mr. Burr		X		Ms. Eshoo		X	
Mr. Bilbray	X			Mr. Klink		X	
Mr. Whitfield		X		Mr. Stupak	X		
Mr. Ganske	X						
Mr. Frisa	X						
Mr. Norwood	X						
Mr. White	X						
Mr. Coburn	X						

COMMITTEE ON COMMERCE—104TH CONGRESS ROLLCALL VOTE NO. 55

Bill: H.R. 1555, Communications Act of 1995

Motion: Motion by Mr. Bliley to order H.R. 1555 reported to the House, as amended

Disposition: Agreed To, by a rollcall vote of 38 ayes to 5 nays

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Bliley	X			Mr. Dingell	X		
Mr. Moorhead	X			Mr. Waxman			
Mr. Fields	X			Mr. Markey		X	
Mr. Oxley	X			Mr. Tauzin	X		
Mr. Bilirakis	X			Mr. Wyden	X		
Mr. Schaefer	X			Mr. Hall	X		
Mr. Barton	X			Mr. Bryant		X	
Mr. Hastert	X			Mr. Boucher	X		
Mr. Upton	X			Mr. Manton	X		
Mr. Stearns	X			Mr. Towns			
Mr. Paxon	X			Mr. Studds		X	
Mr. Gillmor	X			Mr. Pallone		X	
Mr. Klug	X			Mr. Brown	X		
Mr. Franks	X			Mrs. Lincoln	X		
Mr. Greenwood	X			Mr. Gordon	X		
Mr. Crapo	X			Ms. Furse	X		
Mr. Cox	X			Mr. Deutsch	X		
Mr. Deal	X			Mr. Rush	X		
Mr. Burr	X			Ms. Eshoo	X		
Mr. Bilbray				Mr. Klink		X	
Mr. Whitfield	X			Mr. Stupak	X		
Mr. Ganske	X						
Mr. Frisa	X						
Mr. Norwood							
Mr. White	X						
Mr. Coburn	X						

COMMITTEE ON COMMERCE—104TH CONGRESS VOICE VOTES

Amendment: Amendment by Mr. Barton re: pay phones.

Disposition: Agreed To, by a voice vote.

Amendment: Amendment by Mr. Boucher re: small carrier exemption.

Disposition: Agreed To, by a voice vote.

Amendment: Amendment by Mr. White re: interconnectivity.

Disposition: Agreed To, by a voice vote.

Amendment: Amendment by Mr. Tauzin re: advanced network capability.

Disposition: Withdrawn, by unanimous consent.

Amendment: Amendment by Mr. Burr re: CMRS joint marketing.

Disposition: Withdrawn, by unanimous consent.

Amendment: Amendment by Mr. Boucher re: procurement.

Disposition: Agreed To, by a voice vote.

Amendment: Amendment by Mr. Fields re: joint marketing.

Disposition: Agreed To, by a voice vote.

Amendment: Amendment by Mr. Wyden re: State preemption/telemedicine.

Disposition: Withdrawn, by unanimous consent.

Amendment: Amendment by Mr. Boucher re: removal of unnecessary regulation.

Disposition: Agreed To, by a voice vote.

Amendment: Amendment by Mr. Bryant re: private right of action.

Disposition: Not Agreed To, by a voice vote.

Amendment: Amendment Mr. Gordon re: telemessaging joint marketing prohibition.

Disposition: Agreed To, by a voice vote.

Amendment: En Bloc Amendment by Mr. Fields re: technical amendments.

Disposition: Agreed To, by a voice vote.

Amendment: Amendment by Mr. Klink re: Universal Service Board sunset.

Disposition: Withdrawn, by unanimous consent.

Amendment: Amendment by Mr. Boucher re: good faith negotiation.

Disposition: Agreed To, by a voice vote.

Amendment: En Bloc Amendment by Mr. Bliley re: interim interLATA entry, dialing parity and out of region.

Disposition: Agreed To, by a voice vote.

Amendment: Amendment to the Bliley En Bloc Amendment by Mr. Klug re: permit States to enforce intraLATA requirements adopted or proposed prior to the date of enactment.

Disposition: Not Agreed To, by a voice vote.

Amendment: Amendment by Mr. Markey re: appropriations authorization.

Disposition: Agreed To, by a voice vote.

Amendment: Amendment by Mr. Stupak re: removal of barriers to entry.

Disposition: Withdrawn, by unanimous consent.

Amendment: Amendment by Mr. Crapo re: video platform.

Disposition: Withdrawn, by unanimous consent.

Amendment: Amendment by Ms. Eshoo re: cable equipment compatibility.

Disposition: Agreed To, by a voice vote.

Amendment: Amendment by Mr. Markey re: uniform rate structure.

Disposition: Not Agreed To, by a voice vote.

Amendment: Amendment by Mr. Klink re: low power television.

Disposition: Not Agreed To, by a voice vote.

Amendment: Amendment by Mr. Oxley re: foreign investment and ownership.

Disposition: Agreed To, by a voice vote.

Amendment: Amendment by Mr. Barton re: commercial mobile services interconnection.

Disposition: Withdrawn, by unanimous consent.

Amendment: Amendment by Mr. Stupak re: stations without individual licenses.

Disposition: Withdrawn, by unanimous consent.

Amendment: Amendment by Mr. Barton, as amended by unanimous consent, re: small business complaint procedure.

Disposition: Agreed To, by a voice vote.

Amendment: Amendment by Mr. Studds re: line-standers.

Disposition: Ruled Non-Germane.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Subcommittee on Telecommunications and Finance and the Subcommittee on Commerce, Trade and Hazardous Materials held oversight and legislative hearings and made findings that are reflected in this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

Pursuant to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform and Oversight.

ADVISORY COMMITTEE STATEMENT

No advisory committees with the meaning of Section 5(b) of the Federal Advisory Committee Act are created by this legislation.

COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to Section 403 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, following is the cost estimate provided by the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 19, 1995.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1555, the Communications Act of 1995.

Enactment of H.R. 1555 would affect direct spending and receipts. Therefore, pay-as-you-go procedures would apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JUNE E. O'NEILL.

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill Number: H.R. 1555.

2. Bill Title: Communications Act of 1995.

3. Bill Status: As ordered reported by the House Committee on Commerce on May 25, 1995.

4. Bill Purpose: H.R. 1555 would remove many restrictions on competition in telecommunications market.

Title I would require local telephone companies to negotiate to provide for service connections with any requesting telecommunications carrier, and would establish procedures for such connections. It would forbid states and local governments from preventing any entity from providing telecommunications services. Title I also would permit regional Bell operating companies to compete with long-distance carriers, under certain circumstances. It would require the Federal Communications commission (FCC) to convene a federal-state joint board to make recommendations on the preservation of universal telecommunications services at affordable rates to all Americans. The title states several principles on which the joint board would be required to base its recommendations including the principles that services offered should be reasonably comparable between urban and rural areas, that rates should be just and reasonable, and that all providers of telecommunications services should make equitable and nondiscriminatory contributions to universal service. The FCC would be required to complete action on the joint board's recommendations within one year after the bill's enactment.

Title I would permit telecommunications companies to use flexible pricing of services, abolish rate-of-return-regulation, and eliminate pricing regulation under certain circumstances. Title I also would permit the Bell operating companies to manufacture and provide telecommunications equipment, engage in electronic publishing through affiliates and joint ventures, and provide alarm monitoring and telemessaging services under certain conditions. It would restrict the conditions under which a caller to a toll-free number could be charged for the information conveyed during the call. Finally, Title I would authorize appropriations to the FCC to implement the bill, and would permit the FCC to adjust certain fees to offset those appropriations.

Title II would permit telephone companies to offer cable television services under certain circumstances, and would establish procedures under which those companies could enter the cable television market. It would prohibit telephone companies from acquiring cable systems within their telephone service areas, with certain exceptions. Title II also would deregulate cable companies that the FCC finds are subject to effective competition, permit cable operators to make certain rate changes, restrict the FCC's authority to review rate increases, and make other changes to regulations governing cable television.

Title III would prescribe procedures for issuing licenses for advanced television (ATV). It also would provide for transition from the current standard of television broadcasting to that of ATV, and for the return and reassignment by auction of part of the radio spectrum currently allocated to television broadcasting. It would re-

quire the FCC to adopt regulations that would permit broadcast licensees to offer ancillary or supplemental services using frequencies allocated to broadcasting, if the FCC determines that those activities are consistent with public interest. It would require the FCC to collect a fee from licensees offering ancillary or supplemental services, under certain circumstances, and would permit the FCC to retain amounts necessary to pay for regulating ATV services. Title III would reduce, and in some cases remove, restrictions on the ownership of television stations and other media of mass communications.

Title IV would provide that the bill would supersede the Modification of Final Judgment (the decree entered on August 24, 1982, in United States v. Western Electric, Civil Action No. 82–0192, United States District Court, District of Columbia). It would exempt providers of direct-to-home satellite services from taxation by local jurisdictions. Title V would define various terms and make conforming amendments. Title VI would require the FCC to establish a procedure to handle complaints from small businesses. The bill also would require the FCC to perform various studies, prepare reports, and promulgate a variety of regulations.

5. Estimated cost to the Federal Government: The largest budgetary impact of this bill would result from the provisions dealing with universal service. Current standards for universal telecommunications service are implemented through a system of external subsidies (those entailing payments between companies) and internal subsidies (where companies charge low-cost and high-cost customers roughly the same rates). CBO estimates that telecommunications firms would have to pay an additional $7 billion in external subsidies over the next five years in order to implement the universal service provisions of H.R. 1555 and that the amount of internal subsidies would fall by a somewhat greater amount. CBO believes that the external subsidy payments should be included as governmental receipts in the federal budget. The net annual impact of such payments on the federal deficit would be zero because outlays from a universal service fund would be equal to the receipts.

In addition, CBO estimates that enacting H.R. 1555 would increase spending requirements for the FCC by about $15 million over the 1996–1997 period. Because the bill would permit the FCC to increase various fees to offset the costs of implementing its provisions, the increased costs in 1996 and 1997 would be offset by collections of those fees, resulting in no net budgetary impact. CBO also estimates that the FCC would incur additional costs after 1997 for enforcing new regulations issued in 1996 and 1997. CBO estimates that reductions in the FCC's regulatory workload pursuant to the enactment of H.R. 1555 would result in savings sufficiently large to offset those costs. The estimated budgetary impacts are summarized in the following table.

[By fiscal year, in millions of dollars]

	1996	1997	1998	1999	2000
SPENDING SUBJECT TO APPROPRIATIONS ACTION					
Estimated authorization level [1]	10	5	0	0	0
Estimated offsetting collections	−10	−5	0	0	0
Net estimated budged authority	0	0	0	0	0

[By fiscal year, in millions of dollars]

	1996	1997	1998	1999	2000
Estimated outlays	0	0	0	0	0
REVENUES					
Existing external subsidy collections under current law [2]	4,300	4,300	4,300	4,300	4,400
Proposed changes in external subsidy collections	0	600	1,400	2,200	2,900
Estimated revenues under H.R. 1555	4,300	4,900	5,700	6,500	7,300
DIRECT SPENDING					
Existing external subsidy payment under current law [2]	.....	.....	.....	.....	.....
Estimated obligations	4,300	4,300	4,300	4,300	4,400
Estimated disbursements	4,300	4,300	4,300	4,300	4,400
Proposed changes in external subsidy payments [3]	.....	.....	.....	.....	.....
Estimated budget authority	0	600	1,400	2,200	2,900
Estimated outlays	0	600	1,400	2,200	2,900
Total external subsidy:					
Payments under H.R. 1555	.....	.....	.....	.....	.....
Estimated budget authority	4,300	4,900	5,700	6,500	7,300
Estimated outlays	4,300	4,900	5,700	6,500	7,300

[1] Appropriations for the FCC are $69 million in fiscal year 1995. No funding has yet been authorized for fiscal year 1996 or subsequent years.
[2] These amounts are not currently shown in the federal budget. Estimated collections and disbursements of external subsidies in fiscal year 1995 are $4,200 million.
[3] CBO estimates that over the 1996–2000 period, H.R. 1555 would reduce internal subsidy payments by a total of $9 billion to $10 billion.

The costs of this bill fall within budget function 370.

6. Basis of Estimate: This estimate assumes that H.R. 1555 will be enacted by the end of fiscal year 1995, and that the necessary funds will be appropriated each year.

COSTS OF THE FCC

H.R. 1555 would require the FCC to promulgate and enforce numerous regulations and to prepare various studies and reports. Based on information from the FCC, CBO estimates that implementing the provisions of H.R. 1555 would cost the commission $105 million over the 1996–2000 period, but that those increased costs would be offset by a combination of fees and reductions in the FCC regulatory costs. New costs in the first year would be divided between personnel costs associated with rulemakings and studies and overhead costs associated with acquiring necessary space, furnishings, hardware, and software. New costs in later years are primarily for personnel to enforce the new regulations. The FCC would realize savings, however, by transferring personnel and overhead costs from activities that are no longer needed because of the bill to the activities required by the bill. CBO estimates that these savings would total about $90 million over the 1996–2000 period. The bill would permit the FCC to increase various fees to pay for increases in costs resulting from the bill's implementation, so there would be no net increase in discretionary spending resulting from the bill's enactment.

UNIVERSAL SERVICE

Universal Service Under Current Law.—Current FCC regulations establish standards for universal service, which are implemented through various types of subsidies to local telephone companies from other local telephone and long distance carriers. The external subsidies (those entailing payments between companies) will total approximately $4.3 billion in 1996 and $4.4 billion by 2000. These subsidies aid telephone companies facing higher than average

costs, aid low-income customers by providing some services at no cost to those customers, and help pay for special services for the deaf. Telephone companies also internal subsidize their high-cost customers by charging high- and low-cost customers roughly the same rates, and by setting those rates high enough that the excess amount paid by low-cost customers makes up the loss for providing service to the high-cost customers. CBO estimates that this rate averaging will total approximately $4.9 billion in 1996 and $5.1 billion by 2000. None of these receipts and payments currently appear in the federal budget.

Universal Service Under H.R. 1555.—The primary purpose of H.R. 1555 is to increase competition in telecommunications markets and to provide for an orderly transition from a regulated market to a competitive and deregulated market. The mechanisms currently providing for universal service are uniquely suited for a regulated market where limits on competition guarantee economic returns that are sufficient to attract private investment and to allow firms to subsidize their own high-cost consumers. The market environment that H.R. 1555 would create would make such internal subsidies much less viable because deregulation would remove the near-guaranteed returns allowed in a regulated market, and with them the ability of the regulated firm to subsidize high-cost customers. Thus, CBO expects that over time enactment of H.R. 1555 would lead to the disappearance of internal subsidies (those conveyed within companies, between classes of users). In its place, we would expect a new system of transfers consisting almost entirely of external subsidies that would appear in the federal budget.

CBO expects that the standard for universal service under H.R. 1555 would be similar to the existing one. Hence, as the current system of internal and external subsidies is replaced by a system consisting primarily of external subsidies, the total amount of subsidies collected from low-cost customers and passed on to high-cost customers would not change significantly. Over time, CBO expects that the operating costs of telephone companies would tend to fall as a result of competitive pressures and that the total amount of subsidies necessary would decline.

Under H.R. 1555, the FCC would establish a definition of universal service, based on the recommendations of a federal-state joint board. The board could revisit that definition from time to time over its five-year life. Under the principles enunciated in H.R. 1555, all telecommunications carriers would participate in the provision and advancement of universal service. In order to implement the goals of universal service in a competitive telecommunications market, the FCC would likely take a variety of actions to ensure the provision of universal telecommunications service, including requiring contributions by companies serving relatively few high-cost customers. Based on information from a variety of industry and regulatory sources, CBO believes that most if not all of the contributions by companies not serving a large number of high-cost customers would be in the form of cash payments, and that these financial payments would be distributed, either by the FCC or by its designee, as a subsidy to those companies serving a large number of high-cost customers.

H.R. 1555 would require that the FCC begin implementing the initial definition of universal service within one year of enactment. CBO assumes that, for the first five-year period after the bill's enactment, universal service would consist of basic touchtone voice service with long distance access, 911 emergency service, 411 information service, operator assistance services, directory listing, and telecommunications relay services for the deaf. We expect that advanced telecommunications services probably would not be included at this time, but could be included in the future. CBO assumes that the initial implementation of universal service would be phased in over a five-year period.

Budgetary Impact of the New Universal Service Requirement.—CBO assumes that the new system of subsidies would begin in 1997, and that the phasing in of the new system and the phasing out of the old system occur over a five-year period. As a result, CBO estimates that collections to finance subsidy payments between companies would increase by about $600 million in fiscal year 1997 and by a total of $7 billion over the 1997–2000 period. Outlays would grow by the same amounts, resulting in no net change in the federal deficit.

CBO believes that the cash flows from the external subsidies should appear on budget as governmental receipts and direct spending because the payments between companies are made as a result of the exercise of the sovereign power of the federal government, not as a normal business transaction between companies. The payments are a federally-mandated condition for doing business with no relationship between the amounts paid and the level of benefits received. Even if the funds are collected and disbursed by a nonfederal entity, the amounts collected and paid out would be determined by a federal agency under procedures specified in federal law. A nonfederal entity handling these transactions would thus be acting as an agent of the federal government.

The current exclusion of subsidy transfers from the budget may be attributable, at least in part, to the fact that those transfers are the result of judicial and regulatory actions and were not subject to the budgetary scrutiny usually applied to legislation. If H.R. 1555 were enacted, the Administration would determine whether subsidy transfers are included as budget receipts and outlays. CBO's review of the bill, however, leads us to conclude that consistency with current budget concepts requires their inclusion.

Other Budgetary Effects.—A number of other provisions would have a minor impact on receipts and direct spending. The FCC would be permitted to levy fines for violations of certain provisions of the bill. CBO estimates that receipts from fines would not be significant.

Finally, the bill would permit the FCC to charge a fee to television broadcasters who choose to use their broadcast spectrum to provide certain additional types of services. CBO does not expect that broadcasters would receive a significant amount of income over the next five years from diverting spectrum from current uses to other commercial services. Therefore, we estimate that any income to the government as a result of imposing a royalty or fee would not be significant.

7. Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. The provisions dealing with universal service, royalties charged to television broadcasters, and fines and penalties would affect direct spending and receipts. The following table summarizes the estimated pay-as-you-go impact of H.R. 1555.

[By fiscal year, in millions of dollars]

	1995	1996	1997	1988
Change in outlays	0	0	600	1,400
Change in receipts	0	0	600	1,400

8. Estimated cost to state and local governments: Implementing the provisions of H.R. 1555 would result in increased costs to most states. The bill would require states to promulgate regulations, direct various audits of Bell companies, and participate in various joint federal-state boards. Based on information from the National Association of Regulatory Utility Commissioners, CBO estimates that states would spend an average of $1.5 million per state over the next two years, and approximately $1 million per state over the period 1998–2000, for a total estimated cost of about $125 million to all states over the five-year period. CBO expects that implementation of H.R. 1555 would result in some costs to local governments to promulgate various regulations and to adapt their laws to the changes made by H.R. 1555. The extent of those costs will depend on the specific details of regulations promulgated by the FCC. As a result, local governments have been unable to provide CBO with any clear indication of the magnitude of the potential costs, and CBO cannot estimate these amounts.

The bill also would require that state and local governments not discriminate between various telecommunications services when assessing franchise and other fees. If these bodies were to decrease the rates charged for the different services to that of the lowest fee, they could lose substantial amounts of revenues. The bill also would permit state and local governments to charge certain new fees that could offset some or all of any lost revenues. CBO expects that state and local governments would adjust the rates they charge for the various services so that the total amount collected by each state would not diminish significantly, and that state and local governments would further adjust rates to make up at least some of the costs incurred in implementing the requirements of the bill.

H.R. 1555 would prohibit local governments from imposing taxes on direct broadcast satellite services under certain circumstances. CBO does not believe that this provision would have a significant effect on the revenues of state and local governments.

9. Estimate comparison: None.

10. Previous CBO estimate: On May 5, 1995, CBO prepared a cost estimate for S. 652, the Telecommunications Competition and Deregulation Act of 1995, as reported by the Senate Committee on Commerce, Science, and Transportation on March 30, 1995. That estimate stated that implementation of S. 652 would require approximately $62 million in appropriated spending over the 1996–

2000 period. We now believe that our estimate of FCC administrative costs resulting from S. 652 was too high, and that costs to the FCC of implementing S. 652 would be similar to those estimated for this bill. The bills differ, however, in that H.R. 1555 would permit the FCC to collect fees to cover those costs.

S. 652 would require that universal service be extended to every household, whereas H.R. 1555 has no such requirements. While subsidy revenues and payments under S. 652 would probably be slightly higher than those estimated for H.R. 1555 over the next five years, the amounts would not differ significantly.

11. Estimate prepared by: John Webb and Melissa Sampson.

12. Estimate approved by: Robert A. Sunshine, for Paul N. Van de Water, Assistant Director for Budget Analysis.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee finds that the bill would result in decreased rates for both telephone and cable services, and therefore would not have an inflationary impact.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 designates the short title as the "Communications Act of 1995."

TITLE I—DEVELOPMENT OF COMPETITIVE TELECOMMUNICATIONS MARKETS

Section 101. Establishment of part II of title II

Section 241 restates the obligation contained in section 201(a) of the Communications Act of 1934 on all common carriers to interconnect with the facilities and equipment of other providers of telecommunications services and information services. The interconnection requirement in section 201(a) is a cornerstone principle of common carriage, and it is restated here in light of its importance and relevance as the local telephone industry undergoes the transition to a competitive market.

Section 242(a)(1) sets out the specific requirements of openness and accessibility that apply to LECs as competitors enter the local market and seek access to, and interconnection with, the incumbent's network facilities. LECs are required to satisfy reasonable requests for equal access and interconnection to their networks. A request is deemed not reasonable unless the provider includes in it a proposed plan and a reasonable schedule for providing a service that implements the requested access and interconnection. This requirement will ensure that the request for access and interconnection is bona fide. Under Section 242(a)(2), LECs have the duty to offer unbundled services, elements, features, functions, and capabilities whenever technically feasible. During the Committee's consideration of the bill, the Committee deleted a requirement that unbundling be done on an "economically reasonable" basis out of concern that this requirement could result in certain unbundled services, elements, features, functions, and capabilities not being made available. The Committee clarified, however, in section 242(b)(4)(C), that the beneficiary of unbundling must pay its cost.

Section 242(a)(3) imposes the duty to offer resale at economically feasible rates to the reseller. This duty is important in order for non-facilities-based carriers to have an opportunity to compete in the local exchange market, in the same way that it was critical initially for the early development of competition in the long distance market. In markets where a facilities-based competitor is not likely to emerge in the near term, the Committee believes that it is imperative that meaningful resale opportunities are available for competition in the local exchange.

Nonetheless, in determining the resale rate, it is the Committee's intent that there be a recognition of pricing structures for telephone exchange service in the State. In other words, determining the resale rates should be accomplished by taking into account the rate at which local service is tariffed in a particular State. The rate should reflect whether, and to what extent, the local dialtone service is subsidized by other services, such as toll service, long distance access, subsidized through the pricing for other features, such as call forwarding and call waiting, or subsidized through explicit subsidies from a universal service fund.

Section 242(a)(4) sets out the duty to provide number portability, to the extent technically feasible. Number portability is the means by which customers may stop receiving service from their local telephone service provider and "take" their telephone number with them to a new provider. The ability to change service providers is only meaningful if a customer can retain his or her local telephone number. The "technically feasible" requirement in this provision is important, because the software necessary for "true" number portability, as opposed to "interim" number portability (which is an advanced call forwarding feature), is not presently available for local telephone service, although testing is presently under way. The Committee recognizes that the local exchange industry is dependent on the software manufacturers for development of "true" number portability, and expects that technology to be deployed when it is technically feasible.

Section 242(a)(5) sets out the duty to provide dialing parity. Like number portability, dialing parity is essential for a local customer to consider changing local service. Dialing parity means the ability to dial the same number of digits in calling another number, regardless of who provides the service. For local service, obviously this is seven digits; for toll or "short haul" long distance service, it is known as "one plus", or "1+" dialing.

Section 242(a)(6) sets out the duty to afford access to the poles, ducts, conduits, and rights-of-way of the incumbent carrier, as provided under the pole attachment provisions of the Communications Act. Section 242(a)(7) places the responsibility on local telephone companies not to install network features, functions, and capabilities that violate the requirement of network functionality and accessibility. This requirement is implicit in, and related to, the duty to interconnect. Section 242(a)(8) places a duty on both parties to negotiate in good faith all of the requirements in section 242 that comprise opening the local exchange.

Section 242(b)(1) describes the specific terms and conditions for interconnection, compensation, and equal access, which are integral to a competing provider seeking to offer local telephone services

over its own facilities. Under section 242(b)(2), any interconnection agreement entered into must provide for mutual and reciprocal recovery of costs, and may include a range of compensation schemes, such as an in-kind exchange of traffic without cash payment (known as bill-and-keep arrangements). In determining the cost of interconnection, some approximation of the cost of terminating calls in a competitive market should be made. However, neither the Commission or any State commission is authorized to conduct a proceeding to determine these costs with particularity.

Under section 242(b)(3), the LEC has a responsibility to offer reasonable and nondiscriminatory access on an unbundled basis "that is equal in type and quality" to that which it affords itself or any other person. Section 242(b)(4) directs the Commission to establish regulations requiring reasonable and nondiscriminatory equal access to and interconnection with the facilities and capabilities of a local exchange carrier (LEC), within fifteen (15) months.

Paragraph (4)(B) mandates actual collocation, or physical collocation, of equipment necessary for interconnection at the premises of a LEC, except that virtual collocation is permitted where the LEC demonstrates that actual collocation is not practical for technical reasons or because of space limitations. The Committee finds that actual collocation is both important and preferable to accomplish two of the goals of this legislation, reasonable and non-discriminatory access, and that the duty to provide actual collocation is an obligation that flows from the ability of the LEC to interconnect with the interstate telecommunications networks. The experience at the Commission, with its proceeding on expanded interconnection, (Expanded Interconnection Mandated for Interstate Special Access (CC Docket 91–141)(Sept. 17, 1992)), and the experience in some of the States on implementing interconnection, leads the Committee to conclude that the risk of discriminatory interconnection grows the farther one gets away from the central office of the carrier. It is for this reason that the legislation mandates actual, or physical, collocation with the exception as noted above. The Committee intends that the requirements of this paragraph shall only apply to the provision of telecommunications service. Finally, this provision is necessary to promote local competition because a recent court decision indicates that the Commission lacks the authority under the Communications Act to order physical collocation. (See *Bell Atlantic Tel. Co.* v. *Federal Communications Commission*, No. 92–1619 (D.C. Cir. June 10, 1994)).

Section 242(b)(4)(C) directs the Commission to establish regulations requiring full compensation to the LEC for costs of providing services related to equal access, interconnection, number portability, and unbundling. Section 242(b)(4)(D) requires a carrier, to the extent it provides a telecommunications service or an information service over its own network, to impute to itself the charge for access and interconnection that it charges other persons for providing such services. The Committee included this provision for two reasons: First, it provides a benchmark to ensure that the compensation rates established by the carrier for access are in fact just and reasonable; and second, it guards against anti-competitive behavior by requiring a LEC to assess the same charge to itself for access as it charges others.

Section 242(d)(1) prohibits a provider from joint marketing of local and interLATA toll service ("long haul" long distance) until the BOC in that State is authorized to provide long distance service pursuant to section 245. Subsection (d)(2) grandfathers joint marketing arrangements in place before the date of enactment.

Section 242(e) grants to the Commission the authority to modify, in whole or in part, or waive the requirements of subsections 242 for any carrier that has, in the aggregate nationwide, fewer than 500,000 access lines installed, to the extent that the Commission determines the effect of the requirements would be economically burdensome, technologically infeasible, or otherwise not in the public interest.

This authority is necessary for both "new entrants" into the market and certain incumbents. The Committee included this modification authority because it recognizes that new entrants into the market for telephone exchange service will face tremendous obstacles since they will be competing against an entrenched service provider. The Committee further recognizes that saddling the full weight of all of these requirements immediately on new entrants will discourage persons from entering the market. This provision gives the Commission the authority to modify any requirements so as to achieve the policy goal of encouraging competition in the provision of telephone exchange service and exchange access service. However, the Committee further recognizes that, at some point, the new competitors have grown and matured sufficiently so that they are no longer in need of special treatment. The Committee has determined that when a carrier has 500,000 access lines installed in the aggregate nationwide, the protection provided in section 242(e) is no longer necessary. This threshold number effectively separates small LECs from large ones that should have the interconnection and equal access obligations.

Additionally, the Committee recognizes that the equal access and interconnection requirements under section 242 may be technologically infeasible, unduly economically burdensome economically, and otherwise not in the public interest for certain incumbent LECs, especially rural telephone companies. Section 242(e) therefore gives the Commission the authority to modify or waive section 242 requirements for any LEC (or class or category of such carriers) that has, in the aggregate nationwide, fewer than 500,000 access lines installed. By stating "class of carriers," it is the Committee's intent to allow groups of similarly situated carriers to file for modification or waiver at the Commission collectively, so as to lessen the administrative and financial burden on those carriers. Section 242(f) gives State commissions the authority to waive section 242 requirements with respect to rural telephone companies.

The Committee recognizes that there are significant costs associated with seeking a modification or waiver before the Commission or a State commission. Thus, section 242(g) establishes an outright statutory exemption from section 242 requirements for a rural telephone company with fewer than 50,000 access lines in a local exchange study area, provided such rural telephone company does not provide video programming services over its telephone exchange facilities in such study area.

In the future, however, it may be in the public interest to terminate the exemption due to a change in the economic, technical and public interest premises underlying the exemption. Therefore, State commissions are given the authority to terminate the exemption if a State commission determines that the termination of such exemption is consistent with the public interest, convenience, and necessity. If a State commission terminates a company's statutory exemption under subsection (g), those rural telephone companies are not prohibited from requesting a modification or waiver of section 242 requirements pursuant to subsections (e) and (f) of section 242.

Section 243(a) provides that no State or local government may have regulations, rules or laws in place on the date of enactment that effectively prohibit the offering of interstate or intrastate telecommunications or information services, or that effectively prohibit the entry of persons into the business of providing such services. Subsections (a)(1) and (2) clarify that the equal access and interconnection requirements established in this section are essential, and that States or local governments shall not prohibit or limit application of those requirements nor shall they prohibit or limit persons who want to make use of the services made available by those requirements.

Nonetheless, section 243(b) provides that subsection (a) shall not be construed to prohibit a State from imposing certain terms or conditions on telecommunications providers if such terms and conditions do not effectively prohibit the provision of competitive services, and are necessary and appropriate to (1) protect the public safety, (2) ensure continued quality of intrastate telecommunications, (3) ensure a person's business practices are consistent with State consumer protection laws and regulations, and (4) ensure just and reasonable rates. By "public safety and welfare," the Committee means, among other things, making certain that emergency services, such as 911, are available to the public. Section 243(c) makes explicit a local government's continuing authority to issue construction permits regulating how and when construction is conducted on roads and other public rights-of-way. This provision clarifies that local control over construction on public rights-of-way is not disturbed.

Section 243(d) is intended to clarify that nothing in this paragraph should be construed to establish a different system of State preemption than was adopted as part of the Omnibus Reconciliation Act of 1993 and codified at section 332(C)(3) of the Communications Act of 1934.

Section 243(e) prohibits a local government from imposing a franchise fee or its equivalent for access to public rights-of-way in any manner that discriminates among providers of telecommunications services (including the LEC). The purpose of this provision is to create a level playing field for the development of competitive telecommunications networks. Harmonizing the assessment of fees from all providers is one means of creating this parity. It is not the intent of the Committee to deny local governments their authority to impose franchise fees, but rather simply to require such fees be imposed in a non-discriminatory manner. This paragraph is not intended to affect local governments' franchise powers under Title VI of the Communications Act.

Local governments can remedy any situation in which a fee structure violates this section by expanding the application of their fees to all providers of telecommunications services, including LECs. Moreover, this section does not invalidate any general imposition that does not distinguish between or among providers of telecommunications services, nor does it apply to any lawfully imposed tax.

Section 244 requires, within eighteen (18) months, a LEC to file with the State commission in that State in which it is offering service a statement of terms and conditions confirming that it is in compliance with the section 242 requirements. Several States have already begun to require LECs to open their local exchanges to competition; under section 243, no State will be allowed to bar such competition after the date of enactment. While final Federal rules under section 242 may not be available for 15 months, it is the Committee's expectation that incumbent LECs and new entrants will be negotiating the terms and conditions required in the statements filed under section 244 prior to the issuance of Federal rules. Statements of terms and conditions would be have to be modified later, if necessary, to conform to Federal rules.

Section 244(b) requires a State commission to ensure that a LEC's statement conforms with the Federal requirements and standards of section 242. A State may impose its own "openness and accessibility" obligations, provided such obligations do not violate the preemption clause of section 243. The Commission shall conduct a similar review. Under section 244(c), both reviews shall be completed within sixty (60) days of the submission of statements to the respective regulatory authorities, or simply allowed to take effect, as commonly occurs at present with most tariffs. Section 244(c)(2) clarifies that the authority to review the statements does not terminate once they take effect. Section 244(d) allows a LEC to enter into subsequent agreements on different terms and conditions, but with two caveats. First, the subsequent agreement must undergo the same review process, and second, it may not be discriminatory with respect to other agreements it has entered into. Finally, subsection (e) sunsets the requirement of filing statements of terms and conditions once the local exchange market is deemed competitive.

Section 245 provides the method by which a BOC may seek entry to offer interLATA, or long distance, service on a State-by-State basis. Section 245(a) provides that a BOC may file a verification of access and interconnection compliance anytime after eighteen (18) months after the date of enactment. The verification must include, under section 245(a)(1), a State certification of "openness," or the so-called "checklist" requirements, and under section 245(a)(2), either of the following: pursuant to section 245(a)(2)(A), the presence of a facilities-based competitor; or pursuant to section 245(a)(2)(B), a statement of the terms and conditions the BOC would make available under section 244, if no provider had requested access and interconnection within three (3) months prior to the BOC filing under section 245.

Under section 245(a)(2)(A), the Commission must determine that there is a facilities-based competitor that is providing service to

residential and business subscribers. This is the integral requirement of the checklist, in that it is the tangible affirmation that the local exchange is indeed open to competition. In the Committee's view, the "openness and accessibility" requirements are truly validated only when an entity offers a competitive local service in reliance on those requirements.

The Committee requires that the service be made available to both residential and business subscribers, so that the service is, in fact, local telephone exchange service. It is not sufficient for a competitor to offer exchange access service to business customers only, as presently offered by competitive access providers (CAPs) in the business community. The Committee does not intend for cellular service to qualify, since the Commission has not determined that cellular is a substitute for local telephone service.

The Committee expects the Commission to determine that a competitive alternative is operational and offering a competitive service somewhere in the State prior to granting a BOC's petition for entry into long distance. The requirement of an operational competitor is crucial because, under the terms of section 244, whatever agreement the competitor is operating under must be made generally available throughout the State. Any carrier in another part of the State could immediately take advantage of the "agreement" and be operational fairly quickly. By creating this potential for competitive alternatives to flourish rapidly throughout a State, with an absolute minimum of lengthy and contentious negotiations once an initial agreement is entered into, the Committee is satisfied that the "openness and accessibility" requirements have been met.

It is also the Committee's intent that the competitor offer a true "dialtone" alternative within the State, and not merely offer service in one business location that has an incidental, insignificant residential presence. The Committee does not intend that the competitor should have to provide a fully redundant facilities-based network to the incumbent telephone company's network, yet it is expected that the facilities necessary for a competitive provider will be present. In this regard, the Committee notes that the cable industry, which is expected to provide meaningful facilities-based competition, has wired 95% of the local residences in the United States and thus has a network with the potential of offering this sort of competitive alternative. Conversely, resale, as described in section 242(a)(3), would not qualify because resellers would not have their own facilities in the local exchange over which they would provide service, thus failing the facilities-based test.

Section 245(a)(2)(B) is intended to ensure that a BOC is not effectively prevented from seeking entry into the long distance market simply because no facilities-based competitor which meets the criteria specified in the Act sought to enter the market. To the extent that a BOC does not receive a request from a competitor that comports with the criteria established by this section, it is not penalized in terms of its ability to obtain long distance relief. Because negotiating for access and interconnection may begin on the date of enactment, and in many of these States that have opened their local exchanges to competition, such negotiations have already begun, the Committee believes that it does not create an unreason-

able burden on a would-be competitor to step forward and request access and interconnection as prescribed in the legislation.

For purposes of section 245(a)(2)(B), a BOC shall not be considered to have received a request for access and interconnection if a requesting provider failed to bargain in good faith, as required under section 242(a)(8), or if the provider failed to comply, within a reasonable time period, with the requirement under section 242(a)(1) to implement the schedule contained in its access and interconnection agreement.

Section 245(b) sets out the "checklist" requirements that must be included in the State certification that the BOC files with the Commission as part of its verification. These checklist requirements include the following: (1) interconnection; (2) unbundling of network elements; (3) resale; (4) number portability; (5) dialing parity; (6) access to conduits and rights of way; (7) no State or local barriers to entry; (8) network functionality and accessibility; and (9) good faith negotiations by the BOC.

Section 245(c)(1) provides that a BOC may apply for interim interLATA authority any time after the date of enactment, and prior to completion of the Commission actions under section 242, on the basis of one or more local access and transport areas (LATAs) within a State. LATAs represent local calling areas, as created by the AT&T divestiture court, which, in certain instances, may have local competition fairly quickly. In seeking this interim authority, the BOC must include in the application proof of the presence of a facilities-based competitor and a State commission certification that the BOC is in compliance with State laws and regulations governing opening of the local exchange to competition, including the offering of resale as mandated in section 242(a)(3).

Section 245(c)(2) and (3) set out the time periods for State commission and Commission review of the interim interLATA authority. The State must file comments within 40 days of receiving the BOC's application and the Commission must make a determination within 90 days. Section 245(c)(4) states that the interim authority sunsets 180 days after all Commission actions under section 242 are completed.

Section 245(d)(1) sets out the Commission review process for interLATA authorization on a statewide, permanent basis. Under section 245(d)(2), the Commission may conduct a *de novo* review only if a State commission lacks, under relevant State law, the jurisdiction or authority to make the required certification, fails to act within ninety (90) days of receiving a BOC request for certification, or has attempted to impose a term or condition that exceeds its authority, as limited in section 243. Under section 245(d)(3), the Commission has ninety (90) days to approve, disapprove, or approve with conditions the BOC request, unless the BOC consents to a longer period of time. Under Section 245(d)(4), the Commission must determine that the BOC has complied with each and every one of the requirements. Failure to comply with any one of the checklist requirements is grounds for not granting the approval for BOC entry. As mandated in section 245(e), the Commission has continuing authority after approving a BOC's application for entry into long distance to review a BOC's compliance with the certification requirements under this section. If the Commission deter-

mines there is a deficiency, after notice and opportunity for a hearing, the Commission may issue an order requiring the deficiency be corrected, impose a monetary penalty, or suspend or revoke the BOC's approval to offer interLATA service.

Section 245(f) prohibits a BOC from providing interLATA service, unless authorized by the Commission. Section 245(g) grandfathers any activity authorized by court order or pending before the court prior to the date of enactment.

Section 245(h) creates exceptions for the provision of incidental services. Specifically, these are exceptions for certain rather limited interLATA services that are truly "incidental" to other services that a BOC otherwise may lawfully provide.

Section 245(h)(1) permits a BOC to engage in interLATA activities related to the provision of cable services. This is necessary because much of the cable programming must be "downlinked" from a satellite. Section 245(h)(2) permits a BOC to offer interLATA services over cable system facilities located outside the BOC's region. In other words, a BOC seeking to offer telecommunications services over cable facilities outside its "home" region in competition with the incumbent telephone company is permitted to do so. Section 245(h)(3) allows a BOC to offer commercial mobile services, as defined in section 332(d)(1) of the Communications Act of 1934.

Section 245(h)(4) allows a BOC to engage in interLATA services relevant to the provision of information services from a central computer. This would spare the BOC the expense of locating such a computer within each LATA for customer access to information services, such as stock market quotes, sports scores, and voice mail. Section 245(h)(5) and (6) allow a BOC to engage in interLATA services related to signaling information integral to the internal operation of the telephone network, including, for example, "Signaling Systems 7" which sends information over the network prior to the completion of the call.

Notwithstanding the dialing parity requirements of section 242(a)(5), as provided in section 245(i), a BOC is not required to provide dialing parity for intraLATA toll service ("short haul" long distance) before the BOC is authorized to provide long distance service in that State.

Section 245(j) prohibits the Commission from exercising the general authority to forbear from regulation granted to the Commission under section 230 until five years after the date of enactment.

Section 245(k) sunsets this section once the Commission and State commission, in the relevant local exchange market, determine that the BOC has become subject to full and open competition.

Section 246(a) creates a separate subsidiary requirement for the BOC provision of interLATA telecommunications or information services. Section 246(b) requires transactions between a BOC and its subsidiary to be on an arm's length basis. Sections 246(c) and (d) mandates fully separate operations and property, including books, records, and accounts between the BOC and its subsidiary. Sections 246(e) and (f) prohibit discrimination and cross-subsidies, respectively. Under section 246(k), this provision sunsets three years after the date of enactment.

Section 247 establishes a Federal-State Joint Board, pursuant to section 410(c) of the Communications Act of 1934, for the purpose of recommending actions the Commission and the States should take to preserve universal service. The Committee intends that this Joint Board should evaluate universal service in the context of a local market changing from one characterized by monopoly to one of competition.

Section 247(b) sets forth six principles upon which the Board shall base its policies for the preservation of universal service. The Committee intends that these principles shall form the basis of the deliberations of the Joint Board. The Committee also recognizes that although these principles will shape the basis of the Joint Board's recommendations, the ultimate decision-making authority rests with the Commission and with State regulators. Therefore, the Joint Board serves an important function by assessing the current condition of universal service and how it should evolve over time, and by formulating a set of recommendations, taking into account the principles enumerated here.

Section 247(b)(1) requires that any plan adopted maintain just and reasonable rates. Section 247(b)(2) states that the Joint Board should recommend a definition of the nature and extent of services included within the carriers' obligations to provide universal service. The Committee included this provision to make certain that the definition of universal service is considered in light of the functions and capabilities of the telephone network as it evolves and as the state of competition within the local telephone industry advances. Section 247(b)(3) and (4) mandate that the plan provides adequate and sustainable support mechanisms and require equitable and non-discriminatory contributions from all providers to support the plan. The plan should also seek to promote access to advanced telecommunications services and reasonably comparable services between rural and urban areas. Section 247(b)(5) directs that the plan include recommendations to ensure access to advanced telecommunications services for students in elementary and secondary schools.

Section 247(c) requires the Joint Board, in defining carrier obligations with respect to universal service pursuant to subsection (b)(2), to consider several factors: (1) the extent to which a telecommunications service has been subscribed to by customers; (2) whether such service is essential to public health, safety, or the public interest; (3) whether such services are deployed in the public switched network; and (4) whether inclusion of such service is otherwise consistent with the public interest, convenience, and necessity. The Committee included this language to give some direction to the Joint Board on when a service should be included into a definition of universal service. The factors included in subsection (c) are intended to guide the Board in walking the fine line between including new services too fast, and risk increasing prices dramatically and "gold plating" the network, and being slow to include the services.

Section 247(d) requires that the Joint Board be convened and report its recommendations within 270 days after enactment. The Commission is required to act on the recommendations within one year.

Section 247(e) makes clear that States are free to adopt regulations imposing universal service obligations on intrastate services.

Section 247(f) sunsets the Joint Board created by this section five years after enactment.

Section 248 establishes a process by which a LEC may obtain permission from a State or Federal authority to have pricing flexibility in the offering of telecommunications services. The Commission is required to establish Federal criteria and procedures for determining when pricing flexibility is appropriate. It is the Committee's intent that the Commission, in developing these criteria and procedures, should carefully consider, and draw significantly on, the experience of those States that have been at the forefront of promoting local competition and pricing procedures appropriate for a competitive environment. The States may then select from the procedural options developed by the Commission in reviewing applications for pricing flexibility. The Commission is required to respond to any application relating to interstate services within 180 days.

The primary objective of Title I of this legislation is to foster competition for local exchange and exchange access services. The Committee believes that the development of competition for these services is in the public interest, and will result in the provision of innovative services, improved service quality, and lower prices. The Committee also recognizes that, as local competition develops, regulated LECs will require flexibility in establishing prices for their services. Requiring these carriers to charge regulated prices may not be in the consumers' best interest if it results in maintaining prices at artificially high levels. Accordingly, the legislation authorizes the Commission to establish flexible pricing procedures that may be available to a carrier when a telecommunications service is subject, or is substantially certain to become subject, to competition, either within a geographic area or within a class or category of services.

The Committee intends for the Commission and for State authorities to grant flexibility to carriers that is commensurate with the level of competition. The Committee believes that affording carriers pricing flexibility will both foster competition in emerging markets and enable the Commission and State authorities to ensure that incumbent exchange carriers have the ability to respond to competitive entry. In establishing regulations pursuant to this paragraph, the Commission is broadly authorized to design flexible pricing procedures that are in the public interest, including, but not limited to, streamlined tariff requirements, informational tariff requirements, annual reports, pricing schedules that list maximum rates for service, or some combination of these requirements, and other requirements and procedures that will promote competition.

Section 248(b) abolishes rate-of-return regulation for those LECs that have complied with the "openness and accessibility" requirements under section 242 and have filed a certification to that effect under section 244. This section makes clear that LECs that are no longer a monopoly, because of the presence of competition, must no longer be subject to monopoly regulation, particularly rate-of-return regulation.

The purpose of section 248(c) is to ensure the removal of unnecessary regulation of telephone companies once a local telephone service market faces competition. Specifically, to the extent that a carrier has complied with sections 242 and 244, the Commission, with respect to interstate or foreign communications, and State commissions, with respect to intrastate communications, shall not apply certain regulations, for any service that is determined, in accordance with the criteria under section 248(a)(1)(A), to be subject to competition that effectively prevents prices for such service that are unjust or unreasonable or unjustly or unreasonably discriminatory. These prohibited regulations include: (1) regulation of the prices for such service; (2) requirements for the filing of a schedule of charges for such service; (3) requirements for the filing of any cost or revenue projections for such service; (4) regulation of the depreciation charges for facilities used to provide such service; or (5) requirements for prior approval for the construction or extension of lines or other equipment for the provision of such service. Section 248(c) protects providers of competitive communications services from harmful regulation notwithstanding any other provision of the Communications Act of 1995 and notwithstanding any other provision of law.

Under section 248(d), the Committee intends that State commissions, for a period of three years after the date of enactment of this part, and notwithstanding subsections (a), (b) and (c) of this section, shall permit residential subscribers to receive basic voice-grade local telephone service equivalent to the service generally available to residential subscribers at the date of enactment of this part. For the period of three years after the date of enactment of this part, the rate for basic voice-grade residential local telephone service shall be just, reasonable and affordable.

For a period of three years after enactment, State commissions may only approve LEC rate filings made after the date of enactment that would increase the price of basic residential voice-grade local telephone service, (other than when that increase is attributable to changes in the consumer prices generally) when the rate increase is shown (1) to be in the public interest; (2) to preserve the continuation of universal telephone service; and (3) to prevent economic disadvantages for one or more service providers. The service provider who is economically disadvantaged can be the LEC who made the filing with the State commission. The Committee does not intend to disturb State rate proceedings filed prior to the date of enactment of this part. Any price increases implemented in accordance with this subsection shall be minimized to the greatest extent practical and shall be implemented in a period not to exceed three years. The requirements of this subsection shall not apply to any rural telephone company if the rates for basic voice-grade local telephone service of that company are not subject to regulation by a State commission on the date of enactment of this part.

Section 248(e) requires that interstate long distance rates must be maintained at the same levels in rural and urban areas. This section continues the principle of toll rate averaging.

Section 248(f) states that for commercial mobile services, the provisions of section 332(c)(1) of the Communications Act of 1934 shall apply in lieu of the provisions of section 248.

Finally, section 248(g) provides that nothing in section 248 shall be construed to prohibit the Commission and State commissions from enforcing regulations prescribed prior to the date of enactment, to the extent that such regulations are consistent with the provisions of section 248. This savings clause is intended to permit the Commission and State commissions to continue enforcing current regulations and laws that enhance local competition and promote LEC efficiency, including such portions of the Federal LEC price cap regime as set out in the April 7, 1995, First Report and order in CC Docket No. 94–1, *In the Matter of Price Cap Performance Review for Local Exchange Carriers*. The Committee finds that eliminating the last vestiges of Federal LEC rate-of-return regulation will end the incentive to cross subsidize competitive services with revenues from less competitive services. State regulatory regimes and legislative mandates that promote competition, including the elimination of LEC rate of return regulation, should also continue.

Section 249(a) reaffirms the duty of all common carriers to ensure network functionality and accessibility. Section 249(b) directs the Commission to establish procedures for Commission oversight of coordinated network planning by common carriers and other providers of telecommunications services. The Committee intends this requirement to reflect the vital Commission oversight role in making certain that standards for interconnection to the public switched network and access continue to be developed and enforced. The goal of subsection (b) is to require the private sector, through the appropriate industry standards-setting bodies, to bear the primary responsibility to develop and to set standards for telecommunications networks. While in certain instances the Commission may, and does, participate in the deliberations of industry standards-setting bodies, the Committee does not intend for the Commission to have any new authority under this section.

The standard-setting process described in this provision applies to interconnection of the public's switched telecommunications networks. It is not intended to apply to telephone equipment or other CPE. While the Commission may enforce standards for the interconnection of CPE with the telephone network (currently enforced under Part 68 of the Commission's rules), this provision is specifically not intended to permit the Commission to develop standards for computer equipment, computer software, or CPE. The focus of attention is on standards for points of connection with telecommunications networks. Allowing the Commission to establish standards for computers, software, and other technologies would have the effect of freezing technology, slowing innovation, and limiting the development of new features and capabilities.

As used in this section, the term "interconnectivity" includes three essential elements: (1) the ability of end-users to interconnect competitively-provided CPE to public telecommunications networks (the Commission's Part 68 Rules); (2) the requirement that carriers disclose all information, in a timely manner, relating to network design and technical standards and information affecting changes to the telecommunications network which would affect the manner in which CPE is attached to the network (the Commission's "network disclosure" rules); and (3) the requirement that the provision

of CPE be separate and distinct from the provision of common carrier communications service and not be offered on a tariffed basis (the Commission's "unbundling" rules). Together, these interconnectivity requirements ensure that firms that offer CPE can design—and consumers can purchase—equipment which will connect to and operate with the telecommunications network. Nothing in section 249(b) should be construed as limiting or superseding these interconnectivity requirements or the existing authority and responsibilities of the Commission in enforcing them.

Section 249(c) directs the Commission within one year to establish regulations designed to make network capabilities and services accessible to individuals with disabilities. Section 249(d) prohibits private rights of action, and mandates that all remedies are available only through the Communications Act of 1934.

Section 250 requires the Commission to adopt rules that identify and eliminate market entry barriers for entrepreneurs and small businesses in the provision and ownership of telecommunications and information services. The Commission must review these rules and report to Congress every three years on how it might prescribe or eliminate rules to promote the purposes of section 250.

Section 251 requires the Commission to adopt rules to prevent illegal changes in subscriber carrier selections, a practice known as "slamming." The Commission has adopted rules to address problems in the long distance industry of unauthorized changes of a consumer's long distance carrier. The Committee intends that the Commission should adopt rules to thwart the development of similar illegal practices as local exchanges become open to competition.

Section 252 directs the Commission to conduct a study to review its rules at least once every three years to determine whether universal service has been protected, whether access to advanced services for the elementary and secondary schools has been attained, and whether the accessibility to advances in network services by disabled individuals has been ensured.

Section 253 creates a statutory exemption from the "openness" requirements of section 242 for five years for any government-owned LEC operating in a U.S. territory in which the percentage of household subscribership is less than 85 percent of the households in the territory. Certain United States territories have telephone service penetration rates far below the 94 percent penetration rate of the U.S. and have embarked upon programs to increase telephone subscribership. This transitional provision is intended to support efforts by territorial governments to achieve a level of telephone service penetration comparable to that prevailing in the United States before becoming fully subject to the local loop opening requirements. This provision will permit qualifying government-owned LECs to devote substantial resources to achieving universal service during a five-year transition period to a fully competitive market.

Section 101(b) mandates that the Commission conduct the proceeding to prescribe rules necessary to open the local exchange to competition in a single rulemaking.

Section 102. Competition in Manufacturing, Information Services, Alarm Services, and Pay Phone Services.

This section amends Title II of the Communications Act of 1934 to add a new "Part III—Special and Temporary Provisions" and adds a number of new sections to Title II of the Act.

Section 271(a) allows a BOC to engage in equipment manufacturing when the Commission has verified that a parent BOC, and each BOC within the parent company's region, are in compliance with the access and interconnection requirements of section 242. In other words, the restriction on manufacturing is removed only when *all* operating companies within a BOC's region are verified as open by the Commission. Section 271(b) allows a BOC to engage in close collaboration with manufacturers during the design and development of hardware and software. Section 271(c) requires a BOC to file at the Commission all protocol and technical requirements relating to connection with and proposed changes to the network. The BOCs must provide access to this information on a nondiscriminatory basis. Section 271(d) prohibits Bell Communications Research, or "Bellcore," from engaging in manufacturing so long as Bellcore is owned by one or more BOC or is involved in equipment standard setting or product certification activities.

Section 271(e) addresses the concern of companies that sell equipment to BOCs by requiring that BOCs make equipment procurement decisions based on objective commercial criteria, such as price, quality, delivery, and other commercial factors. It is not the Committee's intent to impose, or permit the Commission or any other government entity to impose, a government procurement requirement on the BOCs, or to require that they procure from any particular suppliers.

Nor is it the Committee's intent to have the Commission interfere with the relationships established among the BOCs and their vendors. The provision is meant to ensure that vendors continue to have the opportunity to pursue BOC business. The provision will assure continuing opportunities for vendors to sell to the BOCs based on usual commercial considerations without requiring that BOCs make their procurement decisions based on competitive bidding.

Section 271(e)(2) requires that each BOC sell equipment to any other local telephone company which offers to buy it in order to assure that innovation within the industry does not remain solely in the hands of a single company. Section 271(e)(3) requires that the proprietary information which vendors share with BOCs as their transactions are carried out is protected from release not specifically authorized by the owner of such information.

Section 271(g) grandfathers all previously authorized manufacturing related activities.

Section 272 sets forth regulatory requirements for BOC participation in electronic publishing. Subsection (a) of this section states generally that a BOC may only engage in electronic publishing through a separate affiliate or an electronic publishing joint venture.

Subsection (b)(1) requires the separate affiliate or electronic publishing joint venture to maintain books, records, and accounts separately from those of the BOC. Under subsection (b)(2), the affiliate

is prohibited from incurring debt in a manner that would permit a creditor upon default to have recourse to the assets of the BOC. Subsections (b)(3) and (b)(4) govern the manner in which transactions by the affiliate must be carried out, so as to ensure that they are fully auditable. These subsections also govern the valuation of assets transferred to the affiliate to prevent cross subsidies. Subsection (b)(5) prohibits the affiliate and the BOC from having corporate officers or property in common.

Under subsection (b)(6), the affiliate is prohibited from using the name or trademarks of the affiliated BOC except where used in common with the entity that owns or controls the BOC. Subsection (b)(7) prohibits a BOC from performing a number of activities on behalf of the affiliate, including the hiring or training of personnel, the provision of equipment, and research and development (R&D). Subsection (b)(8) requires the separate affiliate to have an annual compliance review performed for five years. These reviews are to be conducted by an independent entity.

Subsection (c)(1) prohibits a BOC from engaging in joint marketing of any promotion, marketing, sales or advertising with its affiliate, with certain exceptions.

Subsection (c)(2)(A) permits three types of joint activities between a BOC and its electronic publishing affiliate, under specified conditions. Subsection (c)(2)(A) permits a BOC to provide inbound telemarketing or referral services related to the provision of electronic publishing, if the BOC provides the same service on the same terms and conditions, and prices to non-affiliates as to its affiliates. The term "inbound telemarketing or referral services" is defined in subsection (h)(7) to mean "the marketing of property, goods, or services by telephone to a customer or potential customer who initiated the call." Thus, a BOC may refer a customer who seeks information on an electronic publishing service to its affiliate, but must make sure that the referral service is available to unaffiliated providers. No outbound telemarketing or similar activity, under which the call is initiated by the BOC or its affiliate or someone on its behalf, is permitted.

Subsection (c)(2)(B) permits a BOC to engage in nondiscriminatory teaming or business arrangements. Subsection (c)(2)(C) permits a BOC to participate in electronic publishing joint ventures, provided that the BOC or affiliate has not more than a 50% (or for small publishers, 80%) direct or indirect equity interest in the publishing joint venture. The Committee intends that the term "small, local electronic publishers" covers publishers serving communities of fewer than 50,000 persons. Officers and employees of a BOC are prohibited from collectively having more than 50% of the voting control of the venture. The BOC is permitted to provide promotion, marketing, sales, or advertising personnel services for the joint venture.

Subsection (d) entitles a person claiming a violation of this section to file a complaint with the Commission or to bring a suit as provided in section 207 of the Communications Act of 1934. The BOC, affiliate, or separate affiliate is liable for damages for any violation found, unless it is discovered first through the internal compliance review process and corrected within 90 days of such dis-

covery. A person may apply for a cease and desist order, or apply to a district court of the United States for an injunction.

Subsection (f)(1) gives the BOC one year from the date of enactment to comply with the requirements of this section.

Subsection (f)(2) provides that the provisions of this section cease to apply after June 30, 2000.

Subsection (g) establishes several definitions applicable to this section. Subparagraph (g)(1) defines "electronic publishing" to mean the dissemination, provision, publication, or sale to an unaffiliated entity or person, using a BOC's basic telephone service, of any news, including sports; entertainment, excluding interactive games; business, financial, legal, consumer, or credit materials; editorials, columns or features; advertising; photos or images; archival or research material; legal notices or public records; scientific, educational, instructional, technical, professional, trade, or other literary materials; or other like or similar information. Subparagraph (g)(2) includes numerous exceptions from the definition of electronic publishing. Subsection (h)(1) defines "affiliate" in terms of "owns or controls," and paragraph (4) defines "control" with reference to the regulations of the Securities and Exchange Commission. Together, these definitions provide a useful definition of the nature of the relationship between BOCs and other entities for regulatory purposes. Subsection (h)(2) defines the term "basis telephone service" to mean any wireline telephone service provided by a BOC in a telephone exchange area, but not commercial mobile services.

Paragraph (7) defines "inbound telemarketing" as the marketing of property, goods, or services by telephone to a customer or potential customer who initiated the call. "Customer" refers to a person who purchases or would purchase property, goods, services other than basic telephone service, because a person who purchases basic telephone service is a subscriber.

Paragraphs (8), (9), and (10) define the terms "own," "separated affiliate," and "Bell operating company," respectively.

Section 273 governs BOC provision of alarm monitoring and telemessaging services. The small business dominated alarm industry and telemessaging industry provide service in virtually every community in this country in a highly competitive atmosphere. In the alarm industry, consumers have benefited from competition which has produced a 40 percent reduction in installation costs over the past ten years, monitoring fees which have remained constant, and has resulted in prompt reliable service which consumers have come to depend upon.

The state-of-art service provided by the alarm and telemessaging industries are dependent on the local telephone wires. There is no practical alternative currently available. These industries have had problems with the local telephone companies. On several occasions, the Federal government has stepped in to ensure a level playing field. Thus, the concerns raised by the industry are real and not theoretical.

Section 273(a) prohibits a BOC from offering alarm service until six (6) years after the date of enactment, unless a BOC was already providing such service on January 1, 1995, in which case, the BOC may continue to offer the service and add customers, but not purchase other alarm companies.

Section 273(b) prohibits discrimination by a telephone company in the provision of these services, either by refusing to provide its competitors with the same network services it provides itself, or by cross-subsidizing from its local telephone service.

Section 273(c) establishes procedures for expedited consideration of complaints of violations of subsection (b), requiring the Commission to make a final determination within 120 days after the receipt of a complaint. If a violation is found, the Commission is required to issue a cease and desist order within 60 days.

Section 274 of the Communications Act addresses the competitive imbalances that exist in the payphone industry because the BOCs offer their competitive pay telephone service as an integral part of their regulated local exchange operations. As a result, the BOCs are assured of recovering their payphone costs, even if those costs must be subsidized by other regulated accounts. By contrast, independent payphone companies may pay the BOCs for essential network services and must recover all their costs from revenues derived from competitive activities alone.

Section 274 terminates the current system of payphone regulation. The Commission is directed to adopt rules that eliminate all discrimination between BOC and independent payphones and all subsidies or cost recovery for BOC payphones from regulated interstate or intrastate exchange or exchange access revenue. The BOC payphone operations will be transferred, at an appropriate valuation, from the regulated accounts associated with local exchange services to the BOCs' unregulated books. The Commission's implementing safeguards must be at least equal to those adopted in the Commission's *Computer III* proceedings. These safeguards were adopted in *Amendment of Section 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry*), and a number of related Commission proceedings. In place of the existing regulatory structure, the Commission is directed to establish a new system whereby all payphone service providers—BOC and independent—are fairly compensated for every interstate and intrastate call made using their payphones, including, for example, "toll-free" calls to subscribers to 800 and new 888 services and calls dialed by means of carrier access codes. Carriers and customers that benefit from the availability of a payphone should pay for the service they receive when a payphone is used to place a call. In crafting implementing rules, the Commission is not bound to adhere to existing mechanisms or procedures established for general regulatory purposes in other provisions of the Communications Act of 1934.

Currently, under a 1988 court interpretation of the MFJ, the BOCs are prohibited from selecting the interLATA carriers serving their payphones, or even negotiating with location owners concerning the selection of interLATA carriers. Section 274(b)(1)(D) removes that prohibition. Section 274(b)(1)(D) also makes it possible for independent payphone service providers, as well as BOCs, in all jurisdictions, to select the intraLATA carriers serving their payphones. However, existing contracts and agreements between location providers and payphone service providers, interLATA, or intraLATA carriers are grandfathered. Location providers prospectively also have control over the ultimate choice of interLATA and

intraLATA carriers in connection with their choice of payphone service providers.

Section 274(b)(2) directs the Commission to determine whether it is necessary to support the maintenance of "public interest payphones." This term refers to payphones at locations where payphone service would not otherwise be available as a result of the operation of the market. Thus, the term does *not* apply to a payphone located near other payphones, or to a payphone that, even though unprofitable by itself, is provided for a location provider with whom the payphone provider has contract. Section 274(c) authorizes the Commission to preempt State regulations that are inconsistent with the Commission's regulations under section 274.

Section 103. Forbearance From Regulation

This section creates a new section 230 of the Communications Act of 1934 requiring the Commission to forbear from Title II common carrier regulation, with certain limited exceptions. Given that the purpose of this legislation is to shift monopoly markets to competition as quickly as possible, the Committee anticipates this forbearance authority will be a useful tool in ending unnecessary regulation.

Section 104. Privacy of Customer Information

This section adds a new section 222 to the Communications Act of 1934. Section 222 establishes privacy protections for customer proprietary network information (CPNI). Section 222(a) imposes on carriers a statutory duty to provide subscriber list information on a timely basis, under nondiscriminatory and reasonable rates, terms and conditions, to any publisher of directories upon request. Subscriber list information is information about a subscriber's name, telephone number, address, or advertising classification that the carrier possesses, including information for recently connected customers. This provision is intended to ensure that persons who use subscriber information, including publishers of telephone directories unaffiliated with LECs, are able to purchase published or soon-to-be published subscriber listings and updates from carriers on reasonable terms and conditions. Reasonable terms and conditions include, but are not limited to, the ability to purchase listings and updates on a periodic basis at reasonable prices, by zip code or area code, and in electronic format.

LECs have total control over subscriber list information. Over the past decade, some LECs have charged excessive and discriminatory prices for subscriber listings. Some have imposed unreasonable conditions such as requiring that the listings be purchased only on a statewide basis or refusing outright to sell listings or updates. This provision prohibits such practices. Section 222 ensures that independent directory publishers have access to subscriber listing information gathered by all LECs. This section meets the needs of independent publishers for access to subscriber data on reasonable terms and conditions, while at the same time ensuring that the telephone companies that gather and maintain such data are fairly compensated for the value of the listings. Section 222 requires that subscriber listing information be made available "under

non-discriminatory and reasonable rates, terms and conditions to any person upon request for the purpose of publishing directories."

Section 222 states that CPNI may be disclosed if disclosure is required by law, or if the customer approves of release of the information to a carrier or to another service provider designated by the customer. All carriers are prohibited from using the information for any service other than the service from which it is derived or if it is necessary in the provision of customer premise equipment. These new privacy rules will apply to all telecommunications carriers—LECs, interexchange carriers and any other entity which offers services to the public generally (or to some segment of the public).

The protections contained in section 222(b) and (c) represent a careful balance of competing, often conflicting, considerations. First, of course, is the need for customers to be sure that personal information that carriers may collect is not misused; this consideration argues for strict controls on a carrier's use of all customer data. Customers, on the other hand, rightfully expect that when they are dealing with their carrier concerning their telecommunications services, the carrier's employees will have available all relevant information about their service. This consideration argues for looser restrictions on internal use of customer information. The balance is reflected in subsections 222(b) and (c), which impose strict controls, with limited exceptions for the carrier's use of customer information in connection with providing its own services to that customer. For example, a carrier is not required to obtain the approval of customers to use customer information in the provision of common carrier communications services, or services necessary to, or used in, the provision of such services, such as the publishing of directories by a carrier or affiliate.

Section 222(b)(1)(B) prohibits the use of CPNI "in the identifications or solicitation of potential customers for any service other than the service from which such information is derived." The Committee intends that "service" be defined narrowly. Thus, in no event should this section be construed to permit a carrier to use CPNI to market long distance services to their local customers or local telephone exchange services to their long distance customers.

With respect to section 222(b)(2), the Committee recognizes that carriers are likely to incur some costs in complying with the customer-requested disclosures contemplated by this section. This section does not preclude a carrier from being reimbursed by the customers or third parties for the costs associated with making such disclosures. In addition, the disclosures described in this section include only the information provided to the carrier by the customer. A carrier is not required to disclose any of its work product based on such information.

In section 222(b)(3), the term "aggregate information" should not be construed as a mechanism whereby carriers are forced to disclose sensitive information to their competitors. For example, a carrier operating in a competitive market would not be required by this section to disclose information it has amassed at real expense over years of telemarketing. In other words, MCI would not be required as part of its "Friends and Family" program to disclose information to competitors such as Sprint, AT&T, and various resellers. Indeed, the key component of "aggregate information" is

that such information would have to be able to be disclosed only to those persons who have the approval of the customer. Thus, the Committee intends that the use of "aggregate information" would be rather limited or restricted.

Section 222(c) states that this section shall not prevent the use of CPNI to combat toll fraud or to bill and collect for services requested by the customers.

Section 222(d) allows the Commission to exempt from its requirements of subsection (b) carriers with fewer than 500,000 access lines, if the Commission determines either that such an exemption is in the public interest or that compliance would impose an undue burden. Subsection (d) is not, however, intended to preclude the Commission from granting relief in other meritorious circumstances where the public interest may warrant as, for example, in the case of rural telephone companies.

Section 222(e) defines "customer propriety network information," "subscriber list information," and "aggregate information." Subsection (e)(1) defines "customer proprietary network information." The term "customer" is intended to refer to the carrier's subscribers. The term "subscriber list information" is not intended to include any information identifying subscribers that is prepared or distributed within a company or between affiliates or that is provided to any person in a non-public manner.

Section 104(b) directs the Commission to review the impact of converging communications technologies on customer privacy. This section requires the Commission to commence a proceeding within one year after the date of enactment to examine the impact of converging technologies and globalization of communications networks has on the privacy rights of consumers and possible remedies to protect them. This section also directs changes in the Commission's regulations to ensure that customer privacy rights are considered in the introduction of new telecommunications service and directs the Commission to correct any defects in its privacy regulations that are identified pursuant to this section. The Commission is also directed to make any recommendations to Congress for any legislative changes required to correct such defects within 18 months after the date of enactment of this Act.

This section defines three fundamental principles to protect all consumers. These principles are: (1) the right of consumers to know the specific information that is being collected about them; (2) the right of consumers to have proper notice that such information is being used for other purposes; and (3) the right of consumers to stop the reuse or sale of that information.

Section 105. Pole Attachments

Pursuant to section 224 of the Communications Act of 1934, the Commission regulates pole attachment rates for cable television systems. Under current law, cable television systems pay for pole attachments based on a formula that sets a floor and ceiling for the rates. The formula, developed in 1978, gives cable companies a more favorable rate for attachment than other telecommunications service providers. The beneficial rate to cable companies was established to spur the growth of the cable industry, which in 1978 was in its infancy.

Section 105 is intended to remedy the inequity for pole attachments among providers of telecommunications services. First, it expands the scope of the coverage of section 224. Under current law, section 224(a)(4) currently defines "pole attachment" to mean any attachment by a cable television system to a pole, conduit, or right of way owned or controlled by a utility. This section expands the definition of "pole attachment" to include attachments by all providers of telecommunications services.

Second, the new provision changes the formula for the rates pole owners may charge for attachments to poles. It amends section 224 to direct the Commission, no later than one year after the date of enactment of the Communications Act of 1995, to prescribe regulations for ensuring that utilities charge just and reasonable and nondiscriminatory rates for pole attachments to all providers of telecommunications services, including such attachments used by cable television systems to provide telecommunications services.

The new provision directs the Commission to regulate pole attachment rates based on a "fully allocated cost" formula. In prescribing pole attachment rates, the Commission shall: (1) recognize that the entire pole, duct, conduit, or right-of-way other than the usable space is of equal benefit to all entities attaching to the pole and therefore apportion the cost of the space other than the usable space equally among all such attachments; (2) recognize that the usable space is of proportional benefit to all entities attaching to the pole, duct, conduit, or right-of-way and therefore apportion the cost of the usable space according to the percentage of usable space required for each entity; and (3) allow for reasonable terms and conditions relating to health, safety, and the provision of reliable utility service.

This new provision further provides that, to the extent that a company seeks pole attachment for a wire used solely to provide cable television services (as defined by section 602(6) of the Act), that cable company will continue to pay the rate authorized under current law (as set forth in subparagraph (d)(1) of the 1978 Act). If, however, a cable television system also provides telecommunications services, then that company shall instead pay the pole attachment rate prescribed by the Commission pursuant to the fully allocated cost formula. It is not the intention of the Committee to require a cable television system to pay twice for a single pole attachment if the operator is providing both cable and telecommunications services.

Finally, the new provision requires that whenever the owner of a conduit or right-of-way intends to modify or to alter such conduit or right-of-way, the owner shall provide written notification of such action to any entity that has obtained an attachment so that such entity may have a reasonable opportunity to add to or modify its existing attachment. Any entity that adds to or modifies its existing attachment after receiving such notification shall bear a proportionate share of the costs incurred by the owner in making such conduit or right-of-way accessible.

Section 106. Preemption of Franchising Authority Regulation of Telecommunications Services

Section 106 creates a new section 621(b)(3)(A) of the Communications Act of 1934 that States that to the extent a cable operator is engaged in providing a telecommunications service other than cable service, it shall not be required to obtain a franchise, and the provisions of Title VI of the Communications Act of 1934 shall not apply.

Subparagraph (B) provides that a franchising authority may not impose any requirement that has the effect of prohibiting or limiting the provision of telecommunications service by a cable operator.

Subparagraph (C) states that a franchising authority may not terminate an operator's offering of a telecommunications service (other than cable service), nor may the franchising authority discontinue the cable system's operations for failure of the operator to obtain a franchise for provision of telecommunications services. Subparagraph (D) establishes that franchising authorities may collect franchise fees under section 622 of the Communications Act solely on the basis of the revenues derived by an operator from the provision of cable service.

The Committee intends that this section precludes a local government from imposing a franchise obligation on provision of telecommunications services, but this section does not otherwise limit the right of local governments to impose fees and other charges pursuant to section 201(c)(3)(D), or limit the rights of local governments with respect to franchise obligations applying to cable service.

In addition, this section does not restrict the right of franchising authorities to collect franchise fees on revenues from cable services and cable-related services, such as, but not limited to, revenue from the installation of cable service, equipment used to receive cable service, advertising over video channels, compensation received from video programmers, and other sources related to the provision of cable service over the cable system.

The intent of this provision is to ensure that regulation of telecommunications services, which traditionally has been regulated at the Federal and State level, remains a Federal and State regulatory activity. The Committee is aware that some local franchising authorities have attempted to expand their authority over the provision of cable service to include telecommunications service offered by cable operators. Since 1934, the regulation of interstate and foreign telecommunications services has been reserved to the Commission; the State regulatory agencies have regulated intrastate services. It is the Committee's intention that when an entity, whether a cable operator or some other entity, enters the telephone exchange service business, such entity should be subject to the appropriate regulations of Federal or State regulators.

The Committee does not intend that section 106(b) be used by cable operators to escape their obligations under Title VI *qua* cable operators. For that reason, paragraph (3)(A) begins, "To the extent that a cable operator or affiliate is engaged in the provision of telecommunications services ***." This language makes clear that a cable operator does not escape from all of its Title VI obligations, including franchise fees, simply because it begins to offer a tele-

communications service other than cable service. Rather, the force of paragraph (3) only falls on that portion of the cable operator's business related to telecommunications services.

Finally, the Committee does not intend to exempt a cable operator's intrastate telecommunications services or facilities from regulation by a State regulatory body.

Section 107. Facilities Siting; Radio Frequency Emission Standards

Section 107 provides that within 180 days of enactment, the Commission is to prescribe a national policy for the siting of commercial mobile radio services facilities. Representatives of affected industries, State and local governments and public safety agencies are to be included in the negotiation committee. It is the Committee's intent that the Commission establish a negotiated rulemaking committee authorized by the Negotiated Rulemaking Act of 1990 (subchapter III of chapter 5, Title 5 of the U.S. Code) comprised of representatives of State and local governments, public safety agencies and affected wireless telecommunications (Commercial Mobile Radio Service) industries. The committee is to develop a uniform national policy for the siting of Commercial Mobile Radio Service (CMRS) facilities for antennas, cell sites and other infrastructure-related equipment necessary to provide efficient wireless telecommunications services to the public.

The committee's recommendations must ensure that (1) State and local regulation is reasonable, nondiscriminatory, and the minimum necessary and does not have the effect of precluding any commercial mobile service; (2) siting requests are acted upon within a reasonable period of time; and (3) denials of requests are issued in writing and supported by substantial evidence. The siting of facilities cannot be denied on the basis of Radio Frequency (RF) emission levels which are in compliance with Commission RF emission regulated levels. The Commission is to complete within 180 days its action on RF emission standards. The Federal Government, within 180 days after enactment, is to prescribe procedures to make available to wireless telecommunications providers property and rights-of-way under its control on a fair, reasonable and nondiscriminatory basis.

The Committee finds that current State and local requirements, siting and zoning decisions by non-federal units of government, have created an inconsistent and, at times, conflicting patchwork of requirements which will inhibit the deployment of Personal Communications Services (PCS) as well as the rebuilding of a digital technology-based cellular telecommunications network. The Committee believes it is in the national interest that uniform, consistent requirements, with adequate safeguards of the public health and safety, be established as soon as possible. Such requirements will ensure an appropriate balance in policy and will speed deployment and the availability of competitive wireless telecommunications services which ultimately will provide consumers with lower costs as well as with a greater range and options for such services.

The Committee recognizes that there are legitimate State and local concerns involved in regulating the siting of such facilities and believes the negotiated rulemaking committee should address

those matters, such as aesthetic values and the costs associated with the use and maintenance of public rights-of-way. The intent of the Committee is that requirements resulting from the negotiated rulemaking committee's work and subsequent Commission rulemaking will allow construction of a CMRS network at a lower cost for siting and construction compatible with legitimate public health, safety and property protections while fully addressing the legitimate concerns of all affected parties and providing certainty for planning and building.

The Committee has received substantial evidence that local zoning decisions, while responsive to local concern about the potential effects of radio frequency emission levels, are at times not supported by scientific and medical evidence. A high quality national wireless telecommunications network cannot exist if each of its component must meet different RF standards in each community. The Committee believes the Commission rulemaking on this issue (ET Docket 93–62) should contain adequate, appropriate and necessary levels of protection to the public, and needs to be completed expeditiously. No State or local government, solely on the basis of RF emissions, should block the construction of sites and facilities or installation of equipment which comply with the Commission RF standards.

The Commission is directed to develop and issue procedures to make available to the maximum extent possible the use of Federal Government property, rights-of-ways, easements and any other physical instruments and appropriate assets that could be used as CMRS facilities sites that do not conflict with the intent of other Federal laws and regulations. The Committee recognizes, for example, that use of the Washington Monument, Yellowstone National Park or a pristine wildlife sanctuary, while perhaps prime sites for an antenna and other facilities, are not appropriate and use of them would be contrary to environmental, conservation, and public safety laws.

Section 108. Mobile Service Access to Long Distance Carriers

The Commission may not impose any long distance access requirements on providers of commercial mobile services for two-way switched voice services other than as required by section 332(c)(7). For purposes of this provision, a "carrier identification code" means dial up access to long distance providers, such as a 950–XXXX number, or an 800 number. While the Commission may not prescribe requirements other than those provided for in this section, it is not the Committee's intent to limit carriers from providing additional forms of interexchange access to their subscribers. The Commission is granted the authority to exempt carriers or classes of carriers from the requirements of this section if it is consistent with the public interest, convenience and necessity, while the provision of mobile services by satellite is specifically exempt from the requirements of this section.

The dial up access code regulations prescribed by the Commission to carry out subparagraph (A) will supersede the interexchange equal access, balloting and presubscription requirements imposed by the MFJ and the consent decree in *U.S. v. AT&T Corp. and McCaw Cellular.*

The Committee is concerned about the current disparities in the commercial mobile services market where RBOC wireless affiliates and AT&T/McCaw cellular properties are subject to restrictive equal access and long distance presubscription requirements while other wireless carriers are not. Those mobile wireless providers not subject to court order have been able to design and offer customers attractive calling arrangements, such as larger local calling areas and discounted long distance plans, which more appropriately reflect the mobile nature of the industry. RBOC and AT&T/McCaw wireless affiliates should be free to offer their customers the same level of innovative services.

The Committee believes that the alternative of imposing equal access requirements on all commercial mobile services is unwise under current and emerging market conditions and may be counterproductive in a competitive environment. Imposition of equal access requirements on wireless services will only serve to disadvantage customers and inflate the cost of service. The purpose of this provision is to remedy the current disparity on access to long distance services between commercial mobile services by removing the equal access and presubscription requirements from RBOC affiliated wireless services and AT&T/McCaw.

With these restrictions removed, all carriers will be able to design the best plans for their customers. Subscriber choice of interexchange carriers is preserved by requiring that commercial mobile service providers do not block a subscriber from obtaining access to an interexchange carrier through the use of interexchange access codes. For more than a decade, the Commission has passed upon, and carriers have implemented, a variety of dialing access code arrangements facilitating consumers' access to interexchange carriers of their choice. This process, undertaken with the assistance of Bellcore as number administrator, has worked well, and has produced a variety of access arrangements, including 950–XXXX, and 800 numbers. It is the Committee's intent both that consumers continue to have the opportunity to use the interexchange carrier of their choice and that commercial mobile service providers have the freedom to provide access to them in a cost-effective manner.

Section 109. Freedom From Toll Fraud

Section 109 protects unsuspecting callers from being charged for 800 calls they expect to be toll-free—thereby preserving the toll-free status and integrity of the 800 number exchange and $8 billion industry—by requiring strict cost disclosure requirements to ensure that consumers clearly know when there is a charge for a call, how much the charge will be, and how they will be billed.

Pursuant to the provisions of this section, information providers must obtain legal, informed consent from a caller through either a written preauthorized contract between the information providers and the caller, or through the use of an instructive preamble at the start of all non-free 800 calls. Both of these options ensure that consumers know there is a charge for the information service and that they are giving their consent to be charged.

Section 110. Report on Means Restricting Access to Unwanted Material in Interactive Telecommunications Systems

Section 110 requires the Attorney General to report to the Committees on Judiciary and Commerce in the House and Senate on the enforceability of current laws governing the distribution of obscenity and child pornography by means of computer technology. In addition, the report must evaluate current law enforcement resources and technology (both currently available and in development) to enable parents and other computer users to block reception of sexually offensive material. A fast-track study from the Department of Justice will provide Congress with a close examination of the issues at stake and the recommendations of experts to deal with obscenity and child pornography in the interactive media.

Earlier this year, a 28-year-old Gaithersburg, MD, man pleaded guilty to statutory rape in a case in which he had sex in a Pennsylvania hotel room with a 12-year-old girl. That encounter followed five months of computer correspondence between the man and the girl. The following week, a California software company released a program that will permit users to block indecent text and images on the Internet.

The Department of Justice is currently prosecuting these crimes, so they are the appropriate agency to provide this report. In addition, Section 110 may help to reprioritize obscenity prosecutions at the Justice Department. Furthermore, Congress needs more information on the technologies available to parents, teachers and others, that will give them control over the kinds of material that children have access to over the Internet. Section 110 will provide that information.

Section 111. Authorization of Appropriations

This section authorizes appropriations for the Commission of such sums as may be necessary to carry out this Act, and provides that additional amounts appropriated to carry out this Act shall be construed to be changes in the amounts appropriated for the performance of the activities described in section 9(a) of the Communications Act of 1934.

TITLE II—CABLE COMMUNICATIONS COMPETITIVENESS

Section 201. Cable Service Provided by Telephone Companies

This section amends section 613(b) of the Communications Act of 1934 to provide that any common carrier subject to Title II of the Communications Act may provide video programming to subscribers within its telephone service area if it provides video programming through a separate affiliate and otherwise complies with a new Part V of Title VI of the Communications Act, as added by this legislation. This section also makes a conforming change to section 602 to define ''telephone service area'' and to add ''or use'' to the definition of ''cable service,'' reflecting the evolution of video programming toward interactive services.

Paragraph (3) provides that any affiliate of a common carrier that provides video programming in the telephone service area of such a carrier but does not utilize the local exchange facilities or services of the carrier, shall not be subject to the requirements of

Part V, but shall be treated as either a cable operator subject to the requirements of Title VI, or, if it provides video programming by means of radio communications, subject to the requirements of Title III. The Committee added this provision to make clear that a telephone company can be treated as a cable operator if it establishes and maintains its cable operations separately from its telephone operations and does not make use of the services or facilities of its local telephone plant, thereby creating a completely separate infrastructure for the delivery of video programming. This provision recognizes the ability of a telephone company to make such purchases, in addition to investing in and building a cable system.

This section also amends Title VI of the Communications Act to add a new 'Part V-Video Programming Service Provided by Telephone Companies' and adds a number of new sections to Title VI, which are discussed below.

Section 651(1) defines "control" as including an ownership interest in which an entity has the right to vote more than 50 percent of the outstanding common stock or other ownership interest.

In adopting the definition of "actual working control" in new section 651(1)(B), the Committee anticipates that the Commission will continue its fact-specific examinations in considering whether actual working control exists, in whatever manner exercised, just as it has committed to do in its order entitled "Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competitive Act of 1992—Horizontal and Vertical Ownership Limits, Cross-Ownership Limitations, and Anti-Trafficking Provisions," MM Docket 92–264, (adopted September 23, 1993). In determining whether actual working control exists, the Committee expects the Commission to continue to assess all relevant factors including, but not limited to, whether there exists partnership and limited partnership interests, interest in trust, and any interests of officers and directors. The Commission may aggregate ownership interests for purposes of determining when actual control exists.

In general, the Committee endorses the approach that the Commission has used to determine whether actual working control exists. This provision permits the Commission to continue to have flexibility to consider whether factors are relevant to serve the purposes of the legislation and the Communications Act. The Committee does not intend that an attributable interest in an entity, as defined in the Commission's broadcast or cable-telco cross ownership rules, would automatically confer "actual working control."

Section 651(2) defines "rural area" as a geographic area that does not include either an incorporated or unincorporated place of 10,000 persons or more or any incorporated or unincorporated territory defined by the Bureau of the Census as an urbanized area.

Section 652 provides that a common carrier subject to Title II of the Communications Act of 1934 shall provide video programming directly to its telephone subscribers only through a separate affiliate. Subsection (b) sets forth rules on separation, including requirements to (1) maintain separate books, (2) not own in common real or personal property, and (3) maintain separate marketing and product or service specific advertising.

Paragraph (2) permits a carrier to provide inbound telemarketing or referral services related to the provision of video programming

if it provides the same service on the same terms, conditions, and prices to its affiliates as to non-affiliates. By "inbound telemarketing," the Committee means inbound telemarketing or referral services that occur during a call initiated by a customer or a potential customer of such service. The Committee intends that a carrier should be able to refer a customer who seeks information on a competitive service.

Paragraph (3) states that if a cable company is jointly marketing video and telephone services, then the common carrier may jointly market video programming and telephone. The common carrier may do so upon a showing to the Commission that the cable operator in the telephone company's service area is joint-marketing telecommunications services with its video programming services. The Commission is directed to grant or deny the petition within 60 days.

Section 652(c) requires that transactions between a video programming affiliate and a common carrier with respect to the sale, exchange, or lease of property, the furnishing or goods and services, and the transfer to or use of any asset or resource of such carrier, shall be subject to certain Commission rules. Such rules shall ensure that the transaction is auditable, which means that it adheres to generally accepted accounting principles; that it is fully compensatory, by which the Committee means the value paid for the property, goods and services, or asset or resource at minimum covers all costs of obtaining such property, goods and services, or asset or resource and be consistent with the fair market value, if applicable; and that such transaction shall be without cost to telephone ratepayers. The "transfer of asset or resource" covers both tangible assets, e.g., capital or equipment, as well as intangibles, e.g., goodwill or human resources. The requirement on furnishing goods and services applies to transmission services and other access services, as well as goods, which might include telecommunications equipment if a LEC is permitted to manufacture or provide such equipment.

Subsection (d) permits the Commission to grant small or rural telephone companies waivers from these requirements if the Commission finds that telephone ratepayers will not be harmed and that granting the waiver will have no effect on the ability of the Commission to enforce its rules on cross-subsidization and access. By 'small telephone company' the Committee means telephone companies that are similar in size and scope to rural telephone companies but which might fall outside that definition. The Committee intends that in no event shall such term include any carrier classified as Tier I by the Commission.

Subsection (d)(3) clarifies that if a common carrier obtains a waiver and no longer is required to have a video programming affiliate then the carrier itself must meet the obligations of section 656. It is the Committee's intent that these requirements apply to one or the other aspect of a common carrier's organizational structure regardless of how the carrier chooses to provide or offer video programming to its customers.

The provisions of section 652 sunset on July 1, 2000.

Section 653 requires that a common carrier which provides video programming directly to its subscribers shall establish a video plat-

form. The Committee intends that the video platform be the sole source of capacity for all entities, including any video programming affiliate, and that unaffiliated program providers must obtain transmission capacity at nondiscriminatory rates, terms, and conditions.

Section 653(a)(2) imposes a requirement on common carriers seeking to establish a video platform to submit a notice to the Commission of intention to establish channel capacity to meet all *bona fide* demands of video programmers as well as meet any channel capacity pursuant to section 656. The notice shall conform to the regulations established by the Commission pursuant to subsection (b), and shall specify how, within what reasonable time period, and in what form a person seeking to use such channel capacity should submit its requirements for capacity to the carrier.

Subsection (a)(2) further requires the notice to specify the procedures the carrier will use to determine whether a request for capacity is *bona fide*. This requirement ensures that all parties understand how the carrier will administer the Commission's regulations, issued under subsection (b)(1)(B), for determining whether a request is *bona fide*. The Committee expects the Commission to set forth the criteria for determining the *bona fides* of a request, and for the carrier to apply those criteria in an objective way. The Committee further expects that the Commission will establish procedures for review of any denial, or effective denial, of carriage for a particular programmer. This includes issues regarding carriage and related issues arising out of the protection provided throughout this section. Any such review shall be undertaken within an expedited time frame in order to avoid prejudice to the programmer's opportunity to obtain carriage. In its review of any denial, the Commission should exercise its full range of remedies, including mandatory carriage by the common carrier. Paragraph (a)(2) also directs the Commission to submit notices that comply with the Commission's regulations to the Federal Register for publication within five working days. The Committee does not intend for publication to give legal effect to any notice that fails to comply with the Commission's regulations under subsection (b), or for such publication to restrict in any way the Commission's authority to require the common carrier to amend its notice or otherwise comply with Commission regulations.

Paragraph (3) states that the common carrier shall establish channel capacity that is sufficient to meet the following: all *bona fide* requests submitted in response to the notice; all requirements imposed under section 656 (including carriage of commercial and non-commercial television stations, and capacity of public, educational, government use as well as for commercial use); and any additional channels required by the Commission under subsection (b)(1)(C).

The Committee's intent in adopting this provision is to balance the interest of programmers, who would prefer always to have channel capacity available, and the concern of consumers and telephone companies, who do not want to see excessive channel capacity lay fallow, since that would represent wasted investment and excessive costs. The process established here attempts to catalog the legitimate demand for capacity, mandate carriage requirements

established in section 656, and then require that the carrier build a system to meet the sum of this calculus.

Paragraph (4) builds on the system established in paragraph (2) by codifying certain elements of the general practice of common carriers. First, subparagraph (A) directs a carrier to notify immediately the Commission if a request for carriage by any programmer has been delayed or denied. If a carrier fails to notify the Commission, the Commission may take official notice of any complaint submitted by an affected programmer. Subparagraph (B) makes explicit that the requirements in paragraph (3) with respect to extending carriage to a *bona fide* request continue to apply once the video platform is operating. Thus, an operating video platform has an ongoing obligation to extend carriage to *bona fide* programmers as long as capacity is available.

Subparagraph (C) imposes on carriers the obligation to notify the Commission when it becomes apparent to the carrier that there will be no available excess capacity reasonably soon. In making this determination, the carrier should consider initial *bona fide* demands, the rate at which bona fide requests have been received and granted pursuant to subparagraph (B), and general trends among all sources of demand, including public, educational and governmental institutions, for additional capacity. Subparagraph (C) further requires the carrier to file with the Commission the manner and date by which such carrier will provide sufficient capacity to meet such excess demand. This provision requires the carrier to submit a plan either to construct additional capacity in a timely fashion, or make other accommodations, *i.e.*, voluntary reallocation or sharing of capacity so as to meet the excess demand. Subparagraph (D) states that a carrier that establishes a video platform shall construct such additional capacity as may be necessary to meet excess demand.

Paragraph (5) authorizes the Commission to resolve carriage-related disputes. The Commission is directed to resolve these disputes within 180 days. The Commission may require carriage or award damages, or both. Moreover, the paragraph clarifies that an aggrieved party may seek any other remedy that it may have under the Communications Act.

Section 653(b)(1) requires the Commission to prescribe regulations relating to the video platform. Section 653(b)(1)(A) states that such regulations shall prohibit a carrier from discriminating among video programming providers. This subparagraph also requires regulations to ensure that rates, terms, and conditions for carriage are just, reasonable, and nondiscriminatory. The Committee recognizes, however, that sections 656(a)(2) and (b)(1) require unique carriage and payment requirements that reflect the obligations applicable to cable systems under the 1992 Cable Act, including retransmission consent rights and must carry, and thus, the carriage of such video programming providers to section 656 on terms, rates and conditions as required by sections 614, 615 and 325 of the Communications Act will not be a violation of this subsection. One aspect of the terms and conditions for carriage is service, transmission, interconnection, and interoperability. Subparagraph (E) amplifies the general nondiscrimination requirement in subsection (b)(1)(A) by requiring such services be offered by the common carrier to un-

affiliated programming providers on an equivalent basis as is offered to an affiliate.

Subparagraph (B) requires regulations on determining when a carriage request is *bona fide*. With respect to criteria for determining a *bona fide* request, the Committee intends that the Commission look carefully to a number of factors indicating the *bona fide*s of the request, and develop criteria that recognize that the requester has a legitimate business and programming omission. The Committee recognizes that the Commission may establish different sets of criteria for commercial and non-commercial programmers. The Commission also should seek to develop, to the maximum extent possible, regulations that are objective and therefore easily administered by the carrier.

Subparagraph (C) directs the Commission to permit the common carrier to share channel space among video programming providers (including the carrier's programming affiliate). It is the Committee's intention that a common carrier should not be required to provide separate channels for duplicative programming services.

Subparagraph (D) extends the Commission network non-duplication (47 C.F.R. 76.92 et seq.) and syndicated exclusively (47 C.F.R. 76.151 et seq.) rules to the distribution of programming over the video platform.

Subparagraph (E) requires that the service, transmission, and interconnection of all unaffiliated video programming providers be equivalent to that provided to the common carrier's video programming affiliate. The Committee, however, does not intend that this nondiscrimination requirement be used to discriminate between analog and digital programming provided by unaffiliated program providers and, therefore, prohibits such discrimination.

Subparagraph (F) addresses another potential source of discrimination: information given to the subscriber for purposes of selecting programming on the video platform. This subparagraph requires regulations that prohibit unreasonable discrimination among programmers with regard to information given to the subscriber on programming selection. The Commission's regulations should also ensure that a video programmer can identify its product, and have its unique identification passed to the subscriber.

Subparagraph (G) ensures that, as common carriers develop video platform services, they do not totally exclude areas on the basis of the ethnicity, race or income of residents of geographic service areas. The Committee is convinced that our country will only reap the many possible benefits and advantages of video platform services if those services are available to all citizens. The Committee believes this provision is necessary to ensure that common carriers recognize an affirmative obligation to build-out new video service in a manner that does not disadvantage communities on the basis of the ethnicity, race, or income of the residents of a geographic service area. The Commission is also required to provide for public comments on the adequacy of the proposed service areas in meeting this criteria.

Notwithstanding the nondiscrimination requirements of the rules enacted pursuant to subsection (b), the Committee intends that a common carrier and/or its programming affiliates are free to negotiate mutually agreeable terms and conditions with unaffiliated

program providers with respect to access to any providers, signals on a program menu guide.

Paragraph (2) directs the Commission to extend the requirements of this section to those specific cable systems that have installed a switched, broadband video programming delivery system. This paragraph also recognizes that some of the requirements included in this section with respect to requests for carriage overlap with the requirement in section 612 (channels for commercial use), and that the requirements in this section would supplant section 612 requirements. However, the requirements included in this section are broader than section 612, and should be applied to such cable operators, except in cases where such regulations would be clearly inappropriate or duplicative.

In keeping with the Committee's intention to reduce unnecessary regulatory burdens whenever possible, subsection (d) replaces all Title II regulations over common carriers providing video programming services over a video platform with the requirements established pursuant to section 653.

Subsection (d) directs the Commission to study whether the video platform requirements of this section should be applied to all cable operators, and to report to Congress within 2 years of enactment. The Committee has required this study to determine whether it is in the public interest to extend the requirements of this section on access and nondiscrimination to those cable operators who are not covered by subsection (b)(2).

Section 654 permits the State commissions to prescribe regulations prohibiting cross subsidization from telephone rates any expenses with the provision of video programming or regulations prohibiting cable operators from cross subsidizing the cost of cable service any expenses associated with the provision of telephone service if the State finds such regulations are necessary.

Section 655 contains a general prohibition on buy-outs by a common carrier of a cable system within its service territory. Subsection (b) provides exceptions that would permit a common carrier to purchase a cable system or systems under circumstances including the following: (1) the cable system serves a rural area; (2) the total number of subscribers served by such systems adds up to less than ten percent of the households served by the carrier in the telephone service area, and no such system or systems serve a franchise area with more than 35,000 inhabitants for an affiliated system, or more than 50,000 inhabitants for any system that is not affiliated with any system whose franchise area is contiguous; and (3) the exemption would permit a carrier to obtain, by contract with a cable operator, use of the "drop" from the curb to the home that is controlled by the cable company, if such use was reasonably limited in scope and duration as determined by the Commission.

In determining whether the scope and duration is reasonably limited, the Commission should look to the underlying policy goals of this legislation: to promote competition both in services and facilities, and to encourage long term investment in the infrastructure. Consequently, for example, a contract providing for the use of 90 percent of the cable operator's capacity by the telephone company would not only defeat the policy goal of competition, it would also enable the carrier to circumvent effectively the prohibitions on

buy-outs contained in this section. Such an arrangement on scope would not be reasonably limited. By contrast, an arrangement that provides a carrier with the same or similar capacity as used by the cable operator granting the capacity would tend to be reasonably limited in scope. Similarly, the Commission should look to the same policy goals when assessing the reasonableness of duration. An arrangement that, for example, runs for 50 years, given the rapid change in technology in the communications industry, on its face appears not to be reasonably limited. By contrast, an arrangement for 5 years, given the need for some predictability in the market, would appear to be reasonable. The exception under subparagraph (4) is intended to address a market situation where a dominant cable operator that is a large multiple systems operator (MSO) shares a market with a small independent cable system.

Subsection (c) also contains the waiver process for the buy-out provision under which the Commission may grant a waiver upon a showing of undue economic distress by the owner of the cable system if a sale to a telephone company is blocked. By "nature of the market served" the Committee intends the Commission to review the particular circumstances that would lead to making a franchise area a high cost area. By "undue economic distress" the Committee does not mean that the owner is simply failing to obtain the highest possible price. Rather, the Committee intends this provision to be limited to genuine hardship cases. The Commission is directed to act on a waiver application within 180 days after it is filed.

Section 656 provides which sections of Title VI will apply to a video affiliate or a video platform. Subsection (a) requires that all video programming affiliates must comply with the rules on ownership restrictions, carriage agreements, sales of systems prohibiting unfair and discriminatory practices in the sale of video programming, subscriber privacy, customer service obligations, and equal employment opportunity requirements.

This section also states that existing provisions of Title VI requiring the carriage of public, educational and governmental channels, cable channels for commercial use, and local commercial and non-commercial educational television signals apply to video programming affiliates or video platforms.

All rules presently imposed upon multichannel video programming distributors as required under section 325 of Title III also apply. In applying section 325 of the Communications Act of 1934 to operations of the video programming affiliate of a common carrier, the Committee notes that the plain language of section 325 already covers any multichannel video programming distributor. Section 656 of this Act makes it clear which sections of current law will apply to the operation of the video programming affiliate or video platform. The fact that section 325 was included specifically in this Act should not be interpreted to suggest that the Committee in any way intends to limit the application of section 325 to any other multichannel video programming distributor. To the extent that third party packages assemble multiple channels of programming for distribution on a common carrier's video platform, they also would fall clearly within the plain language of section 325. Paragraph (a)(3) specifies the portions of Title VI regulation that will not apply to video programming affiliates.

Section 656(b)(1) directs the Commission to prescribe regulations requiring a common carrier in the operation of the video platform to comply with the rules on capacity for public, educational, and governmental (PEG) channels, capacity for commercial use, carriage of commercial and non-commercial educational television signals and retransmission consent obligations. These regulations shall impose obligations on video platforms that are equivalent to the obligations imposed on cable operators.

In considering how to implement the capacity, services, facilities, and equipment requirements for PEG use pursuant to paragraph (b)(1), the Committee intends that the Commission give substantial weight to the input of local governments, which have long-standing and extensive experience in establishing and implementing such requirements. Moreover, where appropriate, the Commission shall permit, but not require, States and local government to implement and enforce the PEG requirements the Commission adopts pursuant to this section. The Committee intends for the PEG requirements to be substantially equivalent to those to which cable operators typically must meet in cable franchise areas across the country. Nothing in section 656 or in the Commission's regulations should prevent or discourage voluntary offers of capacity, services, facilities and equipment by either cable operators or common carrier programming affiliates that exceed any requirements imposed pursuant to either section 611 or section 656.

Section 656 also applies to video platforms the same mandatory carriage obligations that were applied to cable operators in the 1992 Cable Act. The Commission shall prescribe regulations that adopt the requirements of sections 614 and 615 of the Communications Act so as to impose obligations that are, to the extent feasible, equivalent to those that apply to cable operators.

Although section 656 effectively precludes a local government from requiring that a video programming affiliate obtain a cable franchise pursuant to section 621 in order to provide cable service, the Committee does not intend to prohibit a local government from exercising its authority pursuant to sections 613, 617, 631, and 632 of Title VI or impose requirements, pursuant to a local ordinance, statute, regulation, permit, license, contracts or other authorization.

Subsection (b)(2) requires the video programming affiliate of a carrier and competing video programming providers to pay a fee equivalent to a franchising fee that cable operators are required to pay to the local franchising authority under section 622. It clarifies the right of a local government to collect fees from any multichannel programming affiliate of a common carrier and from any multichannel video programming distributor offering video programming over a video platform. The Committee does not intend for paragraph (2) to prohibit a local jurisdiction from collecting fees pursuant to paragraph (2) if no cable operator serves the jurisdiction. Such a jurisdiction shall have the right to collect fees at a rate which does not exceed the maximum rate at which a franchising authority may impose franchise fees under section 622 of Title VI. The fees shall be determined in a manner consistent with section 622(g) and therefore shall be in addition to (1) any tax, fee, or assessment of general applicability and (2) any provision of services,

facilities and equipment which, as explained in the House Report accompanying the 1984 Cable Act, are not monetary payments included in the definition of "fee" in section 622.[11] The same House Report further notes that any payments which a cable operator makes voluntarily to support public, educational and governmental access and which are not required by the franchise would be subject to the five percent franchise fee cap. This understanding also should apply to paragraph (b)(2).

The Committee intends such fees to be collected by the local government that franchises the cable operator in the local jurisdiction, or, in jurisdictions where there is no cable operator, by the local government authority that would have the right to grant a franchise to a cable operator. The Committee intends for a video programming affiliate or multichannel video programming distributor using a video platform to pay fees to the local government in each locality where it provides video programming. Each local jurisdiction shall have discretion as to the method of collecting fees, the frequency of payment, and other matters related to such authority's right to collect fees pursuant to this section. In order to be consistent with section 656(b)(2), the method, the frequency and other matters determined by the local government that franchises the cable operator must be essentially similar to and no greater or lesser than the requirement imposed on cable operators in the same locality.

The Committee extended the fee requirement beyond the video programming affiliate to any multichannel programming distributor offering a competing service. This will ensure franchise authorities receive appropriate compensation, and to establish horizontal equity among competing programmers. By "competing service" the Committee does not intend mathematical exactitude whereby the multichannel video distributor must have the same number or type of channels as the carrier's affiliate. Rather, the Committee expects the Commission to use a practical test to determine which multichannel services are competing with the video programming affiliate.

Finally, a cable operator that establishes a video platform, whether voluntarily or pursuant to the requirements of section 653(b)(2), would be subject to Title VI only to the extent provided in this section. This will ensure regulatory parity between common carriers, which are required to establish video platforms under section 653, and cable operators which establish such platforms.

Section 657 stipulates that several of the provisions added by this legislation (specifically sections 652, 653, and 655) do not apply to common carriers providing service in rural areas. In the Committee's view, these requirements likely are too burdensome and unnecessary, given the demographics of the areas served by the carriers in question.

Section 202. Competition from cable systems

Subsection (a) amends the definition of "cable service" in section 602(6) of the Communications Act by adding "or use" to the defini-

[11] H.Report No. 98–234, Second Session, at 64–65 (1984).

tion, reflecting the evolution of video programming toward interactive services.

Subsection (b) prohibits the Commission from requiring the divestiture of, or preventing or restricting the acquisition of, any cable system based solely on the geographic location of the system. By permitting clustering of cable systems, the Committee intends that the scale and scope of economies achievable through cable system clustering will generate lower costs, more efficient regional advertising, and higher quality services for consumers and will enhance the cable industry's ability to enter and compete in the local telephone business.

Subsection (c) amends section 623(a) of the Communications Act to deregulate equipment, installations, and additional connections furnished to subscribers that receive more than basic cable service when a cable system has effective competition pursuant to section 623(l)(1)(b). The Committee intends that such equipment deregulation extends to any requirements imposed by States or franchising authorities, as well as by the Commission. Equipment, installations, and additional connections for basic-only subscribers continue to be regulated until a cable system meets effective competition as defined by section 623(l). Subsection (c) also clarifies that the Commission may not regulate the rates of equipment that is furnished to subscribe solely in connection with video programming offered on a per channel or per program basis.

Subsection (d) amends section 623(a) of the Communications Act to limit basic tier rate increases by a cable operator to once every six months and permits cable operators to implement such increases after 30 days notice. Subsection (d) limits the franchising authority's scope of review to the incremental change in the basic tier rate effected by a rate increase. For example, if a cable operator raises its basic service tier rate from $10 to $10.50, the franchise authority may only consider the $.50 increase, but may not consider previous rate increases that have been deemed reasonable. Local franchise authorities have 90 days to review a basic tier increase and order a rate reduction and refund if the increase is found to be unreasonable.

Subsection (e) amends section 623(a) of the Communications Act to promote the development of a broadband, two-way telecommunications infrastructure. Under this paragraph, cable operators are permitted to aggregate equipment costs broadly. It is the Committee's belief that aggregating equipment costs into broad categories will enable cable operators to reduce the monthly charges to consumers that often are associated with the introduction of new technology.

The Committee finds that current Commission regulations do not adequately encourage deployment of the digital technology. For example, the regulations require cable operators to calculate separately the lease charges for analog and digital converter boxes. Broad averaging of the costs of new technology would be a significant advantage for rural and low-income consumers. In the absence of averaging, cable operators are forced to recover the costs of digital equipment through higher-priced services. That, in turn, encourages operators to provide digital boxes in economically upscale

areas where they are more likely to be able to recoup their investment through higher service prices.

The Committee is particularly concerned that the consumer equipment necessary to implement digital technology will be too expensive for most consumers. Some observers have estimated, for example, that the cost of a digital converter is expected to be in the $400–$500 range, with monthly charges in excess of $4. The Committee finds that, in order to facilitate deployment of digital technology, cable operators must be permitted to allocate the costs of such equipment in a manner that reduces the price for consumers. Subsection (e) permits cable operators to broadly average equipment costs as one way of accomplishing this goal. However, subsection (e) does not permit averaging for equipment used by consumers that subscribe only to basic service tier. Subsection (e) directs the Commission to complete its revisions to current rules necessary to implement this subsection within 120 days.

Subsection (f) amends section 623(c) of the Communications Act governing review of complaints by inserting a new paragraph (3) requiring that the Commission receive complaints from five percent of a system's subscribers, or 10 subscribers, whichever is greater, before it initiates a rate case. The Committee finds that this subsection is consistent with the intent of the 1992 Cable Act that there be a reasonable demonstration that consumers believe there is a problem with a cable operator's cable programming service rate before triggering a protracted and expensive rate case. The Committee finds that current Commission regulations do not provide a reasonable threshold for invoking the Commission's regulatory authority and that this often resulting in needless expense for taxpayers and cable operators. The Committee intends that subscriber complaints must be filed individually and not by filing a single complaint with multiple subscriber signatures.

Subsection (f) also directs the Commission to resolve cable programming service rate cases within 90 days. Existing Commission regulations do not set a time period for resolution of rate complaints and rate cases have not been processed in a timely manner. The Committee believes the 90-day requirement allows sufficient time for the Commission to adequately review rate increases.

It is the Committee's intention that subscribers' rights to complain to the Commission about cable programming service rate increases be fully preserved. Subsection (f), therefore, extends from 45 days to 90 days the amount of time after a cable programming service rate increase goes into effect that during which subscribers may file a complaint. Pending rate cases will be subject to the new complaint threshold and complaining parties are granted a 90-day extension to bring complaints into conformance with the new complaint threshold requirement.

Finally, subsection (f) clarifies that the Commission's scope of review is limited to the *last* incremental consumer programming service rate increase consistent with the intent of the 1992 Cable Act. The Committee finds that current Commission rules are unclear as to whether the Commission would consider rolling back a consumer programming service rate beyond its current level even if no complaints had previously been filed against this current level. For example, under current rule, if a cable operator raises its

consumer programming service rate from $10 to $10.50 and subsequently increases the rate from $10.50 to $11.00, some have argued that the Commission not only may reject the increase from $10.50 to $11.00, but may further reduce the rate below $10.50, even though the first $.50 rate increase was never the subject to a complaint and should, therefore, be deemed reasonable. The Committee intends that only the incremental increase over the base rate is appropriate for review.

Subsection (g) clarifies that a cable operator must comply with the uniform rate structure requirement in section 623(d) of the 1992 Cable Act only with respect to regulated services. The subsection is consistent with the recent U.S. Court of Appeals decision holding that the Commission's interpretation imposing the uniform rate structure requirement on all services and all cable systems, regardless of whether the system is subject to effective competition, is inconsistent with the 1992 Act. *Time Warner* v. *FCC,* No. 93–1723 slip op. (D.C. Cir. June 6, 1995). Imposing a uniform rate structure requirement on services that are not regulated is unnecessary, since, in those instances, market forces are actively working to ensure reasonable rates.

Subsection (g) amends section 623(d) of the Communications Act to exempt bulk discounts to multiple dwelling units ("MDUs") from the uniform rate requirement. Current Commission regulations require that if a cable operator offers a lower rate in one MDU it must offer the same low rate to MDUs across the franchise area. The Committee finds that this regulation does not serve consumers well by effectively prohibiting cable operators from offering *lower* prices in an MDU even where there is another distributor offering the same video programming in that MDU.

Subsection (h) amends section 623(l)(1) of the Communications Act by adding a fourth effective competition test which recognizes that the provision of video programming services by a telephone company subjects a cable operator to effective competition that will ensure reasonable rates and high quality services much more effectively than government micromanagement. Under this new test, effective competition for cable programming service tier and subscriber equipment (other than that necessary for receiving the basic service tier) is present: (1) where a common carrier has been authorized to provide video dialtone service in the cable franchise area; (2) where a common carrier has been authorized by the Commission or pursuant to a franchise to provide video programming directly to subscribers in the cable franchise area; or (3) when the Commission completes all actions necessary to prescribe the video platform rules pursuant to section 653(b)(1). When any of these events occurs, the rates for a cable system's cable programming services, as well as equipment, installations, and additional television connections are deregulated.

The Committee intends that any common carrier, or an affiliate of such common carrier, that is authorized to provide video programming through video dialtone or directly to consumers by any means will trigger a finding of effective competition under subsection (h) of the legislation.

Subsection (h) does not apply to basic cable service. Basic service, including all equipment, additional television connections, and in-

stallations furnished to basic-only subscribers, remains subject to regulation until the cable operator meets one of the effective competition tests contained in section 623(l)(1)(A),(B), and (C) of the Communications Act.

The Committee believes subsection (h) restores Congress' original intent of effective competition by making clear that the penetration of all multichannel video program distributors in a franchise area is to be counted towards the 15% penetration threshold as long as one cable competitor in the franchise area achieves 15% availability. This provision is consistent with the recent decision of the U.S. Court of Appeals for the D.C. Circuit, holding that the Commission's rule, under which only video program distributors with 50% availability are counted toward the 15% threshold, is inconsistent with the 1992 Cable Act. See *Time Warner* v. *FCC, supra*.

Subsection (i) amends section 623 of the Communications Act to deregulate the rates for the cable programming service tiers of small companies and the rates for the basic service tier of small company systems that offered only a single tier of service as of December 31, 1994. By deregulating small cable systems, the Committee intends to provide regulatory relief to those companies that lack the capital and technical expertise necessary to comply with the Commission's rate regulations and to survive the substantial rate reductions imposed by the rules. Subsection (i) does not deregulate the basic tier of small cable systems that offer multiple tiers of cable service.

In order to qualify as a "small cable operator," a cable operator must: (1) directly, or through an affiliate, serve in the aggregate fewer than one percent of all cable subscribers nationwide; and (2) not be affiliated with any entity whose annual gross revenues in the aggregate exceed $250,000,000.

Subsection (j) amends section 624(e) of the Communications Act by prohibiting States or franchising authorities from regulating in the areas of technical standards, customer equipment, and transmission technologies. The Committee intends by this subsection to avoid the effects of disjointed local regulation. The Committee finds that the patchwork of regulations that would result from a locality-by-locality approach is particularly inappropriate in today's intensely dynamic technological environment.

Subsection (k) amends section 624A(b)(2) of the Communications Act and directs that no Federal agency, State, or franchising authority may prohibit a cable operator's use of any security system, including scrambling, but permits the Commission to prohibit scrambling of video programming on the broadcast-basic service tier unless scrambling is necessary to prevent signal piracy. The Committee finds that it is imperative that cable operators be provided maximum flexibility to protect the intellectual property that they transmit over their systems. The Committee wants to stress that governmental entities should not prohibit cable operators from scrambling their services, given that scrambling is the most difficult security system for pirates to defeat.

The Committee believes it is particularly important that cable operators are permitted to scramble their signals given the critical need to protect consumers, especially children, from excessively violent or sexually explicit programming, or other programming that

might be deemed objectionable. Scrambling is the best way to ensure that consumers are not exposed to programming they wish to avoid. Moreover, the U.S. Court of Appeals for the D.C. Circuit recently affirmed that cable operators have liability for the distribution of obscene or indecent programming over leased and public access channels. See *Alliance for Community Media* v. *FCC,* No. 93–1169 slip op. (D.C. Cir. June 6, 1995). Given this liability, the government should not restrict cable operators' use of scrambling, or any other security method, to prevent unwanted reception of such programming.

Subsection (l) amends section 624A of the Communications Act to maximize the rate of competition and avoid unnecessary government intervention in the area of cable television equipment. Subsection (l) directs the Commission to set only minimal standards when implementing regulations to assure compatibility between cable "set-top" boxes, televisions, and video cassette recorders, and to rely on the marketplace for other features, services, and functions to ensure basic compatibility. The Committee finds that with respect to cable compatibility; any mandatory requirements should address only the minimum degree of common design and operation necessary to achieve this end. This subsection clarifies section 624(c)(1)(A) further to ensure that Commission efforts with respect to cable compatibility do not affect unrelated markets, such as computers or home automation communications, or result in a preference for one home automation protocol over another.

The Committee notes that subsection (l) does not preclude the Commission from developing or enforcing standards for telecommunications networks. It merely clarifies that the Commission's implementation of section 624A of the Communications Act of 1934 should not include adoption of requirements that go beyond the scope intended by that section.

Subsection (l) is not intended to restrict the Commission's authority to promote the competitive availability of converter boxes, interactive communications devices, and other customer premises equipment as required by section 203 of this legislation.

Subsection (m) amends section 625(d) of the Communications Act by clarifying that a cable operator may move any service off the basic service tier at its discretion, other than the local broadcast signals and access channels required to be carried on the basic service tier under section 623(b)(7)(A) of the Communications Act. The Committee recognizes that carriage of program services is pursuant to contract between cable operators and programmers. The Committee does not intend subsection (l) to modify the terms and conditions of such contracts and, therefore, would permit movement of a program service off a basic tier only if the operator is permitted to do so by its contract with the programmer.

Subsection (n) amends section 632 of the Communications Act to provide cable operators with flexibility to use "reasonable" written means to convey rate and service changes to consumers. Notice need not be inserted in the subscriber's bill. The Committee believes this increased flexibility will reduce operator costs and streamline the implementation of rate adjustments to which the operator is entitled, while at the same continuing to ensure that

cable subscribers are effectively and timely informed in writing of changes in rates and services.

Subsection (n) also provides that prior notice is not required for any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment or change of any kind imposed by the Government on the transaction between a cable operator and a subscriber.

The purpose of a notice requirement is to ensure that consumers have sufficient warning about rate and service changes so they can choose to disconnect their service prior to the implementation of the change. The requirement that subscriber notice occur 30 days before the change is implemented achieves this purpose. There is no need for intrusive regulations to dictate how cable operators communicate this 30-day advance notice to subscribers, as long as the method of notification used by the operator is reasonable and conspicuous.

Subsection (o) amends section 623 of the Act to clarify that losses incurred prior to the enactment of the 1992 Cable Act by a cable system owned and operated by the original franchisee may not be disallowed in determination of rate regulation.

Section 203. Competitive availability of navigation devices

Section 203 directs the Commission to adopt regulations to assure the competitive availability to consumers of converter boxes, interactive communications devices, and other customer premises equipment from manufacturers, retailers, and other vendors not affiliated with a telecommunications operator. These devices will connect consumers to the network of communications and entertainment services that will be provided by telecommunications providers.

The Committee intends that the rules adopted by the Commission pursuant to section 203 will assure consumers of the availability of navigation devices and other customer premises equipment from a variety of sources during the transition period to a competitive market for such devices.

The Committee believes that the transition to competition in network navigation devices and other customer premises equipment is an important national goal. Competition in the manufacturing and distribution of consumer devices has always led to innovation, lower prices and higher quality. Clearly, consumers will benefit from having more choices among telecommunications subscription services arriving by various distribution sources. A competitive market in navigation devices and equipment will allow common circuitry to be built into a single box or, eventually into televisions, video recorders, etc.

Section 203 specifically recognizes that cable and other telecommunications system operators have a valid interest, which the Commission should continue to protect, in system or signal security and in preventing theft of service. Section 203 directs the Commission to take this interest into account in developing its regulations. The Committee does not endorse any particular method for providing security and does not authorize the Commission to adopt regulations which would jeopardize the security of a telecommunications system.

Section 203 does not prohibit telecommunications system operators from also offering navigation devices and other customer premise equipment to customers provided that the system operators' charges for navigation devices and equipment are separately stated, and are not subsidized by the charges for the network service.

Section 203 allows the Commission to waive a regulation for a limited time where the telecommunications system operator has shown that the waiver is necessary to the introduction of a new telecommunications subscription service.

Section 203 defines "telecommunications subscription service" to include those services provided directly to consumers. The Committee does not intend to include in the definition services that sell programming to those networks rather than directly to the consumer.

The Committee intends that the regulations adopted pursuant to this section are transitional and must cease to apply to any market for customer premises equipment, including navigation devices, when the Commission determines that such market has become competitive. In order to reduce the regulatory burden on the Commission, the Committee does not intend that the Commission disturb its rulings with respect to market competitiveness prior to the date of enactment. For example, the Commission's 1992 decision in *Bundling Cellular Premises Equipment and Cellular Service*, 7 FCC Rcd. 4028, which found that the CPE market for cellular is competitive, will be deemed to satisfy the requirements of this section and thus further action by the Commission is not necessary to determine that CPE for cellular service is competitively available.

Finally, the Committee does not intend that section 202(l) in any way limits or circumscribes Commission authority under section 203.

Section 204. Video programming accessibility

Section 204 is designed to ensure that video services are accessible to hearing impaired and visually impaired individuals. Advances in communications technology and communications networks have dramatically improved opportunities for independence, productivity, and integration for people with disabilities. The convergence of telecommunications technology and high speed networks could lead to enormous new opportunities for full and equal participation by citizens with disabilities in employment, commerce, education, health care, entertainment, and democratic government. Yet if accessibility for people with disabilities is not a priority during the development of new technologies and services, it can be expensive and difficult to retrofit. For this reason, the Committee states its clear goal that access for people with disabilities be considered and pursued at the outset of the development of the information technologies and in the creation of products and services that will be available using these technologies.

The Committee recognizes that there has been a significant increase in the amount of programming that has been closed captioned since the passage of the Television Decoder Circuitry Act of 1990. In particular, many network programs aired during prime time are captioned. Nevertheless, the Committee is concerned that

video programming through all delivery systems should be accessible, and that new products and services offered using the information networks of the future should be accessible to people with disabilities.

Subsection (a) requires the Commission to complete an inquiry within 180 days of enactment of this section to ascertain the level at which video programming is closed captioned. In its inquiry, the Commission should examine the level of closed captioning for live and prerecorded programming, the extent to which existing or previously published programming is closed captioned, the type and size of the provider or owner providing the closed captioning, the size of the markets served, the relative audience shares achieved, and any other relevant factors. The Commission also should examine the quality of closed captioning and the style and standards which are appropriate for the particular type of programming. Finally, the Commission should examine the costs of closed captioning to programs and program providers.

Subsection (b) provides that, consistent with the results of its inquiry, the Commission is instructed to establish an appropriate schedule of deadlines and technical requirements regarding closed captioning of programming. While the goal of the Committee is to ensure that video programming is accessible to the hearing impaired, the Committee recognizes that the cost to caption certain programming may be prohibitive given the market demand for such programs and other factors. Accordingly, the Commission shall establish reasonable timetables and exceptions for implementing this section. Such schedules should not be economically burdensome on program providers, distributors or the owners of such programs.

It is clearly more efficient and economical to caption programming at the time of production and to distribute it with captions than to have each delivery system or local broadcaster caption the program. Therefore, the Committee expects that most new programming will be closed captioned, and that preexisting programming will be captioned to the maximum extent possible, with the recognition that economic or logistical difficulties make it unrealistic to caption all previously produced programming. In general, the Committee does not intend that the requirement for captioning should result in a previously produced programming not being aired due to the costs of the captions.

Section 204(d) allows the Commission to exempt specific programs, or classes of programs, or entire services from captioning requirements. For example, the Commission may determine that it is economically burdensome to require captioning for certain types of programming, such as locally produced or regionally distributed programs. Any exemption should be granted using the information collected during the inquiry, and should be based on a finding that the provision of closed captioning would be economically burdensome to the provider or owner of such programs.

The term "provider" contained throughout section 204(d) refers to the specific television station, cable operator, cable network or other service that provides programming to the public. When considering such exemptions, the Commission should focus on the individual outlet and not on the financial conditions of that outlet's cor-

porate parent, nor on the resources of other business units within the parent's corporate structure.

When considering exemptions under paragraph (d)(1), the Commission shall consider several factors, including but not limited to: (1) the nature and cost of providing closed captions; (2) the impact on the operations of the program provider, distributor, or owner; (3) the financial resources of the program provider, distributor, or owner and the financial impact of the program; (4) the cost of the captioning, considering the relative size of the market served or the audience share; (5) the cost of the captioning, considering whether the program is locally or regionally produced and distributed; (6) the non-profit status of the provider; and (7) the existence of alternative means of providing access to the hearing impaired, such as signing.

Paragraph (d)(2) recognizes that closed captioning should not be required where it would be inconsistent with programming contracts between program owners, distributors, or providers, already in effect as of the date of enactment of this section, or inconsistent in effect as of the date of enactment of this section, or inconsistent with copyright law. In addition, cable operators and common carriers establishing video platforms may not refuse to carry programming or services which are required to be carried under the carriage provisions of Title VI of the Communications Act or pursuant to retransmission consent obligations due to closed captioning requirements.

Paragraph (d)(3) authorizes the Commission to grant additional exemptions, on a case-by-case basis, where providing closed captions would constitute an undue burden. In making such determinations, the Commission shall balance the need for closed captioned programming against the potential for hindering the production and distribution of programming.

Subsection (f) directs the Commission to initiate an inquiry within six months of the date of enactment, regarding the use of video descriptions on video programming in order to ensure the accessibility of video programming to persons with visual impairments. The Commission shall report to Congress on its findings. The report shall assess appropriate methods for phasing video descriptions into the marketplace, technical and quality standards for video descriptions, a definition of programming for which video descriptions would apply, and other technical and legal issues. Following the completion of this inquiry the Commission may adopt regulations it deems necessary to promote the accessibility of video programming to persons with visual impairments. It is the goal of the Committee to ensure that all Americans ultimately have access to video services and programs, particularly as video programming becomes an increasingly important part of the home, school and workplace.

Subparagraph (h) makes clear that the Commission has exclusive jurisdiction over complaints arising under this section. Thus, private rights of action are expressly prohibited.

TITLE III—BROADCAST COMMUNICATIONS COMPETITIVENESS

Section 301. Broadcaster spectrum flexibility

Section 301 directs the Commission, if the Commission issues licenses for advanced television services, to limit the initial eligibility for such incumbent broadcast licensees and permittees and authorizes the Commission to adopt regulations that would permit broadcasters to use such spectrum for ancillary or supplementary services. The Committee believes that permitting broadcasters more flexibility in using their spectrum assignments is consistent with the public policy goal of providing additional services to the public. Such a policy not only promotes more efficient spectrum use, but also encourages innovation. This action is no way precludes the Commission's decision-making in developing standards and requirements for advanced television services. Apart from the restrictions contained herein, this section leaves the final determination of the uses of spectrum assigned to the broadcasters to the Commission. This section restricts any potential use of spectrum apart from the main channel signal to "ancillary and supplementary" uses, provided the use of a designated frequency for such services is consistent with the technology or method designated by the Commission for the provision of advanced television services.

Within each 6 megahertz (mHz) assignment, a variety of digitally transmitted services can be offered by a broadcast licensee. The characteristics of a digital transmission permit it to be used for an intermixed flow of data. Given the dynamic nature of the data flow, these services probably cannot be separated or segmented. Therefore, these different digital services are "indivisible" within the 6 mHz assignment, and these services are provided along with the signal that the licensee broadcasts advanced television (ATV) programming.

Nothing in this provision, however, is intended to prevent licensees from providing such other services as the Commission may permit during those periods when the licensee is not actually transmitting a main broadcast signal. For example, if during the initial transition to digital broadcasting, a licensee is transmitting only four hours of ATV service, the licensee could deliver ancillary or supplementary services across the entire 6 mHz during other times of the day.

Paragraph (b)(2) requires the Commission to prescribe regulations that avoid the derogation of any advanced television services, including high definition television (HDTV) services. It is not the intent of the Committee in any way to undermine the considerable efforts expended by the Commission and private industry over the past several years to develop advanced television. The Commission should ensure that if it issues additional licenses for advanced television, adequate transmission capacity shall be retained to support the primary use of the spectrum for advanced television services.

Paragraph (b)(3) clarifies the regulation of ancillary and supplementary services. It requires that Commission regulations that are applicable to such analogous services be applicable to the offering of analogous services by any other person. This section, however, specifically does not confer "must carry" status on any of these ancillary or supplementary services.

Paragraph (b)(4) requires the Commission to adopt any technical or other requirements necessary to assure signal quality for ATV services and provides, inter alia, that the Commission may review and update its requirements concerning minimum broadcast hours for television broadcasters for both NTSC and ATV services. This section need not result in any increase in the number of hours broadcast by any station except where the Commission might find it to be in the public interest. The Committee intends that the Commission continue in its efforts to ensure the quality of the ATV signal that consumers will be receiving. Rather, the Commission maintains its discretion to address requirements for the minimum hours per day of broadcast service to be transmitted.

Subsection (c) provides that if the Commission issues licenses for advanced television services, it shall precondition such issuance on the requirement to one or the other of the licenses be surrendered to the Commission pursuant to its regulations. This provision is designed to ensure that licensees' use of 12 megahertz would be for temporary simulcast purposes only, and that, in due course, one of the licensed channels will revert to the Commission for assignment by competitive bidding. Subsection (c) also requires that the Commission must base its decision regarding the surrender of the license on public acceptance of the new technology through obtaining television receivers capable of receiving an ATV signal or on the potential loss of reception for a substantial portion of the public.

Subsection (d) requires the Commission to establish a fee program for any ancillary or supplementary services if subscription fees or any other compensation fees apart from commercial advertisements are required in order to receive such services.

The Committee notes that if the Commission were to allow subscriber-supported services under its advanced television proceeding, subsection (d) would permit the Commission to designate such services as ancillary and supplementary services subject to the payment of a fee.

The Committee intends that the Commission establish fees which are, to the maximum extent feasible, equal to but do not exceed (over the term of the license) the amount the public would have received had the spectrum for such services been auctioned publicly under section 309(j) of the Communications Act, and which avoid unjust enrichment of the licensee for such use of the spectrum.

Subsection (e) requires the Commission to conduct an evaluation within 10 years after the date it issues its licenses for advanced television services. This report shall (1) assess the willingness of consumers to purchase new television receivers to receive ATV signals; (2) assess alternative uses of the frequencies used for broadcast of ATV; and (3) evaluate the extent to which the Commission has been able to reduce the amount of spectrum assigned to licensees.

In subsection (f), the Committee adopts the Commission's definition of high definition television, i.e., systems that offer approximately twice the vertical and horizontal resolution of NTSC receivers with picture quality approaching that of 35 mm film and audio quality equal to that of compact discs. The Committee notes that high definition television is a subset of advanced television services.

Section 302. Broadcast ownership

Section 302 amends Title III of the Communications Act by inserting a new section 337 addressing broadcast ownership.

Section 337, subject to the restrictions specified in this section, prohibits the Commission from prescribing or enforcing any regulation which prohibits or limits, on a national or local basis, a licensee from holding any form of ownership or other interest in two or more broadcast stations or in a broadcast station any other medium of mass communication. This section also prohibits the Commission from prescribing or enforcing any regulation which prohibits a person or entity from owning, operating or controlling two or more networks of broadcast stations or from owning, operating, or controlling a network of broadcast stations and any other medium of mass communications.

For purposes of this section, it is the intention of the Committee that "medium of mass communication" in a given local market shall include only radio and television broadcast stations licensed to communities in the market, daily newspapers published in communities in the market, and cable television or other equivalent video delivery systems which serve communities in the market. The Committee intends that the ownership restrictions contained in section 337 apply only to the acquisition of media outlets and not to the creation of new media outlets.

Section 337(b)(1) is intended to eliminate current limits placed on television audience nationwide and to place new limits on ownership of television stations by a single entity at a national audience reach exceeding 35 percent for the year following enactment of this section and, after one year, to 50 percent of the national audience. This section does not change the methodology for calculating "national audience reach" currently employed by the Commission. For example, currently, the audience reach of UHF stations is discounted. This "UHF discount" appropriately reflects the technical and economic handicaps applicable to UHF facilities and the Committee does not envision that the UHF discount calculation will be modified so as to impede the objectives of this section.

This section directs the Commission to conduct a study of the operation of these national ownership limitations and to submit a report to Congress on the development of competition in the television marketplace and the need, if any, to revisit these limitations.

Section 337(b)(2) sets forth the circumstances under which one entity may own or operate two television stations in a local market. The Committee believes that significant changes in local video markets, which include increases in the number of local television stations and other multichannel competitors, require substantial deregulation of the local television ownership rules. This is especially true with respect to UHF stations which continue to operate with significant technical and economic handicaps. The Committee believes that these market developments require substantial deregulation of local station ownership and greater reliance on marketplace forces to assure vigorous competition and diversity. Permitting common ownership of stations will promote the public interest by harnessing operating efficiencies of commonly owned facilities, thereby increasing competition and diversity.

Subparagraph (B) creates a strong presumption in favor of UHF/UHF and UHF/VHF combinations. The Committee does not envision that this section will be utilized by the Commission to impose a case-by-case review process. Rather, the Committee expects that the Commission's review of UHF/UHF and UHF/VHF combinations will be triggered only where there if evidence of harm to competition and diversity, e.g., where there is a danger of undue concentration.

Subparagraph (C) clarifies that the Commission may also permit VHF/VHF combinations where it determines that doing so will not harm competition and diversity. Unlike the presumption in favor of UHF/UHF and UHF/VHF combinations, the Committee envisions the Commission's review under subparagraph (C) will be on a case-by-case basis.

Subsection (c) permits the Commission, under certain circumstances, to consider concentrations of local media interests in proceedings to grant, renew or authorize the assignment of station licenses. In a proceeding to grant, renew, or authorize the assignment of any station license under this title, the Commission may deny the application if the Commission determines that the combination of such station and more than one other non-broadcast media of mass communication would result in an undue concentration of media voices in the respective local market. The Commission shall not grant applications that would result in two or fewer persons or entities controlling all the media of mass communications in the market. This section does not constitute authority for the Commission to prescribe regulations containing local cross-media ownership limitations. Further, it is not the intent of the Committee to require divestiture of any existing interests, but the Commission may condition the grant of an application to acquire additional media interests. The Committee intends this limitation to balance the needs of owners of media properties and the historic interest in maintaining a diversity of voices in the media. The Committee believes that these provisions permit appropriate consolidation of media properties to occur while maintaining several independent voices in each local market.

Subsection (d) clarifies that any Commission rule prescribed prior to the date of enactment of this legislation that is inconsistent with the requirements of this section is effectively repealed on the date of enactment. It is the Committee's intention that rules necessary to implement the provision of the Act concerning broadcast ownership be finalized within six months of enactment. Again, the Committee notes that in adopting limits in ownership, it specifically has not changed the Commission's current methodology of calculating or attributing ownership. The Committee does not envision the Commission, either in pending rulemaking proceedings on television ownership and attribution standards, making changes in its rules which would impede the objectives of this section.

Nothing in subsection (d) is to be construed to prohibit the continuation or renewal of any television local marketing agreement in effect on the date of enactment. The Committee wishes to note the positive contributions of television local marketing agreements and to assure that this legislation does not deprive the public of the benefits of existing local marketing agreements that were other-

wise in compliance with Commission regulations on the date of enactment of this legislation. The efficiencies gained through these agreements have reaped substantial rewards for both competition and diversity, enabling stations to go on the air which would not otherwise be able to obtain financing, and saving failing stations which would otherwise go dark.

Section 303. Foreign investment and ownership

Section 303 amends section 310(a) of the Communications Act to exempt licenses to mobile earth stations engaged in occasional or short-term transmissions via satellite of audio or television program material and auxiliary signals if such transmissions are not intended for direct reception by the general public in the United States. The Committee intends this provision to exempt satellite newsgathering (SNG) equipment from the provisions of section 310(a), which bars foreign government representatives from receiving a radio station license. SNG terminals are satellite earth stations that can be transported to a program origination site, either in the U.S. or in foreign countries, by car, truck and/or commercial aircraft.

Broadcast stations or networks owned by a foreign government, receiving some form of government support, or having some form of relationship with the government (which constitute the vast majority of foreign broadcast stations or networks) under current law may be construed to be foreign governments or "representatives" for purposes of section 310(a). Because of the widespread impression that U.S. law imposes an impediment to the operation of SNG facilities by foreign broadcast stations or networks, foreign authorities have reacted by taking actions, or are considering taking actions, that effectively bar or make it more difficult for the U.S. media to operate their own SNG terminals within the foreign authorities' jurisdictions. By amending section 310(a), the Committee intends to provide the Commission with explicit authority for licensing SNG operations in the United States for these entities that have some form of relationship to a foreign government and to assure that U.S. broadcast stations or networks maintain their current authority to operate SNG equipment in other countries.

Section 310(b)(4) of the Communications Act allows foreign ownership of the holding company of a radio licensee to exceed 25 percent but it gives the Commission the discretion to revoke or deny the grant of a license "*if* the Commission finds that the public interest will be served by the refusal or revocation of such license."[12] A treatise on international telecommunications regulation compiled by the Federal Communications Bar Association in 1993 correctly interprets section 310(b)(4) as follows: "Under the terms of the statute, the Commission must find that a refusal of the license to a company in which alien ownership in its holding company exceeds the twenty-five percent benchmark serves the public interest. Therefore, the onus is on the Commission to prove that the relaxed public interest standard mandates a *refusal* of the license request.[13] The Committee notes that the Commission has consist-

[12] 47 U.S.C. § 301(b)(4) (emphasis added).

[13] Tara Kalgher Giunta, "Foreign Participation in Telecommunications Projects," in Federal Communications Bar Association, International Practice Committee, International Communica-

ently misinterpreted section 310(b)(4) by creating a presumption that foreign investment is not in the public interest if it exceeds 25 percent of the equity of an American radio licensee."[14] The Committee notes, however, that the amendments to section 310(b) under this section do not constitute congressional acquiescence to the Commission's past misinterpretation of section 310(b)(4).

Subsection (b) amends section 310 of the Communications Act by adding a new subsection (f) setting out the conditions for terminating foreign ownership restrictions on common carrier radio licenses. Under subsection (f), the general limitations of 310(b) do not apply to foreign companies whose countries have opened their markets to U.S. investment.

The Committee recognizes the importance of ongoing international negotiations that may lead to multilateral and bilateral frameworks to grant national or most favored nation treatment in the grant of common carrier licenses. Thus, under subsection (f)(1)(A), applicants whose home market is a country that is signatory to such an international agreement would not be subject to the requirements of subsection (b).

Absent a multilateral or bilateral agreement being in effect between the home country of an applicant and the U.S., foreign applicants would not be restricted by the application of section 310(b) unless applying the restriction would serve the public interest. In making its determination under this new subsection (f), the Commission should consider, with great deference to the President regarding national security, law enforcement, foreign policy, the interpretation of international agreements, and trade policy, whether effective competitive opportunities are available to U.S. nationals or corporations in the applicants' home market.

The Committee notes that foreign countries point to section 310(b) as a reason to deny U.S. companies entry into their markets. It is the Committee's intent that by applying a "reciprocity" approach, U.S. markets will be open to foreign investment from another country, to the same extent that country's market is open to U.S. investment. Thus, in making such determinations, it is the Committee's intent that the Commission focus principally on the effective competitive opportunities. In other words, absent the unusual circumstance of a serious national security or law enforcement consideration, if an applicant is otherwise well-qualified, a finding of adequate reciprocity in the relevant country should result in a grant of a license.

Subsection (f) does not preclude that Commission determinations of whether there are effective competitive opportunities in the relevant country could be made on a market segment-specific basis. In other words, the Commission may classify each application in a particular common carrier submarket (e.g., paging, cellular, etc.) and consider the legal and regulatory regime of the relevant country in that sub-market. The Committee notes that this type of classification is uniquely within the expertise of the Commission. For-

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tions Practice Handbook, 1993 at 43, 46 (Paul J. Berman & Ellen K. Snyder eds. 1993) (emphasis in original).

[14] See, *e.g.*, PrimeMedia Broadcasting, Inc., 3 F.C.C. Rcd. 4293, 4295 ¶ 2(1988)("alien equity interests in a parent corporation . . . may only amount to 25%, unless the Commission finds that the public interest would be served") (emphasis added).

eign country policies and regulations addressing sub-markets different from that applied for need not be considered for purposes of section 310(f). Notwithstanding a determination made for purposes of this section, the Committee recognizes that cross market discussions could be undertaken in trade negotiations by the United States.

In determining the home market of any applicant, the Commission should use the citizenship of the applicant (if the applicant is an individual or partnership) or the country under whose laws a corporation is controlled by entities (including individuals, other corporations or governments) in another country, the Commission may look beyond where it is organized to such other country. Thus, a foreign entity could not organize in a country with a more open policy toward U.S. investment than its home country in order to circumvent the U.S. rules.

The Committee believes that in order to encourage competitiveness in the global telecommunications market, applications for licenses for spectrum-based services should be considered promptly. Accordingly, the Committee intends that the Commission act upon such applications in a reasonable time frame.

Subparagraph (3) authorizes the Commission to continue to review whether a foreign country meets the requirements permitting an investment approved by the Commission. This provision permits the Commission, under limited circumstances and with great deference to the President, to withdraw licenses granted where a foreign country changes its policies and retention of a license is no longer in the public interest and could not be granted under section 310(b). The Committee anticipates that this provision would be utilized only where the policies and practices of a foreign country are egregious and would result in significant harm to U.S. companies, *e.g.*, where national security and law enforcement concerns would require such action.

It is not the Committee's intent to have the U.S. government implement a unilateral provision to remove negotiated benefits which would be unacceptable to the U.S. government if proposed by other nations for themselves. Sufficient authority to accomplish the desired results already exists under current trade and regulatory provisions.

Section 304. Terms of licenses

Section 304 amends section 307(c) of the Communications Act to provide for a seven year license term for broadcast licenses. Under current law, radio broadcast licenses are seven years and television broadcast licenses are for five years. By applying a uniform license term of seven years for all broadcast station licenses, the Committee simply recognizes that there is no reason for longer radio license terms than for television licenses. The Committee intends that applying a uniform license term of seven years for radio and television licenses will enable the Commission to operate more efficiently in the awarding of new or renewed licenses for all broadcast licenses.

Section 305. Broadcast license renewal procedures

Section 305 amends section 309 of the Communications Act by adding a new subsection (k) mandating a change in the manner in which broadcast license renewal applications are processed. Subsection (k) allows for Commission consideration of the renewal application of the incumbent broadcast licensee without the contemporaneous consideration of competing applications. Under this subsection, the Commission would grant a renewal application if it finds that the station, during its term, had served the public interest, convenience, and necessity; there had been no serious violations by the licensee of the Act or Commission rules; and there had been no other violations of the Act or Commission rules which, taken together, indicate a pattern of abuse. If the Commission finds that the licensee has failed to meet these requirements, it could deny the renewal application or grant a conditional approval, including renewal for a lesser term. Only after denying a renewal application could the Commission accept and consider competing applications for the license.

The Committee believes this change in procedure will lead to a more efficient method of renewing broadcast licenses and should result in a significant cost saving to the Commission. The Committee notes that subsection (k) does not alter the standard of renewal employed by the Commission and does not jeopardize the ability of the public to participate actively in the renewal process through the use of petitions-to-deny and informal complaints. Further, this section in no way limits the ability of the Commission to act sua sponte in enforcing the Act or Commission rules.

Section 306. Exclusive Federal jurisdiction over direct broadcast satellite service

Section 306 amends section 303 of the Communications Act of 1934 to clarify that the Commission has exclusive jurisdiction over the regulation of direct broadcast satellite (DBS) service. DBS is a direct-to-home satellite broadcasting service which utilizes Ku-Band satellites. The Commission currently regulates and issues licenses for DBS service pursuant to its authority contained in Title III of the Communications Act. Section 306 reaffirms and clarifies that the Commission has exclusive authority over the regulation of DBS service. Federal jurisdiction over DBS service will ensure that there is a unified, national system of rules reflecting the national, interstate nature of DBS service.

Section 307. Automated ship distress and safety systems

This section states that notwithstanding the Communications Act of 1934, a ship shall not be required to be equipped with a radio telegraphy station operated by one or more radio officers or operators.

Section 308. Restrictions on over-the-air reception devices

Section 308 directs the Commission to promulgate rules prohibiting restrictions which inhibit a viewer's ability to receive video programming from over-the-air broadcast stations or direct broadcast satellite services. The Committee intends this section to preempt enforcement of State or local statutes and regulations, or State or

local legal requirements, or restrictive covenants or encumbrances that prevent the use of antennae designed for off-the-air reception of television broadcast signals or of satellite receivers designed for receipt of DBS services. Existing regulations, including but not limited to, zoning laws, ordinances, restrictive covenants or homeowners' association rules, shall be unenforceable to the extent contrary to this section.

The Committee notes that the "Direct Broadcast Satellite Service" is a specific service that is limited to higher power DBS satellites. This service does not include lower power C-band satellites, which require larger dishes in order for subscribers to receive their signals. Thus, this section does not prevent the enforcement of State or local statutes and regulations, or State or local legal requirements, or restrictive covenants or encumbrances that limit the use and placement of C-band satellite dishes.

Section 309. DBS signal security

Section 309 amends section 705(e)(4) of the Communications Act of 1934 to extend the current legal protection against signal piracy to direct-broadcast services. The Committee finds this section necessary to protect the DBS industry from unauthorized decryption of its signals by pirates or hackers.

TITLE IV—EFFECT ON OTHER LAWS

Section 401. Relationship to other laws

Section 401 of the bill contains savings provisions for other applicable laws.

Subsection (a) provides that, although Title I of the bill supersedes the MFJ's line-of-business restrictions, the other parts of the MFJ are not affected. For clarity, those other parts are explicitly enumerated.

Subsection (b) provides that nothing in this Act shall be construed to modify, impair, or supersede any of the Federal antitrust laws.

Subsection (c) provides that nothing in the Act shall be construed to modify, impair, or supersede any other Federal law other than law expressly referred to in this Act. This subsection also contains a savings clause for State and local law, except "to the extent such law would impair or prevent the operation of this Act."

Subsection (d) provides that the provisions of the GTE consent decree shall cease to be effective on the date of the enactment of this Act. GTE's consent decree resulted from its 1982 acquisition of Southern Pacific Communications Company (Sprint), which provided national long distance service, and Southern Pacific Satellite Company (Spacenet), a provider of satellite communications services. The Department of Justice, as part of its statutory Hart-Scott-Rodino Act review of the proposed acquisition, negotiated a consent decree with GTE. The consent decree was approved in December, 1984 and permitted GTE to proceed with its acquisition of Sprint, but regulated its provision of interexchange services. The agreement required structural separation between General Telephone Operating Companies (GTOCs) and the Sprint assets and prohibited the GTOCs from providing interexchange services. The decree

also prohibited the joint marketing of those services. The Committee further notes that GTE has since disposed of all Sprint assets and has sold Spacenet to a subsidiary of General Electric Company. Despite the disposition of these assets, and other changes in the marketplace, the decree remains in effect, making GTE the only independent telephone company subject to such restrictions. The Committee notes that GTE's consent decree is not related to the court ordered line of business restriction imposed on the BOCs. Because of the changes in circumstances that have occurred since 1984, the Committee finds that the GTE consent decree should be vacated.

Subsection (e) makes clear that the provisions of the MFJ do not apply to wireless companies which were previously owned by a BOC or its affiliate. The Committee, by this subsection, intends to ensure that former BOC wireless operations will be free from any restrictions imposed under the MFJ once they are no longer affiliated with the BOC's wireline exchange monopoly. The Committee emphasizes that it does not matter how that termination of affiliation is achieved, whether by transfer, spinoff, or in any other manner.

Section 402. Preemption of local taxation with respect to DBS services

Section 402 preempts local taxation on the provision of direct-to-home satellite services. Direct-to-home (DTH) satellite services are delivered via satellite directly to consumers equipped with satellite receivers at their premises.

The Committee finds that DTH satellite service is a national rather than local service. A DTH satellite service provider transmits the service via a Commission-licensed satellite and bills consumers for that service. Unlike other video programming distributions systems, satellite-delivered programming services do not require the use of the public rights-of-way, or the physical facilities or services of a community.

This section exempts DTH satellite service providers and their sales and distribution agents and representatives from collecting and remitting local taxes on satellite-delivered programming services. Section 402 does not preempt local taxes on the sale of the equipment needed to receive these services.

TITLE V—DEFINITIONS

Section 501. Definitions

Subsection (a) adds new definitions to the Communications Act of 1934, including definitions for "information service," "telecommunications," "telecommunications service," "telecommunications equipment," "local exchange carrier," "affiliate," "customer premises equipment," "electronic publishing," "exchange area," and "rural telephone company." "Information service" and "telecommunications" are defined based on the definition used in the Modification of Final Judgment.[15] The definition of "telecommunications" refers to transmission "by means of an electromagnetic transmission medium." The Committee is aware that there is some

[15] 522 F. Supp. at 229.

disagreement whether "an electromagnetic transmission medium" encompasses fiber optic transmission technology. The Committee intends that a transmission that utilizes fiber optics and that would otherwise qualify shall be covered by this definition.

The term "local exchange carrier" does not include a person insofar as such person is engaged in the provision of commercial mobile service under section 332(c) of the Communications Act, except to the extent that the Commission finds that such service as provided by such person in a State is a replacement for a substantial portion of the wireless telephone exchange service within such State. As part of the Omnibus Budget Reconciliation Act of 1993, Congress enacted section 332(c), which establishes the statutory framework for commercial mobile services. Section 332(c) would continue to govern the offering of commercial mobile services after the enactment of this bill, until such time as the Commission finds that a commercial mobile service has become an effective substitute for wireline service. If or when the Commission makes such a finding, the provider of such a mobile service shall be considered a LEC for purposes of the bill and subject to section 201(c).

By defining "telecommunications service" as those services and facilities offered on a "common carrier" basis, the Committee recognizes the distinction between common carrier offerings that are provided indifferently to the public or to such classes of users as to be effectively available to a substantial portion of the public, and private services.

This section defines the term "rural telephone company" to mean a LEC to the extent that such carrier serves an unincorporated area of less than 10,000 residents, or any territory defined by the Bureau of the Census as a rural area; or if such carrier has fewer than 50,000 lines or fewer access lines; or if such carrier provides telephone exchange service to a local study area with fewer than 100,000 access lines; or if such carrier has less than 15 percent of its access lines in communities of more than 50,000 residents. This definition reflects the Committee's finding that some companies are multi-state providers of telephone service to rural areas and that while service areas may not be exclusively rural, they are overwhelmingly so.

The definition of a "Bell operating company" does not include an entity that owns former BOC wireless operations that are no longer affiliated with a BOC's wireline exchange facilities.

TITLE VI—SMALL BUSINESS COMPLAINT PROCEDURE

Section 601. Complaint procedure

Section 601 establishes a new complaint procedure for violations of the Communications Act and Commission rules and regulations for providers of telemessaging service, or other small businesses providing an information or telecommunications service. This section defines a small business as any business entity, including any affiliate or subsidiary, with fewer than 300 employees. The Committee notes that the process established by this section is distinct from the expedited complaint process contained in section 208(b) of the Communications Act, as it is narrowly tailored to meet the special needs and concerns of small businesses. The Committee be-

lieves that the expedited complaint process for small telecommunications companies contained in this section is necessary for ensuring that such entities have an opportunity to pursue complaints against larger carriers, notwithstanding their limited resources.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934

[TITLE I—GENERAL PROVISIONS]

TITLE I—GENERAL PROVISIONS

* * * * * * *

SEC. 2. APPLICATION OF ACT.

(a) * * *

(b) Except as provided in sections 223 through 227, inclusive, *part II of title II*, and section 332, and subject to the provisions of section 301 and title VI, nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier, or (2) any carrier engaged in interstate or foreign communication solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (3) any carrier engaged in interstate or foreign communication solely through connection by radio, or by wire and radio, with facilities, located in an adjoining State or in Canada or Mexico (where they adjoin the State in which the carrier is doing business), of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (4) any carrier to which clause (2) or clause (3) would be applicable except for furnishing interstate mobile radio communication service or radio communication service to mobile stations on land vehicles in Canada or Mexico; except that sections 201 through 205 of this Act, both inclusive, shall, except as otherwise provided therein, apply to carriers described in clauses (2), (3), and (4).

SEC. 3. DEFINITIONS.

For the purposes of this Act, unless the context otherwise requires—

(1) AFFILIATE.—The term "affiliate", when used in relation to any person or entity, means another person or entity who owns or controls, is owned or controlled by, or is under common ownership or control with, such person or entity.

[(q) "Amateur station"] *(2) AMATEUR STATION.—The term "amateur station"* means a radio station operated by a duly au-

thorized person interested in radio technique solely with a personal aim and without pecuniary interest.

(3) BELL OPERATING COMPANY.—The term "Bell operating company" means—

(A) Bell Telephone Company of Nevada, Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, New England Telephone and Telegraph Company, New Jersey Bell Telephone Company, New York Telephone Company, U S West Communications Company, South Central Bell Telephone Company, Southern Bell Telephone and Telegraph Company, Southwestern Bell Telephone Company, The Bell Telephone Company of Pennsylvania, The Chesapeake and Potomac Telephone Company, The Chesapeake and Potomac Telephone Company of Maryland, The Chesapeake and Potomac Telephone Company of Virginia, The Chesapeake and Potomac Telephone Company of West Virginia, The Diamond State Telephone Company, The Ohio Bell Telephone Company, The Pacific Telephone and Telegraph Company, or Wisconsin Telephone Company;

(B) any successor or assign of any such company that provides telephone exchange service.

[(dd) "Broadcast station"] *(4) BROADCAST STATION.—The term "broadcast station"*, "broadcasting station," or "radio broadcast station" means a radio station equipped to engage in broadcasting as herein defined.

[(o) "Broadcasting"] *(5) BROADCASTING.—The term "broadcasting"* means the dissemination of radio communications intended to be received by the public, directly or by the intermediary of relay stations.

(6) CABLE SYSTEM.—The term "cable system" has the meaning given such term in section 602(7) of this Act.

[(p) "Chain broadcasting"] *(7) CHAIN BROADCASTING.—The term "chain broadcasting"* means simultaneous broadcasting of an identical program by two or more connected stations.

[(h) "Common carrier"] *(8) COMMON CARRIER.—The term "common carrier"* or "carrier" means any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or in interstate or foreign radio transmission of energy, except where reference is made to common carriers not subject to this Act; but a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier.

[(u) "Connecting carrier"] *(9) CONNECTING CARRIER.—The term "connecting carrier"* means a carrier described in clauses (2), (3), or (4) of section 2(b).

[(ee) "Construction permit"] *(10) CONSTRUCTION PERMIT.—The term "construction permit"* or "permit for construction" means that instrument of authorization required by this Act or the rules and regulations of the Commission made pursuant to this Act for the construction of a station, or the installation of apparatus, for the transmission of energy, or communications, or signals by radio, by whatever name the instrument may be designated by the Commission.

[(j) "Corporation"] *(11) CORPORATION.—The term "corporation"* includes any corporation, joint-stock company, or association.

(12) CUSTOMER PREMISES EQUIPMENT.—The term "customer premises equipment" means equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications.

(13) DIALING PARITY.—The term "dialing parity" means that a person that is not an affiliated enterprise of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer's designation from among 2 or more telecommunications services providers (including such local exchange carrier).

(14) EXCHANGE ACCESS.—The term "exchange access" means the offering of telephone exchange services or facilities for the purpose of the origination or termination of interLATA services.

[(f) "Foreign communication"] *(15) FOREIGN COMMUNICATION.—The term "foreign communication"* or "foreign transmission" means communication or transmission from or to any place in the United States to or from a foreign country, or between a station in the United States and a mobile station located outside the United States.

[(ff) "Great Lakes Agreement"] *(16) GREAT LAKES AGREEMENT.—The term "Great Lakes Agreement"* means the Agreement for the Promotion of Safety on the Great Lakes by Means of Radio in force and the regulations referred to therein.

[(aa) "Harbor"] *(17) HARBOR.—The term "harbor"* or "port" means any place to which ships may resort for shelter or to load or unload passengers or goods, or to obtain fuel, water, or supplies. This term shall apply to such places whether proclaimed public or not and whether natural or artifical.

(18) INFORMATION SERVICE.—The term "information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

(19) INTERLATA SERVICE.—The term "interLATA service" means telecommunications between a point located in a local access and transport area and a point located outside such area.

[(e) "Interstate communication"] *(20) INTERSTATE COMMUNICATION.—The term "interstate communication"* or "interstate transmission" means communication or transmission [(1)] *(A)* from any State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, to any other State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, [(2)] *(B)* from or to the United States to or from the Canal Zone, insofar as such communication or transmission takes place with-

in the United States, or [(3)] *(C)* between points within the United States but through a foreign country; but shall not, with respect to the provisions of title II of this Act (other than section 223 thereof), include wire or radio communication between points in the same State, Territory, or possession of the United States, or the District of Columbia, through any place outside thereof, if such communication is regulated by a State commission.

[(m) "Land station"] *(21) LAND STATION.—The term "land station"* means a station, other than a mobile station, used for radio communication with mobile stations.

[(c) "Licensee"] *(22) LICENSEE.—The term "licensee"* means the holder of a radio station license granted or continued in force under authority of this Act.

(23) LOCAL ACCESS AND TRANSPORT AREA.—The term "local access and transport area" or "LATA" means a contiguous geographic area—

(A) established by a Bell operating company such that no exchange area includes points within more than 1 metropolitan statistical area, consolidated metropolitan statistical area, or State, except as expressly permitted under the Modification of Final Judgment before the date of the enactment of this paragraph; or

(B) established or modified by a Bell operating company after the date of enactment of this paragraph and approved by the Commission.

(24) LOCAL EXCHANGE CARRIER.—The term "local exchange carrier" means any person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under section 332(c), except to the extent that the Commission finds that such service as provided by such person in a State is a replacement for a substantial portion of the wireline telephone exchange service within such State.

[(n) "Mobile service"] *(25) MOBILE SERVICE.— The term "mobile service"* means a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes [(1)] *(A)* both one-way and two-way radio communication services, [(2)] *(B)* a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation, and [(3)] *(C)* any service for which a license is required in a personal communications service established pursuant to the proceeding entitled "Amendment to the Commission's Rules to Establish New Personal Communications Services" (GEN Docket No. 90–314; ET Docket No. 92–100), or any successor proceeding.

[(l) "Mobile station"] *(26) MOBILE STATION.—The term "mobile station"* means a radio-communication station capable of being moved and which ordinarily does move.

(27) MODIFICATION OF FINAL JUDGMENT.—The term "Modification of Final Judgment" means the order entered August 24, 1982, in the antitrust action styled United States v. Western Electric, Civil Action No. 82–0192, in the United States District Court for the District of Columbia, and includes any judgment or order with respect to such action entered on or after August 24, 1982.

(28) NUMBER PORTABILITY.—The term "number portability" means the ability of users of telecommunications services to retain existing telecommunications numbers without impairment of quality, reliability, or convenience when changing from one provider of telecommunications services to another, as long as such user continues to be located within the area served by the same central office of the carrier from which the user is changing.

[(y)(1) "Operator"] *(29) OPERATOR.—(A) The term "operator"* on a ship of the United States means, for the purpose of parts II and III of title III of this Act, a person holding a radio operator's license of the proper class as prescribed and issued by the Commission.

[(2)] *(B)* "Operator" on a foreign ship means, for the purpose of part II of title III of this Act, a person holding a certificate as such of the proper class complying with the provision of the radio regulations annexed to the International Telecommunication Convention in force, or complyng with an agreement or treaty between the United States and the country in which the ship is registered.

[(i) "Person"] *(30) PERSON.—The term "person"* includes an individual, partnership, association, joint-stock company, trust, or corporation.

[(b) "Radio communication"] *(31) RADIO COMMUNICATION.—The term "radio communication"* or "communication by radio" means the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.

[(z)(1) "Radio officer"] *(32) RADIO OFFICER.—(A) The term "radio officer"* on a ship of the United States means, for the purpose of part II of title III of this Act, a person holding at least a first or second clase radiotelegraph operator's license as prescribed and issued by the Commission. When such person is employed to operate a radiotelegraph station aboard a ship of the United States, he is also required to be licensed as a "radio officer" in accordance with the Act of May 12, 1948 (46 U.S.C. 229a–h).

[(2)] *(B)* "Radio officer" on a foreign ship means, for the purpose of part II of title III of this Act, a person holding at least a first or second class radiotelegraph operator's certificate complying with the provisions of the radio regulations annexed to the International Telecommunication Convention in force.

[(k) "Radio station"] *(33) RADIO STATION.—The term "radio station"* or "station" means a station equipped to engage in radio communication or radio transmission of energy.

[(x) "Radiotelegraph auto alarm"] *(34) RADIOTELEGRAPH AUTO ALARM.—The term "radiotelegraph auto alarm"* on a ship of the United States subject to the provisions of part II of title III of this Act means an automatic alarm receiving apparatus which responds to the radiotelegraph alarm signal and has been approved by the Commission. "Radiotelegraph auto alarm" on a foreign ship means an automatic alarm receiving apparatus which responds to the radiotelegraph alarm signal and has been approved by the government of the country in which the ship is registered: *Provided*, That the United States and the country in which the ship is registered are parties to the same treaty, convention, or agreement prescribing the requirements for such apparatus. Nothing in this Act or in any other provision of law shall be construed to require the recognition of a radiotelegraph auto alarm as complying with part II of title III of this Act, on a foreign ship subject to such part, where the country in which the ship is registered and the United States are not parties to the same treaty, convention, or agreements prescribing the requirements for such apparatus.

(35) RURAL TELEPHONE COMPANY.—The term "rural telephone company" means a local exchange carrier operating entity to the extent that such entity—

(A) provides common carrier service to any local exchange carrier study area that does not include either—

(i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recent available population statistics of the Bureau of the Census; or

(ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

(B) provides telephone exchange service, including telephone exchange access service, to fewer than 50,000 access lines;

(C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(D) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of this paragraph.

[(bb) "Safety convention"] *(36) SAFETY CONVENTION.—The term "safety convention"* means the International Convention for the Safety of Life at Sea in force and the regulations referred to therein.

[(w) (1) "Ship"] *(37) SHIP.—(A) The term "ship"* or "vessel" includes every description of watercraft or other artificial contrivance, except aircraft, used or capable of being used as a means of transportation on water, whether or not it is actually afloat.

[(2)] *(B)* A ship shall be considered a passenger ship if it carries or is licensed or certificated to carry more than twelve passengers.

[(3)] *(C)* A cargo ship means any ship not a passenger ship.

[(4)] *(D)* A passenger is any person carried on board a ship or vessel except (1) the officers and crew actually employed to man

and operate the ship, (2) persons employed to carry on the business of the ship, and (3) persons on board a ship when they are carried, either because of the obligation laid upon the master to carry shipwrecked, distressed, or other persons in like or similar situations or by reason of any circumstance over which neither the master, the owner, nor the charterer (if any) has control.

[(5)**]** *(E)* "Nuclear ship" means a ship provided with a nuclear powerplant.

[(v) "State"**]** *(38) STATE.—The term "State"* includes the District of Columbia and the Territories and possessions.

[(t) "State commission"**]** *(39) STATE COMMISSION.— The term "State commission"* means the commission, board, or official (by whatever name designated) which under the laws of any State has regulatory jurisdiction with respect to intrastate operations of carriers.

[(cc) "Station license"**]** *(40) STATION LICENSE.—The term "station license"*, "radio station license," or "license" means that instrument of authorization required by this Act or the rules and regulations of the Commission made pursuant to this Act, for the use or operation of apparatus for transmission of energy, or communications, or signals by radio by whatever name the instrument may be designated by the Commission.

(41) TELECOMMUNICATIONS.—The term "telecommunications" means the transmission, between or among points specified by the subscriber, of information of the subscriber's choosing, without change in the form or content of the information as sent and received, by means of an electromagnetic transmission medium, including all instrumentalities, facilities, apparatus, and services (including the collection, storage, forwarding, switching, and delivery of such information) essential to such transmission.

(42) TELECOMMUNICATIONS EQUIPMENT.—The term "telecommunications equipment" means equipment, other than customer premises equipment, used by a carrier to provide telecommunications services, and includes software integral to such equipment (including upgrades).

(43) TELECOMMUNICATIONS SERVICE.—The term "telecommunications service" means the offering, on a common carrier basis, of telecommunications facilities, or of telecommunications by means of such facilities. Such term does not include an information service.

[(r) "Telephone exchange service"**]** *(44) TELEPHONE EXCHANGE SERVICE.—The term "telephone exchange service"* means *(A)* service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, *or (B) service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service within a State but which does not result in the subscriber incurring a telephone toll charge.*

[(s) "Telephone toll service"] *(45) TELEPHONE TOLL SERVICE.—The term "telephone toll service"* means telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service.

[(d) "Transmission of energy by radio"] *(46) TRANSMISSION OF ENERGY BY RADIO.—The term "transmission of energy by radio"* or "radio transmission of energy" includes both such transmission and all instrumentalities, facilities, and services incidental to such transmission.

[(g) "United States"] *(47) UNITED STATES.—The term "United States"* means the several States and Territories, the District of Columbia, and the possessions of the United States, but does not include the Canal Zone.

[(a) "Wire communication"] *(48) WIRE COMMUNICATION.—The term "wire communication"* or "communication by wire" means the transmission of writing, signs, signals, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.

* * * * * * *

[TITLE II—COMMON CARRIERS]

TITLE II—COMMON CARRIERS

PART I—REGULATION OF DOMINANT COMMON CARRIERS

SEC. 201. SERVICE AND CHARGES.

(a) It shall be the duty of every common carrier engaged in interstate or foreign communication by wire or radio to furnish such communication service upon reasonable request therefor; and, in accordance with the orders of the Commission, in cases where the Commission, after opportunity for hearing, finds such action necessary or desirable in the public interest, to establish physical connections with other carriers, to establish through routes and charges applicable thereto and the divisions of such charges, and to establish and provide facilities and regulations for operating such through routes.

* * * * * * *

SEC. 222. PRIVACY OF CUSTOMER PROPRIETARY NETWORK INFORMATION.

(a) SUBSCRIBER LIST INFORMATION.—Notwithstanding subsections (b), (c), and (d), a carrier that provides local exchange service shall provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format.

(b) PRIVACY REQUIREMENTS FOR COMMON CARRIERS.—A carrier—

(1) shall not, except as required by law or with the approval of the customer to which the information relates—

(A) use customer proprietary network information in the provision of any service except to the extent necessary (i) in the provision of common carrier services, (ii) in the provision of a service necessary to or used in the provision of common carrier services, including the publishing of directories, or (iii) to continue to provide a particular information service that the carrier provided as of May 1, 1995, to persons who were customers of such service on that date;

(B) use customer proprietary network information in the identification or solicitation of potential customers for any service other than the telephone exchange service or telephone toll service from which such information is derived;

(C) use customer proprietary network information in the provision of customer premises equipment; or

(D) disclose customer proprietary network information to any person except to the extent necessary to permit such person to provide services or products that are used in and necessary to the provision by such carrier of the services described in subparagraph (A);

(2) shall disclose customer proprietary network information, upon affirmative written request by the customer, to any person designated by the customer;

(3) shall, whenever such carrier provides any aggregate information, notify the Commission of the availability of such aggregate information and shall provide such aggregate information on reasonable terms and conditions to any other service or equipment provider upon reasonable request therefor; and

(4) except for disclosures permitted by paragraph (1)(D), shall not unreasonably discriminate between affiliated and unaffiliated service or equipment providers in providing access to, or in the use and disclosure of, individual and aggregate information made available consistent with this subsection.

(c) RULE OF CONSTRUCTION.—This section shall not be construed to prohibit the use or disclosure of customer proprietary network information as necessary—

(1) to render, bill, and collect for the services identified in subsection (b)(1)(A);

(2) to render, bill, and collect for any other service that the customer has requested;

(3) to protect the rights or property of the carrier;

(4) to protect users of any of those services and other carriers from fraudulent, abusive, or unlawful use of or subscription to such service; or

(5) to provide any inbound telemarketing, referral, or administrative services to the customer for the duration of the call if such call was initiated by the customer and the customer approves of the use of such information to provide such service.

(d) EXEMPTION PERMITTED.—The Commission may, by rule, exempt from the requirements of subsection (b) carriers that have, together with any affiliated carriers, in the aggregate nationwide, fewer than 500,000 access lines installed if the Commission deter-

mines that such exemption is in the public interest or if compliance with the requirements would impose an undue economic burden on the carrier.

(e) DEFINITIONS.—As used in this section:

(1) CUSTOMER PROPRIETARY NETWORK INFORMATION.—The term "customer proprietary network information" means—

(A) information which relates to the quantity, technical configuration, type, destination, and amount of use of telephone exchange service or telephone toll service subscribed to by any customer of a carrier, and is made available to the carrier by the customer solely by virtue of the carrier-customer relationship;

(B) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier; and

(C) such other information concerning the customer as is available to the local exchange carrier by virtue of the customer's use of the carrier's telephone exchange service or telephone toll services, and specified as within the definition of such term by such rules as the Commission shall prescribe consistent with the public interest;

except that such term does not include subscriber list information.

(2) SUBSCRIBER LIST INFORMATION.—The term "subscriber list information" means any information—

(A) identifying the listed names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses, or classifications; and

(B) that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format.

(3) AGGREGATE INFORMATION.—The term "aggregate information" means collective data that relates to a group or category of services or customers, from which individual customer identities and characteristics have been removed.

* * * * * * *

SEC. 224. REGULATION OF POLE ATTACHMENTS.

(a) As used in this section:

(1) * * *

* * * * * * *

(4) The term "pole attachment" means any attachment by a cable television system *or a provider of telecommunications service* to a pole, duct, conduit, or right-of-way owned or controlled by a utility, *which attachment may be used by such entities to provide cable service or any telecommunications service.*

* * * * * * *

(c)(1) Nothing in this section shall be construed to apply to, or to give the Commission jurisdiction with respect to rates, terms,

and conditions for pole attachments in any case where such matters are regulated by a State.

(2) Each State which regulates the rates, terms, and conditions for pole attachments shall certify to the Commission that—

(A) it regulates such rates, terms, and conditions; and

(B) in so regulating such rates, terms, and conditions, the State has the authority to consider and does consider the interests of the subscribers of [cable television services] *the services offered via such attachments*, as well as the interests of the consumers of the utility services.

* * * * * * *

[(d)(1) For purposes of subsection (b) of this section, a rate is just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way.]

(d)(1) For purposes of subsection (b) of this section, the Commission shall, no later than 1 year after the date of enactment of the Communications Act of 1995, prescribe regulations for ensuring that utilities charge just and reasonable and nondiscriminatory rates for pole attachments provided to all providers of telecommunications services, including such attachments used by cable television systems to provide telecommunications services (as defined in section 3 of this Act). Such regulations shall—

(A) recognize that the entire pole, duct, conduit, or right-of-way other than the usable space is of equal benefit all entities attaching to the pole and therefore apportion the cost of the space other than the usable space equally among all such attachments;

(B) recognize that the usable space is of proportional benefit to all entities attaching to the pole, duct, conduit or right-of-way and therefore apportion the cost of the usable space according to the percentage of usable space required for each entity; and

(C) allow for reasonable terms and conditions relating to health, safety, and the provision of reliable utility service.

(2) The final regulations prescribed by the Commission pursuant to paragraph (1) shall not apply to a cable television system that solely provides cable service as defined in section 602(6) of this Act; instead, the pole attachment rate for such systems shall assure a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way.

(3) Whenever the owner of a conduit or right-of-way intends to modify or alter such conduit or right-of-way, the owner shall provide written notification of such action to any entity that has obtained an attachment to such conduit or right-of-way so that such

entity may have a reasonable opportunity to add to or modify its existing attachment. Any entity that adds to or modifies its existing attachment after receiving such notification shall bear a proportionate share of the costs incurred by the owner in making such conduit or right-of-way accessible.

[(2)] *(4)* As used in this subsection, the term "usable space" means the space above the minimum grade level which can be used for the attachment of wires, cables, and associated equipment.

SEC. 225. TELECOMMUNICATIONS SERVICES FOR HEARING-IMPAIRED AND SPEECH-IMPAIRED INDIVIDUALS.

(a) DEFINITIONS.—As used in this section—

(1) COMMON CARRIER OR CARRIER.—The term "common carrier" or "carrier" includes any common carrier engaged in interstate communication by wire or radio as defined in [section 3(h)] *section 3* and any common carrier engaged in intrastate communication by wire or radio, notwithstanding sections 2(b) and 221(b).

* * * * * * *

SEC. 228. REGULATION OF CARRIER OFFERING OF PAY-PER-CALL SERVICES.

(a) * * *

* * * * * * *

(c) COMMON CARRIER OBLIGATIONS.—Within 270 days after the date of enactment of this section, the Commission shall, by regulation, establish the following requirements for common carriers:

(1) * * *

* * * * * * *

(7) BILLING FOR 800 CALLS.—A common carrier shall prohibit by tariff or contract the use of any 800 telephone number, or other telephone number advertised or widely understood to be toll free, in a manner that would result in—

(A) the calling party being assessed, by virtue of completing the call, a charge for the call;

(B) the calling party being connected to a pay-per-call service;

[(C) the calling party being charged for information conveyed during the call unless the calling party has a preexisting agreement to be charged for the information or discloses a credit or charge card number during the call; or]

(C) the calling party being charged for information conveyed during the call unless—

(i) the calling party has a written subscription agreement with the information provider that meets the requirements of paragraph (8); or

(ii) the calling party is charged in accordance with paragraph (9); or

* * * * * * *

(8) SUBSCRIPTION AGREEMENTS FOR BILLING FOR INFORMATION PROVIDED VIA TOLL-FREE CALLS.—

(A) IN GENERAL.—For purposes of paragraph (7)(C)(i), a written subscription agreement shall specify the terms and conditions under which the information is offered and include—

(i) the rate at which charges are assessed for the information;

(ii) the information provider's name;

(iii) the information provider's business address;

(iv) the information provider's regular business telephone number;

(v) the information provider's agreement to notify the subscriber at least 30 days in advance of all future changes in the rates charged for the information;

(vi) the signature of a legally competent subscriber agreeing to the terms of the agreement; and

(vii) the subscriber's choice of payment method, which may be by phone bill or credit, prepaid, or calling card.

(B) BILLING ARRANGEMENTS.—If a subscriber elects, pursuant to subparagraph (A)(vii), to pay by means of a phone bill—

(i) the agreement shall clearly explain that the subscriber will be assessed for calls made to the information service from the subscriber's phone line;

(ii) the phone bill shall include, in prominent type, the following disclaimer:

"Common carriers may not disconnect local or long distance telephone service for failure to pay disputed charges for information services."; and

(iii) the phone bill shall clearly list the 800 number dialed.

(C) USE OF PIN'S TO PREVENT UNAUTHORIZED USE.—A written agreement does not meet the requirements of this paragraph unless it provides the subscriber a personal identification number to obtain access to the information provided, and includes instructions on its use.

(D) EXCEPTIONS.—Notwithstanding paragraph (7)(C), a written agreement that meets the requirements of this paragraph is not required—

(i) for services provided pursuant to a tariff that has been approved or permitted to take effect by the Commission or a State commission; or

(ii) for any purchase of goods or of services that are not information services.

(E) TERMINATION OF SERVICE.—On complaint by any person, a carrier may terminate the provision of service to an information provider unless the provider supplies evidence of a written agreement that meets the requirements of this section. The remedies provided in this paragraph are in addition to any other remedies that are available under title V of this Act.

(9) CHARGES BY CREDIT, PREPAID, OR CALLING CARD IN ABSENCE OF AGREEMENT.—For purposes of paragraph (7)(C)(ii), a calling party is not charged in accordance with this paragraph

unless the calling party is charged by means of a credit, prepaid, or calling card and the information service provider includes in response to each call an introductory disclosure message that—

(A) clearly states that there is a charge for the call;

(B) clearly states the service's total cost per minute and any other fees for the service or for any service to which the caller may be transferred;

(C) explains that the charges must be billed on either a credit, prepaid, or calling card;

(D) asks the caller for the credit or calling card number;

(E) clearly states that charges for the call begin at the end of the introductory message; and

(F) clearly states that the caller can hang up at or before the end of the introductory message without incurring any charge whatsoever.

(10) DEFINITION OF CALLING CARD.—As used in this subsection, the term "calling card" means an identifying number or code unique to the individual, that is issued to the individual by a common carrier and enables the individual to be charged by means of a phone bill for charges incurred independent of where the call originates.

* * * * * * *

SEC. 230. FORBEARANCE FROM REGULATION.

(a) AUTHORITY TO FORBEAR.—The Commission shall forbear from applying any provision of this part or part II (other than sections 201, 202, 208, 243, and 248), or any regulation thereunder, to a common carrier or service, or class of carriers or services, in any or some of its or their geographic markets, if the Commission determines that—

(1) enforcement of such provision or regulation is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that carrier or service are just and reasonable and are not unjustly or unreasonably discriminatory;

(2) enforcement of such regulation or provision is not necessary for the protection of consumers; and

(3) forbearance from applying such provision or regulation is consistent with the public interest.

(b) COMPETITIVE EFFECT TO BE WEIGHED.—In making the determination under subsection (a)(3), the Commission shall consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services. If the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest.

PART II—DEVELOPMENT OF COMPETITIVE MARKETS

SEC. 241. INTERCONNECTION.

The duty of a common carrier under section 201(a) includes the duty to interconnect with the facilities and equipment of other providers of telecommunications services and information services.

SEC. 242. EQUAL ACCESS AND INTERCONNECTION TO THE LOCAL LOOP FOR COMPETING PROVIDERS.

(a) OPENNESS AND ACCESSIBILITY OBLIGATIONS.—The duty under section 201(a) of a local exchange carrier includes the following duties:

(1) INTERCONNECTION.—The duty to provide, in accordance with subsection (b), equal access to and interconnection with the facilities of the carrier's networks to any other carrier or person offering (or seeking to offer) telecommunications services or information services reasonably requesting such equal access and interconnection, so that such networks are fully interoperable with such telecommunications services and information services. For purposes of this paragraph, a request is not reasonable unless it contains a proposed plan, including a reasonable schedule, for the implementation of the requested access or interconnection.

(2) UNBUNDLING OF NETWORK ELEMENTS.—The duty to offer unbundled services, elements, features, functions, and capabilities whenever technically feasible, at just, reasonable, and nondiscriminatory prices and in accordance with subsection (b)(4).

(3) RESALE.—The duty to offer services, elements, features, functions, and capabilities for resale at economically feasible rates to the reseller, recognizing pricing structures for telephone exchange service in the State, and the duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale, on a bundled or unbundled basis, of services, elements, features, functions, and capabilities in conjunction with the furnishing of a telecommunications service or an information service.

(4) NUMBER PORTABILITY.—The duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.

(5) DIALING PARITY.—The duty to provide, in accordance with subsection (c), dialing parity to competing providers of telephone exchange service and telephone toll service.

(6) ACCESS TO RIGHTS-OF-WAY.—The duty to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services in accordance with section 224(d).

(7) NETWORK FUNCTIONALITY AND ACCESSIBILITY.—The duty not to install network features, functions, or capabilities that do not comply with any standards established pursuant to section 249.

(8) GOOD FAITH NEGOTIATION.—The duty to negotiate in good faith, under the supervision of State commissions, the particular terms and conditions of agreements to fulfill the duties de-

scribed in paragraphs (1) through (7). The other carrier or person requesting interconnection shall also be obligated to negotiate in good faith the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (7).

(b) INTERCONNECTION, COMPENSATION, AND EQUAL ACCESS.—

(1) INTERCONNECTION.—A local exchange carrier shall provide access to and interconnection with the facilities of the carrier's network at any technically feasible point within the carrier's network on just and reasonable terms and conditions, to any other carrier or person offering (or seeking to offer) telecommunications services or information services requesting such access.

(2) INTERCARRIER COMPENSATION BETWEEN FACILITIES-BASED CARRIERS.—

(A) IN GENERAL.—For the purposes of paragraph (1), the terms and conditions for interconnection of the network facilities of a competing provider of telephone exchange service shall not be considered to be just and reasonable unless—

(i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the termination on such carrier's network facilities of calls that originate on the network facilities of the other carrier;

(ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls; and

(iii) the recovery of costs permitted by such terms and conditions are reasonable in relation to the prices for termination of calls that would prevail in a competitive market.

(B) RULES OF CONSTRUCTION.—This paragraph shall not be construed—

(i) to preclude arrangements that afford such mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements); or

(ii) to authorize the Commission or any State commission to engage in any rate regulation proceeding to establish with particularity the additional costs of terminating calls, or to require carriers to maintain records with respect to the additional costs of terminating calls.

(3) EQUAL ACCESS.—A local exchange carrier shall afford, to any other carrier or person offering (or seeking to offer) a telecommunications service or an information service, reasonable and nondiscriminatory access on an unbundled basis—

(A) to databases, signaling systems, billing and collection services, poles, ducts, conduits, and rights-of-way owned or controlled by a local exchange carrier, or other facilities, functions, or information (including subscriber numbers) integral to the efficient transmission, routing, or other provision of telephone exchange services or exchange access;

(B) that is equal in type and quality to the access which the carrier affords to itself or to any other person, and is available at nondiscriminatory prices; and

(C) that is sufficient to ensure the full interoperability of the equipment and facilities of the carrier and of the person seeking such access.

(4) COMMISSION ACTION REQUIRED.—

(A) IN GENERAL.—Within 15 months after the date of enactment of this part, the Commission shall complete all actions necessary (including any reconsideration) to establish regulations to implement the requirements of this section. The Commission shall establish such regulations after consultation with the Joint Board established pursuant to section 247.

(B) COLLOCATION.—Such regulations shall provide for actual collocation of equipment necessary for interconnection for telecommunications services at the premises of a local exchange carrier, except that the regulations shall provide for virtual collocation where the local exchange carrier demonstrates that actual collocation is not practical for technical reasons or because of space limitations.

(C) USER PAYMENT OF COSTS.—Such regulations shall require that the costs that a carrier incurs in offering access, interconnection, number portability, or unbundled services, elements, features, functions, and capabilities shall be borne by the users of such access, interconnection, number portability, or services, elements, features, functions, and capabilities.

(D) IMPUTED CHARGES TO CARRIER.—Such regulations shall require the carrier, to the extent it provides a telecommunications service or an information service that requires access or interconnection to its network facilities, to impute such access and interconnection charges to itself.

(c) NUMBER PORTABILITY AND DIALING PARITY.—

(1) AVAILABILITY.—A local exchange carrier shall ensure that—

(A) number portability shall be available on request in accordance with subsection (a)(4); and

(B) dialing parity shall be available upon request, except that, in the case of a Bell operating company, such company shall ensure that dialing parity for intraLATA telephone toll service shall be available not later than the date such company is authorized to provide interLATA services.

(2) NUMBER ADMINISTRATION.—The Commission shall designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis. The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States. Nothing in this paragraph shall preclude the Commission from delegating to State commissions or other entities any portion of such jurisdiction.

(d) JOINT MARKETING OF RESOLD ELEMENTS.—

(1) RESTRICTION.—Except as provided in paragraph (2), no service, element, feature, function, or capability that is made available for resale in any State by a Bell operating company may be jointly marketed directly or indirectly with any interLATA telephone toll service until such Bell operating company is authorized pursuant to section 245(d) to provide interLATA services in such State.

(2) EXISTING PROVIDERS.—Paragraph (1) shall not prohibit joint marketing of services, elements, features, functions, or capabilities acquired from a Bell operating company by another provider if that provider jointly markets services, elements, features, functions, and capabilities acquired from a Bell operating company anywhere in the telephone service territory of such Bell operating company, or in the telephone service territory of any affiliate of such Bell operating company that provides telephone exchange service, pursuant to any agreement, tariff, or other arrangement entered into or in effect before the date of enactment of this part.

(e) MODIFICATIONS AND WAIVERS.—The Commission may modify or waive the requirements of this section for any local exchange carrier (or class or category of such carriers) that has, in the aggregate nationwide, fewer than 500,000 access lines installed, to the extent that the Commission determines that compliance with such requirements (without such modification) would be unduly economically burdensome, technologically infeasible, or otherwise not in the public interest.

(f) WAIVER FOR RURAL TELEPHONE COMPANIES.—A State commission may waive the requirements of this section with respect to any rural telephone company.

(g) EXEMPTION FOR CERTAIN RURAL TELEPHONE COMPANIES.—Subsections (a) through (d) of this section shall not apply to a carrier that has fewer than 50,000 access lines in a local exchange study area, if such carrier does not provide video programming services over its telephone exchange facilities in such study area, except that a State commission may terminate the exemption under this subsection if the State commission determines that the termination of such exemption is consistent with the public interest, convenience, and necessity.

(h) AVOIDANCE OF REDUNDANT REGULATIONS.—Nothing in this section shall be construed to prohibit the Commission or any State commission from enforcing regulations prescribed prior to the date of enactment of this part in fulfilling the requirements of this section, to the extent that such regulations are consistent with the provisions of this section.

SEC. 243. PREEMPTION.

(a) REMOVAL OF BARRIERS TO ENTRY.—Except as provided in subsection (b) of this section, no State or local statute, regulation, or other legal requirement shall—

(1) effectively prohibit any carrier or other person from entering the business of providing interstate or intrastate telecommunications services or information services; or

(2) effectively prohibit any carrier or other person providing (or seeking to provide) interstate or intrastate telecommuni-

cations services or information services from exercising the access and interconnection rights provided under this part.

(b) STATE AND LOCAL AUTHORITY.—Nothing in this section shall affect the ability of State or local officials to impose, on a nondiscriminatory basis, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, ensure that a provider's business practices are consistent with consumer protection laws and regulations, and ensure just and reasonable rates, provided that such requirements do not effectively prohibit any carrier or person from providing interstate or intrastate telecommunications services or information services.

(c) CONSTRUCTION PERMITS.—Subsection (a) shall not be construed to prohibit a local government from requiring a person or carrier to obtain ordinary and usual construction or similar permits for its operations if—

(1) such permit is required without regard to the nature of the business; and

(2) requiring such permit does not effectively prohibit any person or carrier from providing any interstate or intrastate telecommunications service or information service.

(d) EXCEPTION.—In the case of commercial mobile services, the provisions of section 332(c)(3) shall apply in lieu of the provisions of this section.

(e) PARITY OF FRANCHISE AND OTHER CHARGES.—Notwithstanding section 2(b), no local government may impose or collect any franchise, license, permit, or right-of-way fee or any assessment, rental, or any other charge or equivalent thereof as a condition for operating in the locality or for obtaining access to, occupying, or crossing public rights-of-way from any provider of telecommunications services that distinguishes between or among providers of telecommunications services, including the local exchange carrier. For purposes of this subsection, a franchise, license, permit, or right-of-way fee or an assessment, rental, or any other charge or equivalent thereof does not include any imposition of general applicability which does not distinguish between or among providers of telecommunications services, or any tax.

SEC. 244. STATEMENTS OF TERMS AND CONDITIONS FOR ACCESS AND INTERCONNECTION.

(a) IN GENERAL.—Within 18 months after the date of enactment of this part, and from time to time thereafter, a local exchange carrier shall prepare and file with a State commission statements of the terms and conditions that such carrier generally offers within that State with respect to the services, elements, features, functions, or capabilities provided to comply with the requirements of section 242 and the regulations thereunder. Any such statement pertaining to the charges for interstate services, elements, features, functions, or capabilities shall be filed with the Commission.

(b) REVIEW.—

(1) STATE COMMISSION REVIEW.—A State commission to which a statement is submitted under subsection (a) shall review such statement in accordance with State law. A State commission may not approve such statement unless such statement complies with section 242 and the regulations thereunder. Ex-

cept as provided in section 243, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of such statement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

(2) FCC REVIEW.—The Commission shall review such statements to ensure that—

(A) the charges for interstate services, elements, features, functions, or capabilities are just, reasonable, and nondiscriminatory; and

(B) the terms and conditions for such interstate services or elements unbundle any separable services, elements, features, functions, or capabilities in accordance with section 242(a)(2) and any regulations thereunder.

(c) TIME FOR REVIEW.—

(1) SCHEDULE FOR REVIEW.—The Commission and the State commission to which a statement is submitted shall, not later than 60 days after the date of such submission—

(A) complete the review of such statement under subsection (b) (including any reconsideration thereof), unless the submitting carrier agrees to an extension of the period for such review; or

(B) permit such statement to take effect.

(2) AUTHORITY TO CONTINUE REVIEW.—Paragraph (1) shall not preclude the Commission or a State commission from continuing to review a statement that has been permitted to take effect under subparagraph (B) of such paragraph.

(d) EFFECT OF AGREEMENTS.—Nothing in this section shall prohibit a carrier from filing an agreement to provide services, elements, features, functions, or capabilities affording access and interconnection as a statement of terms and conditions that the carrier generally offers for purposes of this section. An agreement affording access and interconnection shall not be approved under this section unless the agreement contains a plan, including a reasonable schedule, for the implementation of the requested access or interconnection. The approval of a statement under this section shall not operate to prohibit a carrier from entering into subsequent agreements that contain terms and conditions that differ from those contained in a statement that has been reviewed and approved under this section, but—

(1) each such subsequent agreement shall be filed under this section; and

(2) such carrier shall be obligated to offer access to such services, elements, features, functions, or capabilities to other carriers and persons (including carriers and persons covered by previously approved statements) requesting such access on terms and conditions that, in relation to the terms and conditions in such subsequent agreements, are not discriminatory.

(e) SUNSET.—The provisions of this section shall cease to apply in any local exchange market, defined by geographic area and class or category of service, that the Commission and the State determines has become subject to full and open competition.

SEC. 245. BELL OPERATING COMPANY ENTRY INTO INTERLATA SERVICES.

(a) VERIFICATION OF ACCESS AND INTERCONNECTION COMPLIANCE.—At any time after 18 months after the date of enactment of this part, a Bell operating company may provide to the Commission verification by such company with respect to one or more States that such company is in compliance with the requirements of this part. Such verification shall contain the following:

(1) CERTIFICATION.—A certification by each State commission of such State or States that such carrier has fully implemented the conditions described in subsection (b), except as provided in subsection (d)(2).

(2) AGREEMENT OR STATEMENT.—For each such State, either of the following:

(A) PRESENCE OF A FACILITIES-BASED COMPETITOR.—An agreement that has been approved under section 244 specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities in accordance with section 242 for an unaffiliated competing provider of telephone exchange service that is comparable in price, features, and scope and that is provided over the competitor's own network facilities to residential and business subscribers.

(B) FAILURE TO REQUEST ACCESS.—If no such provider has requested such access and interconnection before the date which is 3 months before the date the company makes its submission under this subsection, a statement of the terms and conditions that the carrier generally offers to provide such access and interconnection that has been approved or permitted to take effect by the State commission under section 243.

For purposes of subparagraph (B), a Bell operating company shall be considered not to have received any request for access or interconnection if the State commission of such State or States certifies that the only provider or providers making such request have (i) failed to bargain in good faith under the supervision of such State commission pursuant to section 242(a)(8), or (ii) have violated the terms of their agreement by failure to comply, within a reasonable period of time, with the implementation schedule contained in such agreement.

(b) CERTIFICATION OF COMPLIANCE WITH PART II.—For the purposes of subsection (a)(1), a Bell operating company shall submit to the Commission a certification by a State commission of compliance with each of the following conditions in any area where such company provides local exchange service or exchange access in such State:

(1) INTERCONNECTION.—The Bell operating company provides access and interconnection in accordance with subsections (a)(1) and (b) of section 242 to any other carrier or person offering telecommunications services requesting such access and interconnection, and complies with the Commission regulations pursuant to such section concerning such access and interconnection.

(2) UNBUNDLING OF NETWORK ELEMENTS.—The Bell operating company provides unbundled services, elements, features, functions, and capabilities in accordance with subsection (a)(2) of section 242 and the regulations prescribed by the Commission pursuant to such section.

(3) RESALE.—The Bell operating company offers services, elements, features, functions, and capabilities for resale in accordance with section 242(a)(3), and neither the Bell operating company, nor any unit of State or local government within the State, imposes any restrictions on resale or sharing of telephone exchange service (or unbundled services, elements, features, or functions of telephone exchange service) in violation of section 242(a)(3).

(4) NUMBER PORTABILITY.—The Bell operating company provides number portability in compliance with the Commission's regulations pursuant to subsections (a)(4) and (c) of section 242.

(5) DIALING PARITY.—The Bell operating company provides dialing parity in accordance with subsections (a)(5) and (c) of section 242, and will, not later than the effective date of its authority to commence providing interLATA services, take such actions as are necessary to provide dialing parity for intraLATA telephone toll service in accordance with such subsections.

(6) ACCESS TO CONDUITS AND RIGHTS OF WAY.—The poles, ducts, conduits, and rights of way of such Bell operating company are available to competing providers of telecommunications services in accordance with the requirements of sections 242(a)(6) and 224(d).

(7) ELIMINATION OF FRANCHISE LIMITATIONS.—No unit of the State or local government in such State or States enforces any prohibition or limitation in violation of section 243.

(8) NETWORK FUNCTIONALITY AND ACCESSIBILITY.—The Bell operating company will not install network features, functions, or capabilities that do not comply with the standards established pursuant to section 249.

(9) NEGOTIATION OF TERMS AND CONDITIONS.—The Bell operating company has negotiated in good faith, under the supervision of the State commission, in accordance with the requirements of section 242(a)(8) with any other carrier or person requesting access or interconnection.

(c) APPLICATION FOR INTERIM INTERLATA AUTHORITY.—

(1) APPLICATION SUBMISSION AND CONTENTS.—At any time after the date of enactment of this part, and prior to the completion by the Commission of all actions necessary to establish regulations under section 242, a Bell operating company may apply to the Commission for interim authority to provide interLATA services. Such application shall specify the LATA or LATAs for which the company is requesting authority to provide interim interLATA services. Such application shall contain, with respect to each LATA within a State for which authorization is requested, the following:

(A) PRESENCE OF A FACILITIES-BASED COMPETITOR.—An agreement that the State commission has determined complies with section 242 (without regard to any regulations thereunder) and that specifies the terms and conditions

under which the Bell operating company is providing access and interconnection to its network facilities for the network facilities an unaffiliated competing provider of telephone exchange service that is comparable in price, features, and scope and that is provided over the competitor's own facilities to residential and business subscribers.

(B) CERTIFICATION.—A certification by the State commission of the State within which such LATA is located that such company is in compliance with State laws, rules, and regulations providing for the implementation of the standards described in subsection (b) as of the date of certification, including certification that such company is offering services, elements, features, functions, and capabilities for resale at economically feasible rates to the reseller, recognizing pricing structures for telephone exchange service in such State.

(2) STATE TO PARTICIPATE.—The company shall serve a copy of the application on the relevant State commission within 5 days of filing its application. The State shall file comments to the Commission on the company's application within 40 days of receiving a copy of the company's application.

(3) DEADLINES FOR COMMISSION ACTION.—The Commission shall make a determination on such application not more than 90 days after such application is filed.

(4) EXPIRATION OF INTERIM AUTHORITY.—Any interim authority granted pursuant to this subsection shall cease to be effective 180 days after the completion by the Commission of all actions necessary to establish regulations under section 242.

(d) COMMISSION REVIEW.—

(1) REVIEW OF STATE DECISIONS AND CERTIFICATIONS.—The Commission shall review any verification submitted by a Bell operating company pursuant to subsection (a). The Commission may require such company to submit such additional information as is necessary to validate any of the items of such verification.

(2) DE NOVO REVIEW.—If—

(A) a State commission does not have the jurisdiction or authority to make the certification required by subsection (b);

(B) the State commission has failed to act within 90 days after the date a request for such certification is filed with such State commission; or

(C) the State commission has sought to impose a term or condition in violation of section 243;

the local exchange carrier may request the Commission to certify the carrier's compliance with the conditions specified in subsection (b).

(3) TIME FOR DECISION; PUBLIC COMMENT.—Unless such Bell operating company consents to a longer period of time, the Commission shall approve, disapprove, or approve with conditions such verification within 90 days after the date of its submission. During such 90 days, the Commission shall afford interested persons an opportunity to present information and evidence concerning such verification.

(4) STANDARD FOR DECISION.—The Commission shall not approve such verification unless the Commission determines that—

(A) the Bell operating company meets each of the conditions required to be certified under subsection (b); and

(B) the agreement or statement submitted under subsection (a)(2) complies with the requirements of section 242 and the regulations thereunder.

(e) ENFORCEMENT OF CONDITIONS.—

(1) COMMISSION AUTHORITY.—If at any time after the approval of a verification under subsection (d), the Commission determines that a Bell operating company has ceased to meet any of the conditions required to be certified under subsection (b), the Commission may, after notice and opportunity for a hearing—

(A) issue an order to such company to correct the deficiency;

(B) impose a penalty on such company pursuant to title V; or

(C) suspend or revoke such approval.

(2) RECEIPT AND REVIEW OF COMPLAINTS.—The Commission shall establish procedures for the review of complaints concerning failures by Bell operating companies to meet conditions required to be certified under subsection (b). Unless the parties otherwise agree, the Commission shall act on such complaint within 90 days.

(3) STATE AUTHORITY.—The authority of the Commission under this subsection shall not be construed to preempt any State commission from taking actions to enforce the conditions required to be certified under subsection (b).

(f) AUTHORITY TO PROVIDE INTERLATA SERVICES.—

(1) PROHIBITION.—Except as provided in paragraph (2) and subsections (g) and (h), a Bell operating company or affiliate thereof may not provide interLATA services.

(2) AUTHORITY SUBJECT TO CERTIFICATION.—A Bell operating company or affiliate thereof may, in any States to which its verification under subsection (a) applies, provide interLATA services—

(A) during any period after the effective date of the Commission's approval of such verification pursuant to subsection (d), and

(B) until the approval of such verification is suspended or revoked by the Commission pursuant to subsection (d).

(g) EXCEPTION FOR PREVIOUSLY AUTHORIZED ACTIVITIES.—Subsection (f) shall not prohibit a Bell operating company or affiliate from engaging, at any time after the date of the enactment of this part, in any activity as authorized by an order entered by the United States District Court for the District of Columbia pursuant to section VII or VIII(C) of the Modification of Final Judgment, if—

(1) such order was entered on or before the date of the enactment of this part, or

(2) a request for such authorization was pending before such court on the date of the enactment of this part.

(h) EXCEPTIONS FOR INCIDENTAL SERVICES.—Subsection (f) shall not prohibit a Bell operating company or affiliate thereof, at any time after the date of the enactment of this part, from providing interLATA services for the purpose of—

(1)(A) providing audio programming, video programming, or other programming services to subscribers to such services of such company;

(B) providing the capability for interaction by such subscribers to select or respond to such audio programming, video programming, or other programming services; or

(C) providing to distributors audio programming or video programming that such company owns or controls, or is licensed by the copyright owner of such programming (or by an assignee of such owner) to distribute;

(2) providing a telecommunications service, using the transmission facilities of a cable system that is an affiliate of such company, between local access and transport areas within a cable system franchise area in which such company is not, on the date of the enactment of this part, a provider of wireline telephone exchange service;

(3) providing commercial mobile services in accordance with section 332(c) of this Act and with the regulations prescribed by the Commission pursuant to paragraph (8) of such section;

(4) providing a service that permits a customer that is located in one local access and transport area to retrieve stored information from, or file information for storage in, information storage facilities of such company that are located in another local access and transport area;

(5) providing signaling information used in connection with the provision of telephone exchange services to a local exchange carrier that, together with any affiliated local exchange carriers, has aggregate annual revenues of less than $100,000,000; or

(6) providing network control signaling information to, and receiving such signaling information from, common carriers offering interLATA services at any location within the area in which such Bell operating company provides telephone exchange services or exchange access.

(i) INTRALATA TOLL DIALING PARITY.—Neither the Commission nor any State may order any Bell operating company to provide dialing parity for intraLATA telephone toll service in any State before the date such company is authorized to provide interLATA services in such State pursuant to this section.

(j) FORBEARANCE.—The Commission may not, pursuant to section 230, forbear from applying any provision of this section or any regulation thereunder until at least 5 years after the date of enactment of this part.

(k) SUNSET.—The provisions of this section shall cease to apply in any local exchange market, defined by geographic area and class or category of service, that the Commission and the State determines has become subject to full and open competition.

(l) DEFINITIONS.—As used in this section—

(1) AUDIO PROGRAMMING.—The term "audio programming" means programming provided by, or generally considered comparable to programming provided by, a radio broadcast station.

(2) VIDEO PROGRAMMING.—The term "video programming" has the meaning provided in section 602.

(3) OTHER PROGRAMMING SERVICES.—The term "other programming services" means information (other than audio programming or video programming) that the person who offers a video programming service makes available to all subscribers generally. For purposes of the preceding sentence, the terms "information" and "makes available to all subscribers generally" have the same meaning such terms have under section 602(13) of this Act.

SEC. 246. COMPETITIVE SAFEGUARDS.

(a) IN GENERAL.—In accordance with the requirements of this section and the regulations adopted thereunder, a Bell operating company or any affiliate thereof providing any interLATA telecommunications or information service, shall do so through a subsidiary that is separate from the Bell operating company or any affiliate thereof that provides telephone exchange service.

(b) TRANSACTION REQUIREMENTS.—Any transaction between such a subsidiary and a Bell operating company and any other affiliate of such company shall be conducted on an arm's-length basis, in the same manner as the Bell operating company conducts business with unaffiliated persons, and shall not be based upon any preference or discrimination in favor of the subsidiary arising out of the subsidiary's affiliation with such company.

(c) SEPARATE OPERATION AND PROPERTY.—A subsidiary required by this section shall—

(1) operate independently from the Bell operating company or any affiliate thereof,

(2) have separate officers, directors, and employees who may not also serve as officers, directors, or employees of the Bell operating company or any affiliate thereof,

(3) not enter into any joint venture activities or partnership with a Bell operating company or any affiliate thereof,

(4) not own any telecommunications transmission or switching facilities in common with the Bell operating company or any affiliate thereof, and

(5) not jointly own or share the use of any other property with the Bell operating company or any affiliate thereof.

(d) BOOKS, RECORDS, AND ACCOUNTS.—Any subsidiary required by this section shall maintain books, records, and accounts in a manner prescribed by the Commission which shall be separate from the books, records, and accounts maintained by a Bell operating company or any affiliate thereof.

(e) PROVISION OF SERVICES AND INFORMATION.—A Bell operating company or any affiliate thereof may not discriminate between a subsidiary required by this section and any other person in the provision or procurement of goods, services, facilities, or information, or in the establishment of standards, and shall not provide any goods, services, facilities or information to a subsidiary required by this section unless such goods, services, facilities or information are made available to others on reasonable, nondiscriminatory terms and conditions.

(f) PREVENTION OF CROSS-SUBSIDIES.—A Bell operating company or any affiliate thereof required to maintain a subsidiary under this

section shall establish and administer, in accordance with the requirements of this section and the regulations prescribed thereunder, a cost allocation system that prohibits any cost of providing interLATA telecommunications or information services from being subsidized by revenue from telephone exchange services and telephone exchange access services. The cost allocation system shall employ a formula that ensures that—

(1) the rates for telephone exchange services and exchange access are no greater than they would have been in the absence of such investment in interLATA telecommunications or information services (taking into account any decline in the real costs of providing such telephone exchange services and exchange access); and

(2) such interLATA telecommunications or information services bear a reasonable share of the joint and common costs of facilities used to provide telephone exchange, exchange access, and competitive services.

(g) ASSETS.—The Commission shall, by regulation, ensure that the economic risks associated with the provision of interLATA telecommunications or information services by a Bell operating company or any affiliate thereof (including any increases in such company's cost of capital that occur as a result of the provision of such services) are not borne by customers of telephone exchange services and exchange access in the event of a business loss or failure. Investments or other expenditures assigned to interLATA telecommunications or information services shall not be reassigned to telephone exchange service or exchange access.

(h) DEBT.—A subsidiary required by this section shall not obtain credit under any arrangement that would—

(1) permit a creditor, upon default, to have resource to the assets of a Bell operating company; or

(2) induce a creditor to rely on the tangible or intangible assets of a Bell operating company in extending credit.

(i) FULFILLMENT OF CERTAIN REQUESTS.—A Bell operating company or an affiliate thereof shall—

(1) fulfill any requests from an unaffiliated entity for telephone exchange service and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or to its affiliates;

(2) fulfill any such requests with telephone exchange service and exchange access of a quality that meets or exceeds the quality of telephone exchange services and exchange access provided by the Bell operating company or its affiliates to itself or its affiliates; and

(3) provide telephone exchange service and exchange access to all providers of intraLATA or interLATA telephone toll services and interLATA information services at cost-based rates that are not unreasonably discriminatory.

(j) CHARGES FOR ACCESS SERVICES.—A Bell operating company or an affiliate thereof shall charge the subsidiary required by this section an amount for telephone exchange services, exchange access, and other necessary associated inputs no less than the rate charged to any unaffiliated entity for such access and inputs.

(k) SUNSET.—The provisions of this section shall cease to apply in any local exchange market 3 years after the date of enactment of this part.

SEC. 247. UNIVERSAL SERVICE.

(a) JOINT BOARD TO PRESERVE UNIVERSAL SERVICE.—Within 30 days after the date of enactment of this part, the Commission shall convene a Federal-State Joint Board under section 410(c) for the purpose of recommending actions to the Commission and State commissions for the preservation of universal service in furtherance of the purposes set forth in section 1 of this Act. In addition to the members required under section 410(c), one member of the Joint Board shall be a State-appointed utility consumer advocate nominated by a national organization of State utility consumer advocates.

(b) PRINCIPLES.—The Joint Board shall base policies for the preservation of universal service on the following principles:

(1) JUST AND REASONABLE RATES.—A plan adopted by the Commission and the States should ensure the continued viability of universal service by maintaining quality services at just and reasonable rates.

(2) DEFINITIONS OF INCLUDED SERVICES; COMPARABILITY IN URBAN AND RURAL AREAS.—Such plan should recommend a definition of the nature and extent of the services encompassed within carriers' universal service obligations. Such plan should seek to promote access to advanced telecommunications services and capabilities, and to promote reasonably comparable services for the general public in urban and rural areas, while maintaining just and reasonable rates.

(3) ADEQUATE AND SUSTAINABLE SUPPORT MECHANISMS.—Such plan should recommend specific and predictable mechanisms to provide adequate and sustainable support for universal service.

(4) EQUITABLE AND NONDISCRIMINATORY CONTRIBUTIONS.—All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation of universal service.

(5) EDUCATIONAL ACCESS TO ADVANCED TELECOMMUNICATIONS SERVICES.—To the extent that a common carrier establishes advanced telecommunications services, such plan should include recommendations to ensure access to advanced telecommunications services for students in elementary and secondary schools.

(6) ADDITIONAL PRINCIPLES.—Such other principles as the Board determines are necessary and appropriate for the protection of the public interest, convenience, and necessity and consistent with the purposes of this Act.

(c) DEFINITION OF UNIVERSAL SERVICE.—In recommending a definition of the nature and extent of the services encompassed within carriers' universal service obligations under subsection (b)(2), the Joint Board shall consider the extent to which—

(1) a telecommunications service has, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers;

(2) such service or capability is essential to public health, public safety, or the public interest;

(3) such service has been deployed in the public switched telecommunications network; and

(4) inclusion of such service within carriers' universal service obligations is otherwise consistent with the public interest, convenience, and necessity.

The Joint Board may, from time to time, recommend to the Commission modifications in the definition proposed under subsection (b).

(d) REPORT; COMMISSION RESPONSE.—The Joint Board convened pursuant to subsection (a) shall report its recommendations within 270 days after the date of enactment of this part. The Commission shall complete any proceeding to act upon such recommendations and to comply with the principles set forth in subsection (b) within one year after such date of enactment.

(e) STATE AUTHORITY.—Nothing in this section shall be construed to restrict the authority of any State to adopt regulations imposing universal service obligations on the provision of intrastate telecommunications services.

(f) SUNSET.—The Joint Board established by this section shall cease to exist 5 years after the date of enactment of this part.

SEC. 248. PRICING FLEXIBILITY AND ABOLITION OF RATE-OF-RETURN REGULATION.

(a) PRICING FLEXIBILITY.—

(1) COMMISSION CRITERIA.—Within 270 days after the date of enactment of this part, the Commission shall complete all actions necessary (including any reconsideration) to establish—

(A) criteria for determining whether a telecommunications service or provider of such service has become, or is substantially certain to become, subject to competition, either within a geographic area or within a class or category of service; and

(B) appropriate flexible pricing procedures that afford a regulated provider of a service described in subparagraph (A) the opportunity to respond fairly to such competition and that are consistent with the protection of subscribers and the public interest, convenience, and necessity.

(2) STATE SELECTION.—A State commission may utilize the flexible pricing procedures or procedures (established under paragraph (1)(B)) that are appropriate in light of the criteria established under paragraph (1)(A).

(3) DETERMINATIONS.—The Commission, with respect to rates for interstate or foreign communications, and State commissions, with respect to rates for intrastate communications, shall, upon application—

(A) render determinations in accordance with the criteria established under paragraph (1)(A) concerning the services or providers that are the subject of such application; and

(B) upon a proper showing, implement appropriate flexible pricing procedures consistent with paragraphs (1)(B) and (2) with respect to such services or providers.

The Commission and such State commission shall approve or reject any such application within 180 days after the date of its submission.

(b) ABOLITION OF RATE-OF-RETURN REGULATION.—Notwithstanding any other provision of law, to the extent that a carrier has complied with sections 242 and 244 of this part, the Commission, with respect to rates for interstate or foreign communications, and State commissions, with respect to rates for intrastate communications, shall not require rate-of-return regulation.

(c) TERMINATION OF PRICE AND OTHER REGULATION.—Notwithstanding any other provision of law, to the extent that a carrier has complied with sections 242 and 244 of this part, the Commission, with respect to interstate or foreign communications, and State commissions, with respect to intrastate communications, shall not, for any service that is determined, in accordance with the criteria established under subsection (a)(1)(A), to be subject to competition that effectively prevents prices for such service that are unjust or unreasonable or unjustly or unreasonably discriminatory—

(1) regulate the prices for such service;

(2) require the filing of a schedule of charges for such service;

(3) require the filing of any cost or revenue projections for such service;

(4) regulate the depreciation charges for facilities used to provide such service; or

(5) require prior approval for the construction or extension of lines or other equipment for the provision of such service.

(d) ABILITY TO CONTINUE AFFORDABLE VOICE-GRADE SERVICE.—Notwithstanding subsections (a), (b), and (c), each State commission shall, for a period of not more than 3 years, permit residential subscribers to continue to receive only basic voice-grade local telephone service equivalent to the service generally available to residential subscribers on the date of enactment of this part, at just, reasonable, and affordable rates. Determinations concerning the affordability of rates for such services shall take into account the rates generally available to residential subscribers on such date of enactment and the pricing rules established by the States. Any increases in the rates for such services for residential subscribers that are not attributable to changes in consumer prices generally shall be permitted in any proceeding commenced after the date of enactment of this section upon a showing that such increase is necessary to ensure the continued availability of universal service, prevent economic disadvantages for one or more service providers, and is in the public interest. Such increase in rates shall be minimized to the greatest extent practical and shall be implemented over a time period of not more than 3 years after the date of enactment of this section. The requirements of this subsection shall not apply to any rural telephone company if the rates for basic voice-grade local telephone service of that company are not subject to regulation by a State commission on the date of enactment of this part.

(e) INTERSTATE INTEREXCHANGE SERVICE.—The rates charged by providers of interstate interexchange telecommunications service to customers in rural and high cost areas shall be maintained at levels no higher than those charged by each such provider to its customers in urban areas.

(f) EXCEPTION.—In the case of commercial mobile services, the provisions of section 332(c)(1) shall apply in lieu of the provisions of this section.

(g) AVOIDANCE OF REDUNDANT REGULATIONS.—Nothing in this section shall be construed to prohibit the Commission or a State commission from enforcing regulations prescribed prior to the date of enactment of this part in fulfilling the requirements of this section, to the extent that such regulations are consistent with the provisions of this section.

SEC. 249. NETWORK FUNCTIONALITY AND ACCESSIBILITY.

(a) FUNCTIONALITY AND ACCESSIBILITY.—The duty of a common carrier under section 201(a) to furnish communications service includes the duty to furnish that service in accordance with any standards established pursuant to this section.

(b) COORDINATION FOR INTERCONNECTIVITY.—The Commission—

(1) shall establish procedures for Commission oversight of coordinated network planning by common carriers and other providers of telecommunications services for the effective and efficient interconnection of public switched networks; and

(2) may participate, in a manner consistent with its authority and practice prior to the date of enactment of this section, in the development by appropriate industry standards-setting organizations of interconnection standards that promote access to—

(A) network capabilities and services by individuals with disabilities; and

(B) information services by subscribers to telephone exchange service furnished by a rural telephone company.

(c) ACCESSIBILITY FOR INDIVIDUALS WITH DISABILITIES.—

(1) ACCESSIBILITY.—Within 1 year after the date of enactment of this section, the Commission shall prescribe such regulations as are necessary to ensure that, if readily achievable, advances in network services deployed by common carriers, and telecommunications equipment and customer premises equipment manufactured for use in conjunction with network services, shall be accessible and usable by individuals with disabilities, including individuals with functional limitations of hearing, vision, movement, manipulation, speech, and interpretation of information. Such regulations shall permit the use of both standard and special equipment, and seek to minimize the need of individuals to acquire additional devices beyond those used by the general public to obtain such access. Throughout the process of developing such regulations, the Commission shall coordinate and consult with representatives of individuals with disabilities and interested equipment and service providers to ensure their concerns and interests are given full consideration in such process.

(2) COMPATIBILITY.—Such regulations shall require that whenever an undue burden or adverse competitive impact would result from the requirements in paragraph (1), the local exchange carrier that deploys the network service shall ensure that the network service in question is compatible with existing peripheral devices or specialized customer premises equipment commonly used by persons with disabilities to achieve access,

unless doing so would result in an undue burden or adverse competitive impact.

(3) UNDUE BURDEN.—The term "undue burden" means significant difficulty or expense. In determining whether the activity necessary to comply with the requirements of this subsection would result in an undue burden, the factors to be considered include the following:

(A) The nature and cost of the activity.

(B) The impact on the operation of the facility involved in the deployment of the network service.

(C) The financial resources of the local exchange carrier.

(D) The type of operations of the local exchange carrier.

(4) ADVERSE COMPETITIVE IMPACT.—In determining whether the activity necessary to comply with the requirements of this subsection would result in adverse competitive impact, the following factors shall be considered:

(A) Whether such activity would raise the cost of the network service in question beyond the level at which there would be sufficient consumer demand by the general population to make the network service profitable.

(B) Whether such activity would, with respect to the network service in question, put the local exchange carrier at a competitive disadvantage. This factor may be considered so long as competing network service providers are not held to the same obligation with respect to access by persons with disabilities.

(5) EFFECTIVE DATE.—The regulations required by this subsection shall become effective 18 months after the date of enactment of this part.

(d) PRIVATE RIGHTS OF ACTIONS PROHIBITED.—Nothing in this section shall be construed to authorize any private right of action to enforce any requirement of this section or any regulation thereunder. The Commission shall have exclusive jurisdiction with respect to any complaint under this section.

SEC. 250. MARKET ENTRY BARRIERS.

(a) ELIMINATION OF BARRIERS.—Within 15 months after the date of enactment of this part, the Commission shall complete a proceeding for the purpose of identifying and eliminating, by regulations pursuant to its authority under this Act (other than this section), market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services, or in the provision of parts or services to providers of telecommunications services and information services.

(b) NATIONAL POLICY.—In carrying out subsection (a), the Commission shall seek to promote the policies and purposes of this Act favoring diversity of points of view, vigorous economic competition, technological advancement, and promotion of the public interest, convenience, and necessity.

(c) PERIODIC REVIEW.—Every 3 years following the completion of the proceeding required by subsection (a), the Commission shall review and report to Congress on—

(1) any regulations prescribed to eliminate barriers within its jurisdiction that are identified under subsection (a) and that

can be prescribed consistent with the public interest, convenience, and necessity; and

(2) the statutory barriers identified under subsection (a) that the Commission recommends be eliminated, consistent with the public interest, convenience, and necessity.

SEC. 251. ILLEGAL CHANGES IN SUBSCRIBER CARRIER SELECTIONS.

No common carrier shall submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe. Nothing in this section shall preclude any State commission from enforcing such procedures with respect to intrastate services.

SEC. 252. STUDY.

At least once every three years, the Commission shall conduct a study that—

(1) reviews the definition of, and the adequacy of support for, universal service, and evaluates the extent to which universal service has been protected and access to advanced services has been facilitated pursuant to this part and the plans and regulations thereunder;

(2) evaluates the extent to which access to advanced telecommunications services for students in elementary and secondary school classrooms has been attained pursuant to section 247(b)(5); and

(3) determines whether the regulations established under section 249(c) have ensured that advances in network services by providers of telecommunications services and information services are accessible and usable by individuals with disabilities.

SEC. 253. TERRITORIAL EXEMPTION.

Until 5 years after the date of enactment of this part, the provisions of this part shall not apply to any local exchange carrier in any territory of the United States if (1) the local exchange carrier is owned by the government of such territory, and (2) on the date of enactment of this part, the number of households in such territory subscribing to telephone service is less than 85 percent of the total households located in such territory.

PART III—SPECIAL AND TEMPORARY PROVISIONS

SEC. 271. MANUFACTURING BY BELL OPERATING COMPANIES.

(a) ACCESS AND INTERCONNECTION.—It shall be unlawful for a Bell operating company, directly or through an affiliate, to manufacture telecommunications equipment or customer premises equipment, until the Commission has approved under section 245(c) verifications that such Bell operating company, and each Bell operating company with which it is affiliated, are in compliance with the access and interconnection requirements of part II of this title.

(b) COLLABORATION.—Subsection (a) shall not prohibit a Bell operating company from engaging in close collaboration with any manufacturer of customer premises equipment or telecommuni-

cations equipment during the design and development of hardware, software, or combinations thereof related to such equipment.

(c) INFORMATION REQUIREMENTS.—

(1) INFORMATION ON PROTOCOLS AND TECHNICAL REQUIREMENTS.—Each Bell operating company shall, in accordance with regulations prescribed by the Commission, maintain and file with the Commission full and complete information with respect to the protocols and technical requirements for connection with and use of its telephone exchange service facilities. Each such company shall report promptly to the Commission any material changes or planned changes to such protocols and requirements, and the schedule for implementation of such changes or planned changes.

(2) DISCLOSURE OF INFORMATION.—A Bell operating company shall not disclose any information required to be filed under paragraph (1) unless that information has been filed promptly, as required by regulation by the Commission.

(3) ACCESS BY COMPETITORS TO INFORMATION.—The Commission may prescribe such additional regulations under this subsection as may be necessary to ensure that manufacturers have access to the information with respect to the protocols and technical requirements for connection with and use of telephone exchange service facilities that a Bell operating company makes available to any manufacturing affiliate or any unaffiliated manufacturer.

(4) PLANNING INFORMATION.—Each Bell operating company shall provide, to contiguous common carriers providing telephone exchange service, timely information on the planned deployment of telecommunications equipment.

(d) MANUFACTURING LIMITATIONS FOR STANDARD-SETTING ORGANIZATIONS.—

(1) BELL COMMUNICATIONS RESEARCH.—The Bell Communications Research Corporation, or any successor entity, shall not engage in manufacturing telecommunications equipment or customer premises equipment so long as—

(A) such Corporation or entity is owned, in whole or in part, by one or more Bell operating companies; or

(B) such Corporation or entity engages in establishing standards for telecommunications equipment, customer premises equipment, or telecommunications services, or any product certification activities with respect to telecommunications equipment or customer premises equipment.

(2) PARTICIPATION IN STANDARD SETTING; PROTECTION OF PROPRIETARY INFORMATION.—Any entity (including such Corporation) that engages in establishing standards for—

(A) telecommunications equipment, customer premises equipment, or telecommunications services, or

(B) any product certification activities with respect to telecommunications equipment or customer premises equipment,

for one or more Bell operating companies shall allow any other person to participate fully in such activities on a nondiscriminatory basis. Any such entity shall protect proprietary information submitted for review in the standards-setting and certifi-

cation processes from release not specifically authorized by the owner of such information, even after such entity ceases to be so engaged.

(e) BELL OPERATING COMPANY EQUIPMENT PROCUREMENT AND SALES.—

(1) OBJECTIVE BASIS.—Each Bell operating company and any entity acting on behalf of a Bell operating company shall make procurement decisions and award all supply contracts for equipment, services, and software on the basis of an objective assessment of price, quality, delivery, and other commercial factors.

(2) SALES RESTRICTIONS.—A Bell operating company engaged in manufacturing may not restrict sales to any local exchange carrier of telecommunications equipment, including software integral to the operation of such equipment and related upgrades.

(3) PROTECTION OF PROPRIETARY INFORMATION.—A Bell operating company and any entity it owns or otherwise controls shall protect the proprietary information submitted for procurement decisions from release not specifically authorized by the owner of such information.

(f) ADMINISTRATION AND ENFORCEMENT AUTHORITY.—For the purposes of administering and enforcing the provisions of this section and the regulations prescribed thereunder, the Commission shall have the same authority, power, and functions with respect to any Bell operating company or any affiliate thereof as the Commission has in administering and enforcing the provisions of this title with respect to any common carrier subject to this Act.

(g) EXCEPTION FOR PREVIOUSLY AUTHORIZED ACTIVITIES.—Nothing in this section shall prohibit a Bell operating company or affiliate from engaging, at any time after the date of the enactment of this part, in any activity as authorized by an order entered by the United States District Court for the District of Columbia pursuant to section VII or VIII(C) of the Modification of Final Judgment, if—

(1) such order was entered on or before the date of the enactment of this part, or

(2) a request for such authorization was pending before such court on the date of the enactment of this part.

(h) ANTITRUST LAWS.—Nothing in this section shall be construed to modify, impair, or supersede the applicability of any of the antitrust laws.

(i) DEFINITION.—As used in this section, the term "manufacturing" has the same meaning as such term has under the Modification of Final Judgment.

SEC. 272. ELECTRONIC PUBLISHING BY BELL OPERATING COMPANIES.

(a) LIMITATIONS.—No Bell operating company or any affiliate may engage in the provision of electronic publishing that is disseminated by means of such Bell operating company's or any of its affiliates' basic telephone service, except that nothing in this section shall prohibit a separated affiliate or electronic publishing joint venture operated in accordance with this section from engaging in the provision of electronic publishing.

(b) SEPARATED AFFILIATE OR ELECTRONIC PUBLISHING JOINT VENTURE REQUIREMENTS.—A separated affiliate or electronic publishing joint venture shall be operated independently from the Bell

operating company. Such separated affiliate or joint venture and the Bell operating company with which it is affiliated shall—

(1) maintain separate books, records, and accounts and prepare separate financial statements;

(2) not incur debt in a manner that would permit a creditor of the separated affiliate or joint venture upon default to have recourse to the assets of the Bell operating company;

(3) carry out transactions (A) in a manner consistent with such independence, (B) pursuant to written contracts or tariffs that are filed with the Commission and made publicly available, and (C) in a manner that is auditable in accordance with generally accepted auditing standards;

(4) value any assets that are transferred directly or indirectly from the Bell operating company to a separated affiliate or joint venture, and record any transactions by which such assets are transferred, in accordance with such regulations as may be prescribed by the Commission or a State commission to prevent improper cross subsidies;

(5) between a separated affiliate and a Bell operating company—

(A) have no officers, directors, and employees in common after the effective date of this section; and

(B) own no property in common;

(6) not use for the marketing of any product or service of the separated affiliate or joint venture, the name, trademarks, or service marks of an existing Bell operating company except for names, trademarks, or service marks that are or were used in common with the entity that owns or controls the Bell operating company;

(7) not permit the Bell operating company—

(A) to perform hiring or training of personnel on behalf of a separated affiliate;

(B) to perform the purchasing, installation, or maintenance of equipment on behalf of a separated affiliate, except for telephone service that it provides under tariff or contract subject to the provisions of this section; or

(C) to perform research and development on behalf of a separated affiliate;

(8) each have performed annually a compliance review—

(A) that is conducted by an independent entity for the purpose of determining compliance during the preceding calendar year with any provision of this section; and

(B) the results of which are maintained by the separated affiliate or joint venture and the Bell operating company for a period of 5 years subject to review by any lawful authority;

(9) within 90 days of receiving a review described in paragraph (8), file a report of any exceptions and corrective action with the Commission and allow any person to inspect and copy such report subject to reasonable safeguards to protect any proprietary information contained in such report from being used for purposes other than to enforce or pursue remedies under this section.

(c) JOINT MARKETING.—

(1) IN GENERAL.—Except as provided in paragraph (2)—

(A) a Bell operating company shall not carry out any promotion, marketing, sales, or advertising for or in conjunction with a separated affiliate; and

(B) a Bell operating company shall not carry out any promotion, marketing, sales, or advertising for or in conjunction with an affiliate that is related to the provision of electronic publishing.

(2) PERMISSIBLE JOINT ACTIVITIES.—

(A) JOINT TELEMARKETING.—A Bell operating company may provide inbound telemarketing or referral services related to the provision of electronic publishing for a separated affiliate, electronic publishing joint venture, affiliate, or unaffiliated electronic publisher, provided that if such services are provided to a separated affiliate, electronic publishing joint venture, or affiliate, such services shall be made available to all electronic publishers on request, on nondiscriminatory terms.

(B) TEAMING ARRANGEMENTS.—A Bell operating company may engage in nondiscriminatory teaming or business arrangements to engage in electronic publishing with any separated affiliate or with any other electronic publisher if (i) the Bell operating company only provides facilities, services, and basic telephone service information as authorized by this section, and (ii) the Bell operating company does not own such teaming or business arrangement.

(C) ELECTRONIC PUBLISHING JOINT VENTURES.—A Bell operating company or affiliate may participate on a nonexclusive basis in electronic publishing joint ventures with entities that are not any Bell operating company, affiliate, or separated affiliate to provide electronic publishing services, if the Bell operating company or affiliate has not more than a 50 percent direct or indirect equity interest (or the equivalent thereof) or the right to more than 50 percent of the gross revenues under a revenue sharing or royalty agreement in any electronic publishing joint venture. Officers and employees of a Bell operating company or affiliate participating in an electronic publishing joint venture may not have more than 50 percent of the voting control over the electronic publishing joint venture. In the case of joint ventures with small, local electronic publishers, the Commission for good cause shown may authorize the Bell operating company or affiliate to have a larger equity interest, revenue share, or voting control but not to exceed 80 percent. A Bell operating company participating in an electronic publishing joint venture may provide promotion, marketing, sales, or advertising personnel and services to such joint venture.

(d) PRIVATE RIGHT OF ACTION.—

(1) DAMAGES.—Any person claiming that any act or practice of any Bell operating company, affiliate, or separated affiliate constitutes a violation of this section may file a complaint with the Commission or bring suit as provided in section 207 of this Act, and such Bell operating company, affiliate, or separated af-

filiate shall be liable as provided in section 206 of this Act; except that damages may not be awarded for a violation that is discovered by a compliance review as required by subsection (b)(7) of this section and corrected within 90 days.

(2) CEASE AND DESIST ORDERS.—In addition to the provisions of paragraph (1), any person claiming that any act or practice of any Bell operating company, affiliate, or separated affiliate constitutes a violation of this section may make application to the Commission for an order to cease and desist such violation or may make application in any district court of the United States of competent jurisdiction for an order enjoining such acts or practices or for an order compelling compliance with such requirement.

(e) SEPARATED AFFILIATE REPORTING REQUIREMENT.—Any separated affiliate under this section shall file with the Commission annual reports in a form substantially equivalent to the Form 10–K required by regulations of the Securities and Exchange Commission.

(f) EFFECTIVE DATES.—

(1) TRANSITION.—Any electronic publishing service being offered to the public by a Bell operating company or affiliate on the date of enactment of this section shall have one year from such date of enactment to comply with the requirements of this section.

(2) SUNSET.—The provisions of this section shall not apply to conduct occurring after June 30, 2000.

(g) DEFINITION OF ELECTRONIC PUBLISHING.—

(1) IN GENERAL.—The term "electronic publishing" means the dissemination, provision, publication, or sale to an unaffiliated entity or person, of any one or more of the following: news (including sports); entertainment (other than interactive games); business, financial, legal, consumer, or credit materials; editorials, columns, or features; advertising; photos or images; archival or research material; legal notices or public records; scientific, educational, instructional, technical, professional, trade, or other literary materials; or other like or similar information.

(2) EXCEPTIONS.—The term "electronic publishing" shall not include the following services:

(A) Information access, as that term is defined by the Modification of Final Judgment.

(B) The transmission of information as a common carrier.

(C) The transmission of information as part of a gateway to an information service that does not involve the generation or alteration of the content of information, including data transmission, address translation, protocol conversion, billing management, introductory information content, and navigational systems that enable users to access electronic publishing services, which do not affect the presentation of such electronic publishing services to users.

(D) Voice storage and retrieval services, including voice messaging and electronic mail services.

(E) Data processing or transaction processing services that do not involve the generation or alteration of the content of information.

(F) Electronic billing or advertising of a Bell operating company's regulated telecommunications services.

(G) Language translation or data format conversion.

(H) The provision of information necessary for the management, control, or operation of a telephone company telecommunications system.

(I) The provision of directory assistance that provides names, addresses, and telephone numbers and does not include advertising.

(J) Caller identification services.

(K) Repair and provisioning databases and credit card and billing validation for telephone company operations.

(L) 911–E and other emergency assistance databases.

(M) Any other network service of a type that is like or similar to these network services and that does not involve the generation or alteration of the content of information.

(N) Any upgrades to these network services that do not involve the generation or alteration of the content of information.

(O) Video programming or full motion video entertainment on demand.

(h) ADDITIONAL DEFINITIONS.—As used in this section—

(1) The term "affiliate" means any entity that, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with, a Bell operating company. Such term shall not include a separated affiliate.

(2) The term "basic telephone service" means wireline telephone exchange service provided by a Bell operating company in a telephone exchange area, except that such term does not include—

(A) a competitive wireline telephone exchange service provided in a telephone exchange area where another entity provides a wireline telephone exchange service that was provided on January 1, 1984, and

(B) a commercial mobile service.

(3) The term "basic telephone service information" means network and customer information of a Bell operating company and other information acquired by a Bell operating company as a result of its engaging in the provision of basic telephone service.

(4) The term "control" has the meaning that it has in 17 C.F.R. 240.12b–2, the regulations promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or any successor provision to such section.

(5) The term "electronic publishing joint venture" means a joint venture owned by a Bell operating company or affiliate that engages in the provision of electronic publishing which is disseminated by means of such Bell operating company's or any of its affiliates' basic telephone service.

(6) The term "entity" means any organization, and includes corporations, partnerships, sole proprietorships, associations, and joint ventures.

(7) The term "inbound telemarketing" means the marketing of property, goods, or services by telephone to a customer or potential customer who initiated the call.

(8) The term "own" with respect to an entity means to have a direct or indirect equity interest (or the equivalent thereof) of more than 10 percent of an entity, or the right to more than 10 percent of the gross revenues of an entity under a revenue sharing or royalty agreement.

(9) The term "separated affiliate" means a corporation under common ownership or control with a Bell operating company that does not own or control a Bell operating company and is not owned or controlled by a Bell operating company and that engages in the provision of electronic publishing which is disseminated by means of such Bell operating company's or any of its affiliates' basic telephone service.

(10) The term "Bell operating company" has the meaning provided in section 3, except that such term includes any entity or corporation that is owned or controlled by such a company (as so defined) but does not include an electronic publishing joint venture owned by such an entity or corporation.

SEC. 273. ALARM MONITORING AND TELEMESSAGING SERVICES BY BELL OPERATING COMPANIES.

(a) DELAYED ENTRY INTO ALARM MONITORING.—

(1) PROHIBITION.—No Bell operating company or affiliate thereof shall engage in the provision of alarm monitoring services before the date which is 6 years after the date of enactment of this part.

(2) EXISTING ACTIVITIES.—Paragraph (1) shall not apply to any provision of alarm monitoring services in which a Bell operating company or affiliate is lawfully engaged as of January 1, 1995, except that such Bell operating company or any affiliate may not acquire or otherwise obtain control of additional entities providing alarm monitoring services after such date.

(b) NONDISCRIMINATION.—A common carrier engaged in the provision of alarm monitoring services or telemessaging services shall—

(1) provide nonaffiliated entities, upon reasonable request, with the network services it provides to its own alarm monitoring or telemessaging operations, on nondiscriminatory terms and conditions; and

(2) not subsidize its alarm monitoring services or its telemessaging services either directly or indirectly from telephone exchange service operations.

(c) EXPEDITED CONSIDERATION OF COMPLAINTS.—The Commission shall establish procedures for the receipt and review of complaints concerning violations of subsection (b) or the regulations thereunder that result in material financial harm to a provider of alarm monitoring service or telemessaging service. Such procedures shall ensure that the Commission will make a final determination with respect to any such complaint within 120 days after receipt of the complaint. If the complaint contains an appropriate showing that the alleged violation occurred, as determined by the Commission in accordance with such regulations, the Commission shall, within 60 days after receipt of the complaint, order the common car-

rier and its affiliates to cease engaging in such violation pending such final determination.

(d) DEFINITIONS.—As used in this section:

(1) ALARM MONITORING SERVICE.—The term "alarm monitoring service" means a service that uses a device located at a residence, place of business, or other fixed premises—

(A) to receive signals from other devices located at or about such premises regarding a possible threat at such premises to life, safety, or property, from burglary, fire, vandalism, bodily injury, or other emergency, and

(B) to transmit a signal regarding such threat by means of transmission facilities of a Bell operating company or one of its affiliates to a remote monitoring center to alert a person at such center of the need to inform the customer or another person or police, fire, rescue, security, or public safety personnel of such threat,

but does not include a service that uses a medical monitoring device attached to an individual for the automatic surveillance of an ongoing medical condition.

(2) TELEMESSAGING SERVICES.—The term "telemessaging services" means voice mail and voice storage and retrieval services provided over telephone lines for telemessaging customers and any live operator services used to answer, record, transcribe, and relay messages (other than telecommunications relay services) from incoming telephone calls on behalf of the telemessaging customers (other than any service incidental to directory assistance).

SEC. 274. PROVISION OF PAYPHONE SERVICE.

(a) NONDISCRIMINATION SAFEGUARDS.—After the effective date of the rules prescribed pursuant to subsection (b), any Bell operating company that provides payphone service—

(1) shall not subsidize its payphone service directly or indirectly with revenue from its telephone exchange service or its exchange access service; and

(2) shall not prefer or discriminate in favor of it payphone service.

(b) REGULATIONS.—

(1) CONTENTS OF REGULATIONS.—In order to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public, within 9 months after the date of enactment of this section, the Commission shall take all actions necessary (including any reconsideration) to prescribe regulations that—

(A) establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone, except that emergency calls and telecommunications relay service calls for hearing disabled individuals shall not be subject to such compensation;

(B) discontinue the intrastate and interstate carrier access charge payphone service elements and payments in effect on the date of enactment of this section, and all intrastate and interstate payphone subsidies from basic ex-

change and exchange access revenues, in favor of a compensation plan as specified in subparagraph (A);

(C) prescribe a set of nonstructural safeguards for Bell operating company payphone service to implement the provisions of paragraphs (1) and (2) of subsection (a), which safeguards shall, at a minimum, include the nonstructural safeguards equal to those adopted in the Computer Inquiry-III CC Docket No. 90–623 proceeding; and

(D) provide for Bell operating company payphone service providers to have the same right that independent payphone providers have to negotiate with the location provider on selecting and contracting with, and, subject to the terms of any agreement with the location provider, to select and contract with the carriers that carry interLATA calls from their payphones, and provide for all payphone service providers to have the right to negotiate with the location provider on selecting and contracting with, and, subject to the terms of any agreement with the location provider, to select and contract with the carriers that carry intraLATA calls from their payphones.

(2) PUBLIC INTEREST TELEPHONES.—In the rulemaking conducted pursuant to paragraph (1), the Commission shall determine whether public interest payphones, which are provided in the interest of public health, safety, and welfare, in locations where there would otherwise not be a payphone, should be maintained, and if so, ensure that such public interest payphones are supported fairly and equitably.

(3) EXISTING CONTRACTS.—Nothing in this section shall affect any existing contracts between location providers and payphone service providers or interLATA or intraLATA carriers that are in force and effect as of the date of the enactment of this Act.

(c) STATE PREEMPTION.—To the extent that any State requirements are inconsistent with the Commission's regulations, the Commission's regulations on such matters shall preempt State requirements.

(d) DEFINITION.—As used in this section, the term "payphone service" means the provision of public or semi-public pay telephones, the provision of inmate telephone service in correctional institutions, and any ancillary services.

[TITLE III—PROVISIONS RELATING TO RADIO

[PART I—GENERAL PROVISIONS]

TITLE III—PROVISIONS RELATING TO RADIO

PART I—GENERAL PROVISIONS

* * * * * * *

SEC. 303. GENERAL POWERS OF COMMISSION.

Except as otherwise provided in this Act, the Commission from time to time, as public convenience, interest, or necessity requires shall—

(a) * * *

* * * * * * *

(v) Have exclusive jurisdiction over the regulation of the direct broadcast satellite service.

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SEC. 307. ALLOCATION OF FACILITIES; TERM OF LICENSES.

(a) * * *

* * * * * * *

[(c) No license granted for the operation of a television broadcasting station shall be for a longer term than five years and no license so granted for any other class of station (other than a radio broadcasting station) shall be for a longer term than ten years, and any license granted may be revoked as hereinafter provided. Each license granted for the operation of a radio broadcasting station shall be for a term of not to exceed seven years. The term of any license for the operation of any auxiliary broadcast station or equipment which can be used only in conjunction with a primary radio, television, or translator station shall be concurrent with the term of the license for such primary radio, television, or translator station. Upon the expiration of any license, upon application therefor, a renewal of such license may be granted from time to time for a term of not to exceed five years in the case of television broadcasting licenses, for a term of not to exceed seven years in the case of radio broadcasting station licenses, and for a term of not to exceed ten years in the case of other licenses, if the Commission finds that public interest, convenience, and necessity would be served thereby. In order to expedite action on applications for renewal of broadcasting station licenses and in order to avoid needless expense to applicants for such renewals, the Commission shall not require any such applicant to file any information which previously has been furnished to the Commission or which is not directly material to the considerations that affect the granting or denial of such application, but the Commission may require any new or additional facts it deems necessary to make its findings. Pending any hearing and final decision on such an application and the disposition of any petition for rehearing pursuant to section 405, the Commission shall continue such license in effect. Consistently with the foregoing provisions of this subsection, the Commission may by rule prescribe the period or periods for which licenses shall be granted and renewed for particular classes of stations, but the Commission may not adopt or follow any rule which would preclude it, in any case involving a station of a particular class, from granting or renewing a license for a shorter period than that prescribed for stations of such class if, in its judgment, public interest, convenience, or necessity would be served by such action.**]**

(c) TERMS OF LICENSES.—

(1) INITIAL AND RENEWAL LICENSES.—Each license granted for the operation of a broadcasting station shall be for a term

of not to exceed seven years. Upon application therefor, a renewal of such license may be granted from time to time for a term of not to exceed seven years from the date of expiration of the preceding license, if the Commission finds that public interest, convenience, and necessity would be served thereby. Consistent with the foregoing provisions of this subsection, the Commission may by rule prescribe the period or periods for which licenses shall be granted and renewed for particular classes of stations, but the Commission may not adopt or follow any rule which would preclude it, in any case involving a station of a particular class, from granting or renewing a license for a shorter period than that prescribed for stations of such class if, in its judgment, public interest, convenience, or necessity would be served by such action.

(2) MATERIALS IN APPLICATION.—In order to expedite action on applications for renewal of broadcasting station licenses and in order to avoid needless expense to applicants for such renewals, the Commission shall not require any such applicant to file any information which previously has been furnished to the Commission or which is not directly material to the considerations that affect the granting or denial of such application, but the Commission may require any new or additional facts it deems necessary to make its findings.

(3) CONTINUATION PENDING DECISION.—Pending any hearing and final decision on such an application and the disposition of any petition for rehearing pursuant to section 405, the Commission shall continue such license in effect.

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SEC. 309. ACTION UPON APPLICATIONS; FORM OF AND CONDITIONS ATTACHED TO LICENSES.

(a) * * *

* * * * * * *

(d)(1) Any party in interest may file with the Commission a petition to deny any application (whether as originally filed or as amended) to which subsection (b) of this section applies at any time prior to the day of Commission grant thereof without hearing or the day of formal designation thereof for hearing; except that with respect to any classification of applications, the Commission from time to time by rule may specify a shorter period (no less than thirty days following the issuance of public notice by the Commission of the acceptance for filing of such application or of any substantial amendment thereof), which shorter period shall be reasonably related to the time when the applications would normally be reached for processing. The petitioner shall serve a copy of such petition on the applicant. The petition shall contain specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the application would be prima facie inconsistent with subsection (a) *(or subsection (k) in the case of renewal of any broadcast station license).* Such allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge thereof. The applicant shall be given the opportunity to file a reply in which allegations of fact or denials thereof shall similarly be supported by affidavit.

(2) If the Commission finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there are no substantial and material questions of fact and that a grant of the application would be consistent with subsection (a) *(or subsection (k) in the case of renewal of any broadcast station license)*, it shall make the grant, deny the petition, and issue a concise statement of the reasons for denying the petition, which statement shall dispose of all substantial issues raised by the petition. If a substantial and material question of fact is presented or if the Commission for any reason is unable to find that grant of the application would be consistent with subsection (a) *(or subsection (k) in the case of renewal of any broadcast station license)*, it shall proceed as provided in subsection (e).

* * * * * * *

(k) BROADCAST STATION RENEWAL PROCEDURES.—

(1) STANDARDS FOR RENEWAL.—If the licensee of a broadcast station submits an application to the Commission for renewal of such license, the Commission shall grant the application if it finds, with respect to that station, during the preceding term of its license—

(A) the station has served the public interest, convenience, and necessity;

(B) there have been no serious violations by the licensee of this Act or the rules and regulations of the Commission; and

(C) there have been no other violations by the licensee of this Act or the rules and regulations of the Commission which, taken together, would constitute a pattern of abuse.

(2) CONSEQUENCE OF FAILURE TO MEET STANDARD.—If any licensee of a broadcast station fails to meet the requirements of this subsection, the Commission may deny the application for renewal in accordance with paragraph (3), or grant such application on terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted.

(3) STANDARDS FOR DENIAL.—If the Commission determines, after notice and opportunity for a hearing as provided in subsection (e), that a licensee has failed to meet the requirements specified in paragraph (1) and that no mitigating factors justify the imposition of lesser sanctions, the Commission shall—

(A) issue an order denying the renewal application filed by such licensee under section 308; and

(B) only thereafter accept and consider such applications for a construction permit as may be filed under section 308 specifying the channel or broadcasting facilities of the former licensee.

(4) COMPETITOR CONSIDERATION PROHIBITED.—In making the determinations specified in paragraph (1) or (2), the Commission shall not consider whether the public interest, convenience, and necessity might be served by the grant of a license to a person other than the renewal applicant.

SEC. 310. LIMITATION ON HOLDING AND TRANSFER OF LICENSES.

[(a) The station license required under this Act shall not be granted to or held by any foreign government or the representative thereof.]

(a) GRANT TO OR HOLDING BY FOREIGN GOVERNMENT OR REPRESENTATIVE.—No station license required under title III of this Act shall be granted to or held by any foreign government or any representative thereof. This subsection shall not apply to licenses issued under such terms and conditions as the Commission may prescribe to mobile earth stations engaged in occasional or short-term transmissions via satellite of audio or television program material and auxilliary signals if such transmissions are not intended for direct reception by the general public in the United States.

* * * * * * *

(f) TERMINATION OF FOREIGN OWNERSHIP RESTRICTIONS.—

(1) RESTRICTION NOT TO APPLY.—Subsection (b) shall not apply to any common carrier license granted, or for which application is made, after the date of enactment of this subsection with respect to any alien (or representative thereof), corporation, or foreign government (or representative thereof) if—

(A) the President determines that the foreign country of which such alien is a citizen, in which such corporation is organized, or in which the foreign government is in control is party to an international agreement which requires the United States to provide national or most-favored-nation treatment in the grant of common carrier licenses; or

(B) the Commission determines that not applying subsection (b) would serve the public interest.

(2) COMMISSION CONSIDERATIONS.—In making its determination, under paragraph (1)(B), the Commission may consider, among other public interest factors, whether effective competitive opportunities are available to United States nationals or corporations in the applicant's home market. In evaluating the public interest, the Commission shall exercise great deference to the President with respect to United States national security, law enforcement requirements, foreign policy, the interpretation of international agreements, and trade policy (as well as direct investment as it relates to international trade policy). Upon receipt of an application that requires a finding under this paragraph, the Commission shall cause notice thereof to be given to the President or any agencies designated by the President to receive such notification.

(3) FURTHER COMMISSION REVIEW.—Except as otherwise provided in this paragraph, the Commission may determine that any foreign country with respect to which it has made a determination under paragraph (1) has ceased to meet the requirements for that determination. In making this determination, the Commission shall exercise great deference to the President with respect to United States national security, law enforcement requirements, foreign policy, the interpretation of international agreements, and trade policy (as well as direct investment as it relates to international trade policy). If a determination under this paragraph is made then—

(A) subsection (b) shall apply with respect to such aliens, corporation, and government (or their representatives) on the date that the Commission publishes notice of its determination under this paragraph; and

(B) any license held, or application filed, which could not be held or granted under subsection (b) shall be reviewed by the Commission under the provisions of paragraphs (1)(B) and (2).

(4) OBSERVANCE OF INTERNATIONAL OBLIGATIONS.—Paragraph (3) shall not apply to the extent the President determines that it is inconsistent with any international agreement to which the United States is a party.

(5) NOTIFICATIONS TO CONGRESS.—The President and the Commission shall notify the appropriate committees of the Congress of any determinations made under paragraph (1), (2), or (3).

* * * * * * *

SEC. 325. FALSE DISTRESS SIGNALS; REBROADCASTING; STUDIOS OF FOREIGN STATIONS.

(a) * * *

(b)(1) * * *

(2) The provisions of this subsection shall not apply to—

(A) * * *

* * * * * * *

[(D) retransmission by a cable operator or other multichannel video programming distributor of the signal of a superstation if such signal was obtained from a satellite carrier and the originating station was a superstation on May 1, 1991.]

(D) retransmission by a cable operator or other multichannel video programming distributor of the signal of a superstation if (i) the customers served by the cable operator or other multichannel video programming distributor reside outside the originating station's television market, as defined by the Commission for purposes of section 614(h)(1)(C); (ii) such signal was obtained from a satellite carrier or terrestrial microwave common carrier; and (iii) and the origination station was a superstation on May 1, 1991.

For purposes of this paragraph, the terms "satellite carrier", "superstation", and "unserved household" have the meanings given those terms, respectively, in section 119(d) of title 17, United States Code, as in effect on the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992.

* * * * * * *

SEC. 332. MOBILE SERVICES.

(a) * * *

* * * * * * *

(c) REGULATORY TREATMENT OF MOBILE SERVICES.—

(1) * * *

* * * * * * *

(7) FACILITIES SITING POLICIES.—(A) Within 180 days after enactment of this paragraph, the Commission shall prescribe and make effective a policy regarding State and local regulation of the placement, construction, modification, or operation of facilities for the provision of commercial mobile services.

(B) Pursuant to subchapter III of chapter 5, title 5, United States Code, the Commission shall establish a negotiated rulemaking committee to negotiate and develop a proposed policy to comply with the requirements of this paragraph. Such committee shall include representatives from State and local governments, affected industries, and public safety agencies. In negotiating and developing such a policy, the committee shall take into account—

(i) the desirability of enhancing the coverage and quality of commercial mobile services and fostering competition in the provision of such services;

(ii) the legitimate interests of State and local governments in matters of exclusively local concern;

(iii) the effect of State and local regulation of facilities siting on interstate commerce; and

(iv) the administrative costs to State and local governments of reviewing requests for authorization to locate facilities for the provision of commercial mobile services.

(C) The policy prescribed pursuant to this paragraph shall ensure that—

(i) regulation of the placement, construction, and modification of facilities for the provision of commercial mobile services by any State or local government or instrumentality thereof—

(I) is reasonable, nondiscriminatory, and limited to the minimum necessary to accomplish the State or local government's legitimate purposes; and

(II) does not prohibit or have the effect of precluding any commercial mobile service; and

(ii) a State or local government or instrumentality thereof shall act on any request for authorization to locate, construct, modify, or operate facilities for the provision of commercial mobile services within a reasonable period of time after the request is fully filed with such government or instrumentality; and

(iii) any decision by a State or local government or instrumentality thereof to deny a request for authorization to locate, construct, modify, or operate facilities for the provision of commercial mobile services shall be in writing and shall be supported by substantial evidence contained in a written record.

(D) The policy prescribed pursuant to this paragraph shall provide that no State or local government or any instrumentality thereof may regulate the placement, construction, modification, or operation of such facilities on the basis of the environmental effects of radio frequency emissions, to the extent that such facilities comply with the Commission's regulations concerning such emissions.

(E) In accordance with subchapter III of chapter 5, title 5, United States Code, the Commission shall periodically establish a negotiated rulemaking committee to review the policy prescribed by the Commission under this paragraph and to recommend revisions to such policy.

(8) MOBILE SERVICES ACCESS.—(A) The Commission shall prescribe regulations to afford subscribers of two-way switched voice commercial mobile radio services access to a provider of telephone toll service of the subscriber's choice, except to the extent that the commercial mobile radio service is provided by satellite. The Commission may exempt carriers or classes of carriers from the requirements of such regulations to the extent the Commission determines such exemption is consistent with the public interest, convenience, and necessity. For purposes of this paragraph, "access" shall mean access to a provider of telephone toll service through the use of carrier identification codes assigned to each such provider.

(B) The regulations prescribed by the Commission pursuant to subparagraph (A) shall supersede any inconsistent requirements imposed by the Modification of Final Judgment or any order in United States v. AT&T Corp. and McCaw Cellular Communications, Inc., Civil Action No. 94–01555 (United States District Court, District of Columbia).

(d) DEFINITIONS.—For purposes of this section—

(1) the term "commercial mobile service" means any mobile service (as defined in section 3[(n)]) that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission;

(2) the term "interconnected service" means service that is interconnected with the public switched network (as such terms are defined by regulation by the Commission) or service for which a request for interconnection is pending pursuant to subsection (c)(1)(B); and

(3) the term "private mobile service" means any mobile service (as defined in section 3[(n)]) that is not a commercial mobile service or the functional equivalent of a commercial mobile service, as specified by regulation by the Commission.

* * * * * * *

SEC. 336. BROADCAST SPECTRUM FLEXIBILITY.

(a) COMMISSION ACTION.—If the Commission determines to issue additional licenses for advanced television services, the Commission shall—

(1) limit the initial eligibility for such licenses to persons that, as of the date of such issuance, are licensed to operate a television broadcast station or hold a permit to construct such a station (or both); and

(2) adopt regulations that allow such licensees or permittees to offer such ancillary or supplementary services on designated frequencies as may be consistent with the public interest, convenience, and necessity.

(b) CONTENTS OF REGULATIONS.—In prescribing the regulations required by subsection (a), the Commission shall—

(1) only permit such licensee or permittee to offer ancillary or supplementary services if the use of a designated frequency for such services is consistent with the technology or method designated by the Commission for the provision of advanced television services;

(2) limit the broadcasting of ancillary or supplementary services on designated frequencies so as to avoid derogation of any advanced television services, including high definition television broadcasts, that the Commission may require using such frequencies;

(3) apply to any other ancillary or supplementary service such of the Commission's regulations as are applicable to the offering of analogous services by any other person, except that no ancillary or supplementary service shall have any rights to carriage under section 614 or 615 or be deemed a multichannel video programming distributor for purposes of section 628;

(4) adopt such technical and other requirements as may be necessary or appropriate to assure the quality of the signal used to provide advanced television services, and may adopt regulations that stipulate the minimum number of hours per day that such signal must be transmitted; and

(5) prescribe such other regulations as may be necessary for the protection of the public interest, convenience, and necessity.

(c) RECOVERY OF LICENSE.—

(1) CONDITIONS REQUIRED.—If the Commission grants a license for advanced television services to a person that, as of the date of such issuance, is licensed to operate a television broadcast station or holds a permit to construct such a station (or both), the Commission shall, as a condition of such license, require that, upon a determination by the Commission pursuant to the regulations prescribed under paragraph (2), either the additional license or the original license held by the licensee be surrendered to the Commission in accordance with such regulations for reallocation or reassignment (or both) pursuant to Commission regulation.

(2) CRITERIA.—The Commission shall prescribe criteria for rendering determinations concerning license surrender pursuant to license conditions required by paragraph (1). Such criteria shall—

(A) require such determinations to be based, on a market-by-market basis, on whether the substantial majority of the public have obtained television receivers that are capable of receiving advanced television services; and

(B) not require the cessation of the broadcasting under either the original or additional license if such cessation would render the television receivers of a substantial portion of the public useless, or otherwise cause undue burdens on the owners of such television receivers.

(3) AUCTION OF RETURNED SPECTRUM.—Any license surrendered under the requirements of this subsection shall be subject to assignment by use of competitive bidding pursuant to section

309(j), notwithstanding any limitations contained in paragraph (2) of such section.

(d) FEES.—

(1) SERVICES TO WHICH FEES APPLY.—If the regulations prescribed pursuant to subsection (a) permit a licensee to offer ancillary or supplementary services on a designated frequency—

(A) for which the payment of a subscription fee is required in order to receive such services, or

(B) for which the licensee directly or indirectly receives compensation from a third party in return for transmitting material furnished by such third party (other than commercial advertisements used to support broadcasting for which a subscription fee is not required),

the Commission shall establish a program to assess and collect from the licensee for such designated frequency an annual fee or other schedule or method of payment that promotes the objectives described in subparagraphs (A) and (B) of paragraph (2).

(2) COLLECTION OF FEES.—The program required by paragraph (1) shall—

(A) be designed (i) to recover for the public a portion of the value of the public spectrum resource made available for such commercial use, and (ii) to avoid unjust enrichment through the method employed to permit such uses of that resource;

(B) recover for the public an amount that, to the extent feasible, equals but does not exceed (over the term of the license) the amount that would have been recovered had such services been licensed pursuant to the provisions of section 309(j) of this Act and the Commission's regulations thereunder; and

(C) be adjusted by the Commission from time to time in order to continue to comply with the requirements of this paragraph.

(3) TREATMENT OF REVENUES.—

(A) GENERAL RULE.—Except as provided in subparagraph (B), all proceeds obtained pursuant to the regulations required by this subsection shall be deposited in the Treasury in accordance with chapter 33 of title 31, United States Code.

(B) RETENTION OF REVENUES.—Notwithstanding subparagraph (A), the salaries and expenses account of the Commission shall retain as an offsetting collection such sums as may be necessary from such proceeds for the costs of developing and implementing the program required by this section and regulating and supervising advanced television services. Such offsetting collections shall be available for obligation subject to the terms and conditions of the receiving appropriations account, and shall be deposited in such accounts on a quarterly basis.

(4) REPORT.—Within 5 years after the date of the enactment of this section, the Commission shall report to the Congress on the implementation of the program required by this subsection, and shall annually thereafter advise the Congress on the amounts collected pursuant to such program.

(e) EVALUATION.—Within 10 years after the date the Commission first issues additional licenses for advanced television services, the Commission shall conduct an evaluation of the advanced television services program. Such evaluation shall include—

(1) an assessment of the willingness of consumers to purchase the television receivers necessary to receive broadcasts of advanced television services;

(2) an assessment of alternative uses, including public safety use, of the frequencies used for such broadcasts; and

(3) the extent to which the Commission has been or will be able to reduce the amount of spectrum assigned to licensees.

(f) DEFINITIONS.—As used in this section:

(1) ADVANCED TELEVISION SERVICES.—The term "advanced television services" means television services provided using digital or other advanced technology as further defined in the opinion, report, and order of the Commission entitled "Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service", MM Docket 87–268, adopted September 17, 1992, and successor proceedings.

(2) DESIGNATED FREQUENCIES.—The term "designated frequency" means each of the frequencies designated by the Commission for licenses for advanced television services.

(3) HIGH DEFINITION TELEVISION.—The term "high definition television" refers to systems that offer approximately twice the vertical and horizontal resolution of receivers generally available on the date of enactment of this section, as further defined in the proceedings described in paragraph (1) of this subsection.

SEC. 337. BROADCAST OWNERSHIP.

(a) LIMITATIONS ON COMMISSION RULEMAKING AUTHORITY.—Except as expressly permitted in this section, the Commission shall not prescribe or enforce any regulation—

(1) prohibiting or limiting, either nationally or within any particular area, a person or entity from holding any form of ownership or other interest in two or more broadcasting stations or in a broadcasting station and any other medium of mass communication; or

(2) prohibiting a person or entity from owning, operating, or controlling two or more networks of broadcasting stations or from owning, operating, or controlling a network of broadcasting stations and any other medium of mass communications.

(b) TELEVISION OWNERSHIP LIMITATIONS.—

(1) NATIONAL AUDIENCE REACH LIMITATIONS.—The Commission shall prohibit a person or entity from obtaining any license if such license would result in such person or entity directly or indirectly owning, operating, or controlling, or having a cognizable interest in, television stations which have an aggregate national audience reach exceeding—

(A) 35 percent, for any determination made under this paragraph before one year after the date of enactment of this section; or

(B) 50 percent, for any determination made under this paragraph on or after one year after such date of enactment.

Within 3 years after such date of enactment, the Commission shall conduct a study on the operation of this paragraph and submit a report to the Congress on the development of competition in the television marketplace and the need for any revisions to or elimination of this paragraph.

(2) MULTIPLE LICENSES IN A MARKET.—

(A) IN GENERAL.—The Commission shall prohibit a person or entity from obtaining any license if such license would result in such person or entity directly or indirectly owning, operating, or controlling, or having a cognizable interest in, two or more television stations within the same television market.

(B) EXCEPTION FOR MULTIPLE UHF STATIONS AND FOR UHF-VHF COMBINATIONS.—Notwithstanding subparagraph (A), the Commission shall not prohibit a person or entity from directly or indirectly owning, operating, or controlling, or having a cognizable interest in, two television stations within the same television market if at least one of such stations is a UHF television, unless the Commission determines that permitting such ownership, operation, or control will harm competition or will harm the preservation of a diversity of media voices in the local television market.

(C) EXCEPTION FOR VHF-VHF COMBINATIONS.—Notwithstanding subparagraph (A), the Commission may permit a person or entity to directly or indirectly own, operate, or control, or have a cognizable interest in, two VHF television stations within the same television market, if the Commission determines that permitting such ownership, operation, or control will not harm competition and will not harm the preservation of a diversity of media voices in the local television market.

(c) LOCAL CROSS-MEDIA OWNERSHIP LIMITS.—In a proceeding to grant, renew, or authorize the assignment of any station license under this title, the Commission may deny the application if the Commission determines that the combination of such station and more than one other nonbroadcast media of mass communication would result in an undue concentration of media voices in the respective local market. In considering any such combination, the Commission shall not grant the application if all the media of mass communication in such local market would be owned, operated, or controlled by two or fewer persons or entities. This subsection shall not constitute authority for the Commission to prescribe regulations containing local cross-media ownership limitations. The Commission may not, under the authority of this subsection, require any person or entity to divest itself of any portion of any combination of stations and other media of mass communications that such person or entity owns, operates, or controls on the date of enactment of this section unless such person or entity acquires another station or other media of mass communications after such date in such local market.

(d) TRANSITION PROVISIONS.—Any provision of any regulation prescribed before the date of enactment of this section that is inconsistent with the requirements of this section shall cease to be effective on such date of enactment. The Commission shall complete all

actions (including any reconsideration) necessary to amend its regulations to conform to the requirements of this section not later than 6 months after such date of enactment. Nothing in this section shall be construed to prohibit the continuation or renewal of any television local marketing agreement that is in effect on such date of enactment and that is in compliance with Commission regulations on such date.

[PART II—RADIO EQUIPMENT AND RADIO OPERATORS ON BOARD SHIP]

PART II—RADIO EQUIPMENT AND RADIO OPERATORS ON BOARD SHIP

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[PART III—RADIO INSTALLATIONS ON VESSELS CARRYING PASSENGERS FOR HIRE]

PART III—RADIO INSTALLATIONS ON VESSELS CARRYING PASSENGERS FOR HIRE

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[PART IV—ASSISTANCE FOR PUBLIC TELECOMMUNICATIONS FACILITIES; TELECOMMUNICATIONS DEMONSTRATIONS; CORPORATION FOR PUBLIC BROADCASTING

PART IV—ASSISTANCE FOR PUBLIC TELECOMMUNICATIONS FACILITIES; TELECOMMUNICATIONS DEMONSTRATIONS; CORPORATION FOR PUBLIC BROADCASTING

* * * * * * *

[TITLE IV—PROCEDURAL AND ADMINISTRATIVE PROVISIONS]

TITLE IV—PROCEDURAL AND ADMINISTRATIVE PROVISIONS

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[TITLE V—PENAL PROVISIONS—FORFEITURES]

TITLE V—PENAL PROVISIONS—FORFEITURES

* * * * * * *

SEC. 503. FORFEITURES IN CASES OF REBATES AND OFFSETS.

(a) * * *

(b)(1) Any person who is determined by the Commission, in accordance with paragraph (3) or (4) of this subsection, to have—

(A) * * *

* * * * * * *

(D) violated any provision of section 1304, 1343, or 1464 of title 18, United States Code;

shall be liable to the United States for a forfeiture penalty. A forfeiture penalty under this subsection shall be in addition to any other penalty provided for by this Act; except that this subsection shall not apply to any conduct which is subject to forfeiture under *part I of* title II, part II or III of title III, or section 506 of this Act.

* * * * * * *

SEC. 504. PROVISIONS RELATING TO FORFEITURES.

(a) * * *

(b) The forfeitures imposed by *part I of* title II, parts II and III of title III, and sections 503(b) and 506 of this Act shall be subject to remission or mitigation by the Commission, under such regulations and methods of ascertaining the facts as may seem to it advisable, and, if suit has been instituted, the Attorney General, upon request of the Commission, shall direct the discontinuance of any prosecution to recover such forfeitures: *Provided, however,* That no forfeiture shall be remitted or mitigated after determination by a court of competent jurisdiction.

* * * * * * *

[TITLE VI—CABLE COMMUNICATIONS

[PART I—GENERAL PROVISIONS]

TITLE VI—CABLE COMMUNICATIONS

PART I—GENERAL PROVISIONS

* * * * * * *

SEC. 602. DEFINITIONS.

For purposes of this title—

(1) * * *

* * * * * * *

(6) the term "cable service" means—

(A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and

(B) subscriber interaction, if any, which is required for the selection *or use* of such video programming or other programming service;

* * * * * * *

(18) the term "telephone service area" when used in connection with a common carrier subject in whole or in part to title II of this Act means the area within which such carrier provides telephone exchange service as of January 1, 1993, but if any common carrier after such date transfers its exchange serv-

ice facilities to another common carrier, the area to which such facilities provide telephone exchange service shall be treated as part of the telephone service area of the acquiring common carrier and not of the selling common carrier;

[(18)] *(19)* the term "usable activated channels" means activated channels of a cable system, except those channels whose use for the distribution of broadcast signals would conflict with technical and safety regulations as determined by the Commission; and

[(19)] *(20)* the term "video programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

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[PART II—USE OF CABLE CHANNELS AND CABLE OWNERSHIP RESTRICTIONS]

PART II—USE OF CABLE CHANNELS AND CABLE OWNERSHIP RESTRICTIONS

* * * * * * *

SEC. 613. OWNERSHIP RESTRICTIONS.

[(a)(1) It shall be unlawful for any person to be a cable operator if such person, directly or through 1 or more affiliates, owns or controls, the licensee of a television broadcast station and the predicted grade B contour of such station covers any portion of the community served by such operator's cable system.

[(2) It shall be unlawful for a cable operator to hold a license for multichannel multipoint distribution service, or to offer satellite master antenna television service separate and apart from any franchised cable service, in any portion of the franchise area served by that cable operator's cable system. The Commission—

[(A) shall waive the requirements of this paragraph for all existing multichannel multipoint distribution services and satellite master antenna television services which are owned by a cable operator on the date of enactment of this paragraph; and

[(B) may waive the requirements of this paragraph to the extent the Commission determines is necessary to ensure that all significant portions of a franchise area are able to obtain video programming.

[(b)(1) It shall be unlawful for any common carrier, subject in whole or in part to title II of this Act, to provide video programming directly to subscribers in its telephone service area, either directly or indirectly through an affiliate owned by, operated by, controlled by, or under common control with the common carrier.

[(2) It shall be unlawful for any common carrier, subject in whole or in part to title II of this Act, to provide channels of communications or pole, line, conduit space, or other rental arrangements, to any entity which is directly or indirectly owned by, operated by, controlled by, or under common control with such common carrier, if such facilities or arrangements are to be used for, or in connection with, the provision of video programming directly to subscribers in the telephone service area of the common carrier.

[(3) This subsection shall not apply to any common carrier to the extent such carrier provides telephone exchange service in any rural area (as defined by the Commission).

[(4) In those areas where the provision of video programming directly to subscribers through a cable system demonstrably could not exist except through a cable system owned by, operated by, controlled by, or affiliated with the common carrier involved, or upon other showing of good cause, the Commission may, on petition for waiver, waive the applicability of paragraphs (1) and (2) of this subsection. Any such waiver shall be made in accordance with section 63.56 of title 47, Code of Federal Regulations (as in effect September 20, 1984) and shall be granted by the Commission upon a finding that the issuance of such waiver is justified by the particular circumstances demonstrated by the petitioner, taking into account the policy of this subsection.]

(b)(1) Subject to the requirements of part V and the other provisions of this title, any common carrier subject in whole or in part to title II of this Act may, either through its own facilities or through an affiliate, provide video programming directly to subscribers in its telephone service area.

(2) Subject to the requirements of part V and the other provisions of this title, any common carrier subject in whole or in part to title II of this Act may provide channels of communications or pole, line, or conduit space, or other rental arrangements, to any entity which is directly or indirectly owned, operated, or controlled by, or under common control with, such common carrier, if such facilities or arrangements are to be used for, or in connection with, the provision of video programming directly to subscribers in its telephone service area.

(3)(A) Notwithstanding paragraphs (1) and (2), an affiliate described in subparagraph (B) shall not be subject to the requirements of part V, but—

(i) if providing video programming as a cable service using a cable system, shall be subject to the requirements of this part and parts III and IV; and

(ii) if providing such video programming by means of radio communication, shall be subject to the requirements of title III.

(B) For purposes of subparagraph (A), an affiliate is described in this subparagraph if such affiliate—

(i) is, consistently with section 655, owned, operated, or controlled by, or under common control with, a common carrier subject in whole or in part to title II of this Act;

(ii) provides video programming to subscribers in the telephone service area of such carrier; and

(iii) does not utilize the local exchange facilities or services of any affiliated common carrier in distributing such programming.

* * * * * * *

(i) ACQUISITION OF CABLE SYSTEMS.—Except as provided in section 655, the Commission may not require divestiture of, or restrict or prevent the acquisition of, an ownership interest in a cable system by any person based in whole or in part on the geographic location of such cable system.

SEC. 614. CARRIAGE OF LOCAL COMMERCIAL TELEVISION SIGNALS.

(a) * * *

* * * * * * *

(h) DEFINITIONS.—

(1) LOCAL COMMERCIAL TELEVISION STATION.—

(A) * * *

* * * * * * *

(C) MARKET DETERMINATIONS.—(i) For purposes of this section, a broadcasting station's market shall be determined [in the manner provided in section 73.3555(d)(3)(i) of title 47, Code of Federal Regulations, as in effect on May 1, 1991,] *by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns,* except that, following a written request, the Commission may, with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's television market to better effectuate the purposes of this section. In considering such requests, the Commission may determine that particular communities are part of more than one television market.

* * * * * * *

[(iv) In the rulemaking proceeding required by subsection (f), the Commission shall provide for expedited consideration of requests filed under this subparagraph.]

(iv) Within 120 days after the date a request is filed under this subparagraph, the Commission shall grant or deny the request.

* * * * * * *

[PART III—FRANCHISING AND REGULATION]

PART III—FRANCHISING AND REGULATION

SEC. 621. GENERAL FRANCHISE REQUIREMENTS.

(a) * * *

(b)(1) * * *

* * * * * * *

(3)(A) To the extent that a cable operator or affiliate thereof is engaged in the provision of telecommunications services—

(i) such cable operator or affiliate shall not be required to obtain a franchise under this title; and

(ii) the provisions of this title shall not apply to such cable operator or affiliate.

(B) A franchising authority may not impose any requirement that has the purpose or effect of prohibiting, limiting, restricting, or conditioning the provision of a telecommunications service by a cable operator or an affiliate thereof.

(C) A franchising authority may not order a cable operator or affiliate thereof—

(i) to discontinue the provision of a telecommunications service, or

(ii) to discontinue the operation of a cable system, to the extent such cable system is used for the provision of a telecommunications service, by reason of the failure of such cable operator or affiliate thereof to obtain a franchise or franchise renewal under this title with respect to the provision of such telecommunications service.

(D) A franchising authority may not require a cable operator to provide any telecommunications service or facilities as a condition of the initial grant of a franchise or a franchise renewal.

* * * * * * *

(d)(1) * * *

* * * * * * *

(3) For purposes of this subsection, the term "State" has the meaning given it in section 3**[**(v)**]**.

* * * * * * *

SEC. 622. FRANCHISE FEES.

(a) Subject to the limitation of subsection (b), any cable operator may be required under the terms of any franchise to pay a franchise fee.

(b) For any twelve-month period, the franchise fees paid by a cable operator with respect to any cable system shall not exceed 5 percent of such cable operator's gross revenues derived in such period from the operation of the cable system *to provide cable services*. For purposes of this section, the 12-month period shall be the 12-month period applicable under the franchise for accounting purposes. Nothing in this subsection shall prohibit a franchising authority and a cable operator from agreeing that franchise fees which lawfully could be collected for any such 12-month period shall be paid on a prepaid or deferred basis; except that the sum of the fees paid during the term of the franchise may not exceed the amount, including the time value of money, which would have lawfully been collected if such fees had been paid per annum.

* * * * * * *

SEC. 623. REGULATION OF RATES.

(a) COMPETITION PREFERENCE; LOCAL AND FEDERAL REGULATION.—

(1) * * *

* * * * * * *

(3) EQUIPMENT.—If the Commission finds that a cable system is subject to effective competition under subparagraph (D) of subsection (l)(1), the rates for equipment, installations, and connections for additional television receivers (other than equipment, installations, and connections furnished by such system to subscribers who receive only a rate regulated basic service tier) shall not be subject to regulation by the Commission or by a State or franchising authority. If the Commission finds that a cable system is subject to effective competition under subparagraph (A), (B), or (C) of subsection (l)(1), the rates for any equipment, installations, and connections furnished by such

system to any subscriber shall not be subject to regulation by the Commission, or by a State or franchising authority. No Federal agency, State, or franchising authority may establish the price or rate for the installation, sale, or lease of any equipment furnished to any subscriber by a cable system solely in connection with video programming offered on a per channel or per program basis.

[(3)] *(4)* QUALIFICATION OF FRANCHISING AUTHORITY.—A franchising authority that seeks to exercise the regulatory jurisdiction permitted under paragraph (2)(A) shall file with the Commission a written certification that—

(A) * * *

* * * * * * *

[(4)] *(5)* APPROVAL BY COMMISSION.—A certification filed by a franchising authority under paragraph (3) shall be effective 30 days after the date on which it is filed unless the Commission finds, after notice to the authority and a reasonable opportunity for the authority to comment, that—

(A) * * *

* * * * * * *

[(5)] *(6)* REVOCATION OF JURISDICTION.—Upon petition by a cable operator or other interested party, the Commission shall review the regulation of cable system rates by a franchising authority under this subsection. A copy of the petition shall be provided to the franchising authority by the person filing the petition. If the Commission finds that the franchising authority has acted inconsistently with the requirements of this subsection, the Commission shall grant appropriate relief. If the Commission, after the franchising authority has had a reasonable opportunity to comment, determines that the State and local laws and regulations are not in conformance with the regulations prescribed by the Commission under subsection (b), the Commission shall revoke the jurisdiction of such authority.

[(6)] *(7)* EXERCISE OF JURISDICTION BY COMMISSION.—If the Commission disapproves a franchising authority's certification under [paragraph (4)] *paragraph (5),* or revokes such authority's jurisdiction under [paragraph (5)] *paragraph (6),* the Commission shall exercise the franchising authority's regulatory jurisdiction under paragraph (2)(A) until the franchising authority has qualified to exercise that jurisdiction by filing a new certification that meets the requirements of [paragraph (3)] *paragraph (4).* Such new certification shall be effective upon approval by the Commission. The Commission shall act to approve or disapprove any such new certification within 90 days after the date it is filed.

(8) LIMITATION ON BASIC TIER RATE INCREASES; SCOPE OF REVIEW.—A cable operator may not increase its basic service tier rate more than once every 6 months. Such increase may be implemented, using any reasonable billing or proration method, 30 days after providing notice to subscribers and the appropriate regulatory authority. The rate resulting from such increase shall be deemed reasonable and shall not be subject to reduction or refund if the franchising authority or the Commis-

sion, as appropriate, does not complete its review and issue a final order within 90 days after implementation of such increase. The review by the franchising authority or the Commission of any future increase in such rate shall be limited to the incremental change in such rate effected by such increase.

(9) NATIONAL INFORMATION INFRASTRUCTURE.—

(A) PURPOSE.—It is the purpose of this paragraph to—

(i) promote the development of the National Information Infrastructure;

(ii) enhance the competitiveness of the National Information Infrastructure by ensuring that cable operators have incentives comparable to other industries to develop such infrastructure; and

(iii) encourage the rapid deployment of digital technology necessary to the development of the National Information Infrastructure.

(B) AGGREGATION OF EQUIPMENT COSTS.—The Commission shall allow cable operators, pursuant to any rules promulgated under subsection (b)(3), to aggregate, on a franchise, system, regional, or company level, their equipment costs into broad categories, such as converter boxes, regardless of the varying levels of functionality of the equipment within each such broad category. Such aggregation shall not be permitted with respect to equipment used by subscribers who receive only a rate regulated basic service tier.

(C) REVISION TO COMMISSION RULES; FORMS.—Within 120 days of the date of enactment of this paragraph, the Commission shall issue revisions to the appropriate rules and forms necessary to implement subparagraph (B).

* * * * * * *

(c) REGULATION OF UNREASONABLE RATES.—

(1) COMMISSION REGULATIONS.—Within 180 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission shall, by regulation, establish the following:

(A) * * *

(B) fair and expeditious procedures for the receipt, consideration, and resolution of complaints from any subscriber, franchising authority, or other relevant State or local government entity alleging that a rate for cable programming services charged by a cable operator violates the criteria prescribed under subparagraph (A), which procedures shall include the minimum showing that shall be required for a complaint to [obtain Commission consideration and resolution of whether the rate in question is unreasonable] *be counted toward the complaint threshold specified in paragraph (3)(A)*; and

(C) the procedures to be used to reduce rates for cable programming services that are determined by the Commission to be unreasonable and to refund such portion of the rates or charges that were paid by subscribers after the fil-

ing of [such complaint] *the first complaint* and that are determined to be unreasonable.

* * * * * * *

[(3) LIMITATION ON COMPLAINTS CONCERNING EXISTING RATES.—Except during the 180-day period following the effective date of the regulations prescribed by the Commission under paragraph (1), the procedures established under subparagraph (B) of such paragraph shall be available only with respect to complaints filed within a reasonable period of time following a change in rates that is initiated after that effective date, including a change in rates that results from a change in that system's service tiers.]

(3) REVIEW OF COMPLAINTS.—

(A) COMPLAINT THRESHOLD.—The Commission shall have the authority to review any increase in the rates for cable programming services implemented after the date of enactment of the Communications Act of 1995 only if, within 90 days after such increase becomes effective, at least 10 subscribers to such services or 5 percent of the subscribers to such services, whichever is greater, file separate, individual complaints against such increase with the Commission in accordance with the requirements established under paragraph (1)(B).

(B) TIME PERIOD FOR COMMISSION REVIEW.—The Commission shall complete its review of any such increase and issue a final order within 90 days after it receives the number of complaints required by subparagraph (A).

(4) TREATMENT OF PENDING CABLE PROGRAMMING SERVICES COMPLAINTS.—Upon enactment of the Communications Act of 1995, the Commission shall suspend the processing of all pending cable programming services rate complaints. These pending complaints shall be counted by the Commission toward the complaint threshold specified in paragraph (3)(A). Parties shall have an additional 90 days from the date of enactment of such Act to file complaints about prior increases in cable programming services rates if such rate increases were already subject to a valid, pending complaint on such date of enactment. At the expiration of such 90-day period, the Commission shall dismiss all pending cable programming services rate cases for which the complaint threshold has not been met, and may resume its review of those pending cable programming services rate cases for which the complaint threshold has been met, which review shall be completed within 180 days after the date of enactment of the Communications Act of 1995.

(5) SCOPE OF COMMISSION REVIEW.—A cable programming services rate shall be deemed not unreasonable and shall not be subject to reduction or refund if—

(A) such rate was not the subject of a pending complaint at the time of enactment of the Communications Act of 1995;

(B) such rate was the subject of a complaint that was dismissed pursuant to paragraph (4);

(C) such rate resulted from an increase for which the complaint threshold specified in paragraph (3)(A) has not been met;

(D) the Commission does not complete its review and issue a final order in the time period specified in paragraph (3)(B) or (4); or

(E) the Commission issues an order finding such rate to be not unreasonable.

The review by the Commission of any future increase in such rate shall be limited to the incremental change in such rate effected by such increase.

[(d) UNIFORM RATE STRUCTURE REQUIRED.—A cable operator shall have a rate structure, for the provision of cable service, that is uniform throughout the geographic area in which cable service is provided over its cable system.]

(d) UNIFORM RATE STRUCTURE.—A cable operator shall have a uniform rate structure throughout its franchise area for the provision of cable services that are regulated by the Commission or the franchising authority. Bulk discounts to multiple dwelling units shall not be subject to this requirement.

* * * * * * *

(l) DEFINITIONS.—As used in this section—

(1) The term "effective competition" means that—

(A) fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system;

(B) the franchise area is—

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

(ii) the number of households subscribing to programming services offered by *all* multichannel video programming distributors other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area; [or]

(C) 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 that franchise area[.]*; or*

(D) with respect to cable programming services and subscriber equipment, installations, and connections for additional television receivers (other than equipment, installations, and connections furnished to subscribers who receive only a rate regulated basic service tier)—

(i) a common carrier has been authorized by the Commission to construct facilities to provide video dialtone service in the cable operator's franchise area;

(ii) a common carrier has been authorized by the Commission or pursuant to a franchise to provide video programming directly to subscribers in the franchise area; or

(iii) the Commission has completed all actions necessary (including any reconsideration) to prescribe reg-

ulations pursuant to section 653(b)(1) relating to video platforms.

(m) SMALL CABLE OPERATORS.—

(1) SMALL CABLE OPERATOR RELIEF.—A small cable operator shall not be subject to subsections (a), (b), (c), or (d) in any franchise area with respect to the provision of cable programming services, or a basic service tier where such tier was the only tier offered in such area on December 31, 1994.

(2) DEFINITION OF SMALL CABLE OPERATOR.—For purposes of this subsection, "small cable operator" means a cable operator that—

(A) directly or through an affiliate, serves in the aggregate fewer than 1 percent of all cable subscribers in the United States; and

(B) is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.

(n) TREATMENT OF PRIOR YEAR LOSSES.—Notwithstanding any other provision of this section or of section 612, losses (including losses associated with the acquisitions of such franchise) that were incurred prior to September 4, 1992, with respect to a cable system that is owned and operated by the original franchisee of such system shall not be disallowed, in whole or in part, in the determination of whether the rates for any tier of service or any type of equipment that is subject to regulation under this section are lawful.

* * * * * * *

SEC. 624. REGULATION OF SERVICES, FACILITIES, AND EQUIPMENT.

(a) * * *

(e) Within one year after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission shall prescribe regulations which establish minimum technical standards relating to cable systems' technical operation and signal quality. The Commission shall update such standards periodically to reflect improvements in technology. **[**A franchising authority may require as part of a franchise (including a modification, renewal, or transfer thereof) provisions for the enforcement of the standards prescribed under this subsection. A franchising authority may apply to the Commission for a waiver to impose standards that are more stringent than the standards prescribed by the Commission under this subsection.**]** *No State or franchising authority may prohibit, condition, or restrict a cable system's use of any type of subscriber equipment or any transmission technology.*

* * * * * * *

SEC. 624A. CONSUMER ELECTRONICS EQUIPMENT COMPATIBILITY.

(a) FINDINGS.—The Congress finds that—

(1) * * *

(2) if these problems are allowed to persist, consumers will be less likely to purchase, and electronics equipment manufacturers will be less likely to develop, manufacture, or offer for sale, television receivers and video cassette recorders with new and innovative features and functions; **[**and**]**

(3) cable operators should use technologies that will prevent signal thefts while permitting consumers to benefit from such features and functions in such receivers and recorders[.]*; and*

(4) compatibility among televisions, video cassette recorders, and cable systems can be assured with narrow technical standards that mandate a minimum degree of common design and operation, leaving all features, functions, protocols, and other product and service options for selection through open competition in the market.

(b) COMPATIBLE INTERFACES.—

(1) * * *

[(2) SCRAMBLING AND ENCRYPTION.—In issuing the regulations referred to in paragraph (1), the Commission shall determine whether and, if so, under what circumstances to permit cable systems to scramble or encrypt signals or to restrict cable systems in the manner in which they encrypt or scramble signals, except that the Commission shall not limit the use of scrambling or encryption technology where the use of such technology does not interfere with the functions of subscribers' television receivers or video cassette recorders.]

(2) CABLE SECURITY SYSTEMS.—No Federal agency, State, or franchising authority may prohibit a cable operator's use of any security system (including scrambling, encryption, traps, and interdiction), except that the Commission may prohibit the use of any such system solely with respect to the delivery of a basic service tier that, as of January 1, 1995, contained only the signals and programming specified in section 623(b)(7)(A), unless the use of such system is necessary to prevent the unauthorized reception of such tier.

(c) RULEMAKING REQUIREMENTS.—

(1) FACTORS TO BE CONSIDERED.—In prescribing the regulations required by this section, the Commission shall consider—

(A) the need to maximize open competition in the market for all features, functions, protocols, and other product and service options of converter boxes and other cable converters unrelated to the descrambling or decryption of cable television signals;

[(A)] *(B)* the costs and benefits to consumers of imposing compatibility requirements on cable operators and television manufacturers in a manner that, while providing effective protection against theft or unauthorized reception of cable service, will minimize interference with or nullification of the special functions of subscribers' television receivers or video cassette recorders, including functions that permit the subscriber—

(i) * * *

* * * * * * *

[(B)] *(C)* the need for cable operators to protect the integrity of the signals transmitted by the cable operator against theft or to protect such signals against unauthorized reception.

(2) REGULATIONS REQUIRED.—The regulations prescribed by the Commission under this section shall include such regulations as are necessary—

(A) * * *

* * * * * * *

(D) to ensure that any standards or regulations developed under the authority of this section to ensure compatibility between televisions, video casette recorders, and cable systems do not affect features, functions, protocols, and other product and service options other than those specified in paragraph (1)(B), including telecommunications interface equipment, home automation communications, and computer network services;

[(D)] *(E)* to require a cable operator who offers subscribers the option of renting a remote control unit—

(i) * * *

* * * * * * *

[(E)] *(F)* to prohibit a cable operator from taking any action that prevents or in any way disables the converter box supplied by the cable operator from operating compatibly with commercially available remote control units.

* * * * * * *

SEC. 625. MODIFICATION OF FRANCHISE OBLIGATIONS.

(a) * * *

* * * * * * *

(d) Notwithstanding subsections (a) and (b), a cable operator may take such actions to rearrange a particular service from one service tier to another, or otherwise offer the service, if the rates for all of the service tiers involved in such actions are not subject to regulation under section 623. *Any signals or services carried on the basic service tier but not required under section 623(b)(7)(A) may be moved from the basic service tier at the operator's sole discretion, provided that the removal of such a signal or service from the basic service tier is permitted by contract. The movement of such signals or services to an unregulated package of services shall not subject such package to regulation.*

* * * * * * *

[PART IV—MISCELLANEOUS PROVISIONS]

PART IV—MISCELLANEOUS PROVISIONS

* * * * * * *

SEC. 632. CONSUMER PROTECTION AND CUSTOMER SERVICE.

(a) * * *

* * * * * * *

(c) SUBSCRIBER NOTICE.—A cable operator may provide notice of service and rate changes to subscribers using any reasonable written means at its sole discretion. Notwithstanding section 623(b)(6) or any other provision of this Act, a cable operator shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, State, or

franchising authority on the transaction between the operator and the subscriber.

[(c)**]** *(d)* CONSUMER PROTECTION LAWS AND CUSTOMER SERVICE AGREEMENTS.—

(1) CONSUMER PROTECTION LAWS.—Nothing in this title shall be construed to prohibit any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted by this title.

* * * * * * *

SEC. 636. COORDINATION OF FEDERAL, STATE, AND LOCAL AUTHORITY.

(a) * * *

* * * * * * *

(d) For purposes of this section, the term "State" has the meaning given such term in section 3**[**(v)**]**.

SEC. 637. EXISTING FRANCHISES.

(a) The provisions of—

(1) * * *

(2) any law of any State (as defined in section 3**[**(v)**]**) in effect on the date of the enactment of this section, or any regulation promulgated pursuant to such law, which relates to such designation, use or support of such channel capacity,

shall remain in effect, subject to the express provisions of this title, and for not longer than the then current remaining term of the franchise as such franchise existed on such effective date.

* * * * * * *

PART V—VIDEO PROGRAMMING SERVICES PROVIDED BY TELEPHONE COMPANIES

SEC. 651. DEFINITIONS.

For purposes of this part—

(1) the term "control" means—

(A) an ownership interest in which an entity has the right to vote more than 50 percent of the outstanding common stock or other ownership interest; or

(B) if no single entity directly or indirectly has the right to vote more than 50 percent of the outstanding common stock or other ownership interest, actual working control, in whatever manner exercised, as defined by the Commission by regulation on the basis of relevant factors and circumstances, which shall include partnership and direct ownership interests, voting stock interests, the interests of officers and directors, and the aggregation of voting interests; and

(2) the term "rural area" means a geographic area that does not include either—

(A) any incorporated or unincorporated place of 10,000 inhabitants or more, or any part thereof; or

(B) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census.

SEC. 652. SEPARATE VIDEO PROGRAMMING AFFILIATE.

(a) IN GENERAL.—Except as provided in subsection (d) of this section and section 613(b)(3), a common carrier subject to title II of this Act shall not provide video programming directly to subscribers in its telephone service area unless such video programming is provided through a video programming affiliate that is separate from such carrier.

(b) BOOKS AND MARKETING.—

(1) IN GENERAL.—A video programming affiliate of a common carrier shall—

(A) maintain books, records, and accounts separate from such carrier which identify all transactions with such carrier;

(B) carry out directly (or through any nonaffiliated person) its own promotion, except that institutional advertising carried out by such carrier shall be permitted so long as each party bears its pro rata share of the costs; and

(C) not own real or personal property in common with such carrier.

(2) INBOUND TELEMARKETING AND REFERRAL.—Notwithstanding paragraph (1)(B), a common carrier may provide telemarketing or referral services in response to the call of a customer or potential customer related to the provision of video programming by a video programming affiliate of such carrier. If such services are provided to a video programming affiliate, such services shall be made available to any video programmer or cable operator on request, on nondiscriminatory terms, at just and reasonable prices.

(3) JOINT MARKETING.—Notwithstanding paragraph (1)(B) or section 613(b)(3), a common carrier may market video programming directly upon a showing to the Commission that a cable operator or other entity directly or indirectly provides telecommunications services within the telephone service area of the common carrier, and markets such telecommunications services jointly with video programming services. The common carrier shall specify the geographic region covered by the showing. The Commission shall approve or disapprove such showing within 60 days after the date of its submission.

(c) BUSINESS TRANSACTIONS WITH CARRIER.—Any contract, agreement, arrangement, or other manner of conducting business, between a common carrier and its video programming affiliate, providing for—

(1) the sale, exchange, or leasing of property between such affiliate and such carrier,

(2) the furnishing of goods or services between such affiliate and such carrier, or

(3) the transfer to or use by such affiliate for its benefit of any asset or resource of such carrier,

shall be on a fully compensatory and auditable basis, shall be without cost to the telephone service ratepayers of the carrier, and shall be in compliance with regulations established by the Commission

that will enable the Commission to assess the compliance of any transaction.

(d) WAIVER.—

(1) CRITERIA FOR WAIVER.—The Commission may waive any of the requirements of this section for small telephone companies or telephone companies serving rural areas, if the Commission determines, after notice and comment, that—

(A) such waiver will not affect the ability of the Commission to ensure that all video programming activity is carried out without any support from telephone ratepayers;

(B) the interests of telephone ratepayers and cable subscribers will not be harmed if such waiver is granted;

(C) such waiver will not adversely affect the ability of persons to obtain access to the video platform of such carrier; and

(D) such waiver otherwise is in the public interest.

(2) DEADLINE FOR ACTION.—The Commission shall act to approve or disapprove a waiver application within 180 days after the date it is filed.

(3) CONTINUED APPLICABILITY OF SECTION 656.—In the case of a common carrier that obtains a waiver under this subsection, any requirement that section 656 applies to a video programming affiliate shall instead apply to such carrier.

(e) SUNSET OF REQUIREMENTS.—The provisions of this section shall cease to be effective on July 1, 2000.

SEC. 653. ESTABLISHMENT OF VIDEO PLATFORM.

(a) VIDEO PLATFORM.—

(1) IN GENERAL.—Except as provided in section 613(b)(3), any common carrier subject to title II of this Act, and that provides video programming directly to subscribers in its telephone service area, shall establish a video platform. This paragraph shall not apply to any carrier to the extent that it provides video programming directly to subscribers in its telephone service area solely through a cable system acquired in accordance with section 655(b).

(2) IDENTIFICATION OF DEMAND FOR CARRIAGE.—Any common carrier subject to the requirements of paragraph (1) shall, prior to establishing a video platform, submit a notice to the Commission of its intention to establish channel capacity for the provision of video programming to meet the bona fide demand for such capacity. Such notice shall—

(A) be in such form and contain information concerning the geographic area intended to be served and such information as the Commission may require by regulations pursuant to subsection (b);

(B) specify the methods by which any entity seeking to use such channel capacity should submit to such carrier a specification of its channel capacity requirements; and

(C) specify the procedures by which such carrier will determine (in accordance with the Commission's regulations under subsection (b)(1)(B)) whether such requests for capacity are bona fide.

The Commission shall submit any such notice for publication in the Federal Register within 5 working days.

(3) RESPONSE TO REQUEST FOR CARRIAGE.—After receiving and reviewing the requests for capacity submitted pursuant to such notice, such common carrier shall establish channel capacity that is sufficient to provide carriage for—

(A) all bona fide requests submitted pursuant to such notice,

(B) any additional channels required pursuant to section 656, and

(C) any additional channels required by the Commission's regulations under subsection (b)(1)(C).

(4) RESPONSES TO CHANGES IN DEMAND FOR CAPACITY.—Any common carrier that establishes a video platform under this section shall—

(A) immediately notify the Commission and each video programming provider of any delay in or denial of channel capacity or service, and the reasons therefor;

(B) continue to receive and grant, to the extent of available capacity, carriage in response to bona fide requests for carriage from existing or additional video programming providers;

(C) if at any time the number of channels required for bona fide requests for carriage may reasonably be expected soon to exceed the existing capacity of such video platform, immediately notify the Commission of such expectation and of the manner and date by which such carrier will provide sufficient capacity to meet such excess demand; and

(D) construct such additional capacity as may be necessary to meet such excess demand.

(5) DISPUTE RESOLUTION.—The Commission shall have the authority to resolve disputes under this section and the regulations prescribed thereunder. Any such dispute shall be resolved within 180 days after notice of such dispute is submitted to the Commission. At that time or subsequently in a separate damages proceeding, the Commission may award damages sustained in consequence of any violation of this section to any person denied carriage, or require carriage, or both. Any aggrieved party may seek any other remedy available under this Act.

(b) COMMISSION ACTIONS.—

(1) IN GENERAL.—Within 15 months after the date of the enactment of this section, the Commission shall complete all actions necessary (including any reconsideration) to prescribe regulations that—

(A) consistent with the requirements of section 656, prohibit a common carrier from discriminating among video programming providers with regard to carriage on its video platform, and ensure that the rates, terms, and conditions for such carriage are just, reasonable, and nondiscriminatory;

(B) prescribe definitions and criteria for the purposes of determining whether a request shall be considered a bona fide request for purposes of this section;

(C) permit a common carrier to carry on only one channel any video programming service that is offered by more than one video programming provider (including the common

carrier's video programming affiliate), provided that subscribers have ready and immediate access to any such video programming service;

(D) extend to the distribution of video programming over video platforms the Commission's regulations concerning network nonduplication (47 C.F.R. 76.92 et seq.) and syndicated exclusivity (47 C.F.R. 76.151 et seq.);

(E) require the video platform to provide service, transmission, and interconnection for unaffiliated or independent video programming providers that is equivalent to that provided to the common carrier's video programming affiliate, except that the video platform shall not discriminate between analog and digital video programming offered by such unaffiliated or independent video programming providers;

(F)(i) prohibit a common carrier from unreasonably discriminating in favor of its video programming affiliate with regard to material or information provided by the common carrier to subscribers for the purposes of selecting programming on the video platform, or in the way such material or information is presented to subscribers;

(ii) require a common carrier to ensure that video programming providers or copyright holders (or both) are able suitably and uniquely to identify their programming services to subscribers; and

(iii) if such identification is transmitted as part of the programming signal, require the carrier to transmit such identification without change or alteration; and

(G) prohibit a common carrier from excluding areas from its video platform service area on the basis of the ethnicity, race, or income of the residents of that area, and provide for public comments on the adequacy of the proposed service area on the basis of the standards set forth under this subparagraph.

Nothing in this section prohibits a common carrier or its affiliate from negotiating mutually agreeable terms and conditions with over-the-air broadcast stations and other unaffiliated video programming providers to allow consumer access to their signals on any level or screen of any gateway, menu, or other program guide, whether provided by the carrier or its affiliate.

(2) APPLICABILITY TO OTHER HIGH CAPACITY SYSTEMS.—The Commission shall apply the requirements of this section, in lieu of the requirements of section 612, to any cable operator of a cable system that has installed a switched, broadband video programming delivery system, except that the Commission shall not apply the requirements of the regulations prescribed pursuant to subsection (b)(1)(D) or any other requirement that the Commission determines is inappropriate.

(c) REGULATORY STREAMLINING.—With respect to the establishment and operation of a video platform, the requirements of this section shall apply in lieu of, and not in addition to, the requirements of title II.

(d) COMMISSION INQUIRY.—The Commission shall conduct a study of whether it is in the public interest to extend the require-

ments of subsection (a) to any other cable operators in lieu of the requirements of section 612. The Commission shall submit to the Congress a report on the results of such study not later than 2 years after the date of enactment of this section.

SEC. 654. AUTHORITY TO PROHIBIT CROSS-SUBSIDIZATION.

Nothing in this part shall prohibit a State commission that regulates the rates for telephone exchange service or exchange access based on the cost of providing such service or access from—

(1) prescribing regulations to prohibit a common carrier from engaging in any practice that results in the inclusion in rates for telephone exchange service or exchange access of any operating expenses, costs, depreciation charges, capital investments, or other expenses directly associated with the provision of competing video programming services by the common carrier or affiliate; or

(2) ensuring such competing video programming services bear a reasonable share of the joint and common costs of facilities used to provide telephone exchange service or exchange access and competing video programming services.

SEC. 655. PROHIBITION ON BUY OUTS.

(a) GENERAL PROHIBITION.—No common carrier that provides telephone exchange service, and no entity owned by or under common ownership or control with such carrier, may purchase or otherwise obtain control over any cable system that is located within its telephone service area and is owned by an unaffiliated person.

(b) EXCEPTIONS.—Notwithstanding subsection (a), a common carrier may—

(1) obtain a controlling interest in, or form a joint venture or other partnership with, a cable system that serves a rural area;

(2) obtain, in addition to any interest, joint venture, or partnership obtained or formed pursuant to paragraph (1), a controlling interest in, or form a joint venture or other partnership with, any cable system or systems if—

(A) such systems in the aggregate serve less than 10 percent of the households in the telephone service area of such carrier; and

(B) no such system serves a franchise area with more than 35,000 inhabitants, except that a common carrier may obtain such interest or form such joint venture or other partnership with a cable system that serves a franchise area with more than 35,000 but not more than 50,000 inhabitants if such system is not affiliated with any other system whose franchise area is contiguous to the franchise area of the acquired system;

(3) obtain, with the concurrence of the cable operator on the rates, terms, and conditions, the use of that part of the transmission facilities of such a cable system extending from the last multi-user terminal to the premises of the end user, if such use is reasonably limited in scope and duration, as determined by the Commission; or

(4) obtain a controlling interest in, or form a joint venture or other partnership with, or provide financing to, a cable system

(hereinafter in this paragraph referred to as "the subject cable system"), if—

(A) the subject cable system operates in a television market that is not in the top 25 markets, and that has more than 1 cable system operator, and the subject cable system is not the largest cable system in such television market;

(B) the subject cable system and the largest cable system in such television market held on May 1, 1995, cable television franchises from the largest municipality in the television market and the boundaries of such franchises were identical on such date;

(C) the subject cable system is not owned by or under common ownership or control of any one of the 50 largest cable system operators as existed on May 1, 1995; and

(D) the largest system in the television market is owned by or under common ownership or control of any one of the 10 largest cable system operators as existed on May 1, 1995.

(c) WAIVER.—

(1) CRITERIA FOR WAIVER.—The Commission may waive the restrictions in subsection (a) of this section only upon a showing by the applicant that—

(A) because of the nature of the market served by the cable system concerned—

(i) the incumbent cable operator would be subjected to undue economic distress by the enforcement of such subsection; or

(ii) the cable system would not be economically viable if such subsection were enforced; and

(B) the local franchising authority approves of such waiver.

(2) DEADLINE FOR ACTION.—The Commission shall act to approve or disapprove a waiver application within 180 days after the date it is filed.

SEC. 656. APPLICABILITY OF PARTS I THROUGH IV.

(a) IN GENERAL.—Any provision that applies to a cable operator under—

(1) sections 613 (other than subsection (a)(2) thereof), 616, 617, 628, 631, 632, and 634 of this title, shall apply,

(2) sections 611, 612, 614, and 615 of this title, and section 325 of title III, shall apply in accordance with the regulations prescribed under subsection (b), and

(3) parts III and IV (other than sections 628, 631, 632, and 634) of this title shall not apply,

to any video programming affiliate established by a common carrier in accordance with the requirements of this part.

(b) IMPLEMENTATION.—

(1) COMMISSION ACTION.—The Commission shall prescribe regulations to ensure that a common carrier in the operation of its video platform shall provide (A) capacity, services, facilities, and equipment for public, educational, and governmental use, (B) capacity for commercial use, (C) carriage of commercial and non-commercial broadcast television stations, and (D) an opportunity for commercial broadcast stations to choose between

mandatory carriage and reimbursement for retransmission of the signal of such station. In prescribing such regulations, the Commission shall, to the extent possible, impose obligations that are no greater or lesser than the obligations contained in the provisions described in subsection (a)(2) of this section.

(2) FEES.—A video programming affiliate of any common carrier that establishes a video platform under this part, and any multichannel video programming distributor offering a competing service using such video platform (as determined in accordance with regulations of the Commission), shall be subject to the payment of fees imposed by a local franchising authority, in lieu of the fees required under section 622. The rate at which such fees are imposed shall not exceed the rate at which franchise fees are imposed on any cable operator transmitting video programming in the same service area.

SEC. 657. RURAL AREA EXEMPTION.

The provisions of sections 652, 653, and 655 shall not apply to video programming provided in a rural area by a common carrier that provides telephone exchange service in the same area.

[TITLE VII—MISCELLANEOUS PROVISIONS]

TITLE VII—MISCELLANEOUS PROVISIONS

* * * * * * *

SEC. 705. UNAUTHORIZED PUBLICATION OF COMMUNICATIONS.

(a) * * *

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(e)(1) * * *

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(4) Any person who manufactures, assembles, modifies, imports, exports, sells, or distributes any electronic, mechanical, or other device or equipment, knowing or having reason to know that the device or equipment is primarily of assistance in the unauthorized decryption of satellite cable programming *or programming of a licensee in the direct broadcast satellite service*, or is intended for any other activity prohibited by subsection (a), shall be fined not more than $500,000 for each violation, or imprisoned for not more than 5 years for each violation, or both. For purposes of all penalties and remedies established for violations of this paragraph, the prohibited activity established herein as it applies to each such device shall be deemed a separate violation.

* * * * * * *

SEC. 713. COMPETITIVE AVAILABILITY OF NAVIGATION DEVICES.

(a) DEFINITIONS.—As used in this section:

(1) The term "telecommunications subscription service" means the provision directly to subscribers of video, voice, or data services for which a subscriber charge is made.

(2) The term "telecommunications system" or a "telecommunications system operator" means a provider of telecommunications subscription service.

(b) COMPETITIVE CONSUMER AVAILABILITY OF CUSTOMER PREMISES EQUIPMENT.—The Commission shall adopt regulations to assure competitive availability, to consumers of telecommunications subscription services, of converter boxes, interactive communications devices, and other customer premises equipment from manufacturers, retailers, and other vendors not affiliated with any telecommunications system operator. Such regulations shall take into account the needs of owners and distributors of video programming and information services to ensure system and signal security and prevent theft of service. Such regulations shall not prohibit any telecommunications system operator from also offering devices and customer premises equipment to consumers, provided that the system operator's charges to consumers for such devices and equipment are separately stated and not bundled with or subsidized by charges for any telecommunications subscription service.

(c) WAIVER FOR NEW NETWORK SERVICES.—The Commission may waive a regulation adopted pursuant to subsection (b) for a limited time upon an appropriate showing by a telecommunications system operator that such waiver is necessary to the introduction of a new telecommunications subscription service.

(d) SUNSET.—The regulations adopted pursuant to this section shall cease to apply to any market for the acquisition of converter boxes, interactive communications devices, or other customer premises equipment when the Commission determines that such market is competitive.

SECTION 6002 OF THE OMNIBUS BUDGET RECONCILIATION ACT OF 1993

SEC. 6002. AUTHORITY TO USE COMPETITIVE BIDDING.

(a) * * *

* * * * * * *

(c) EFFECTIVE DATES.—

(1) * * *

(2) EFFECTIVE DATES OF MOBILE SERVICE AMENDMENTS.—The amendments made by subsection (b)(2) shall be effective on the date of enactment of this Act, except that—

(A) * * *

(B) any private land mobile service provided by any person before such date of enactment, and any paging service utilizing frequencies allocated as of January 1, 1993, for private land mobile services, shall, except for purposes of [section 332(c)(6)] *paragraphs (6) and (8) of section 332(c)* of such Act, be treated as a private mobile service until 3 years after such date of enactment.

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ADDITIONAL VIEWS

SUMMARY

H.R. 1555 is a big bill. It contains many provisions that are similar to those contained in H.R. 3626 and H.R. 3636, each of which passed the House in June 1994 by overwhelming majorities. The bill seeks to breakdown statutory and regulatory barriers that have impeded the development of competition—competition for incumbent cable operators, competition to local telephone companies, competition in the long distance, and competition in the manufacturing of telecommunications equipment.

Most of us supported the motion to report the bill to the full House. It contains much with which we agree. It also contains provisions with which we disagree—in some cases strongly—and which we will continue to work to improve as the bill is considered by the full House and in conference.

We would like to note that the bill's consideration in both the Subcommittee and the full Committee has been, for the most part, bipartisan. We would like to express our gratitude to the Majority for the manner in which they have worked with us, and to express our hope that this is the beginning of a pattern for all legislation moving through the Committee.

TITLE I

Title I of H.R. 1555 creates a new Part II of Title II of the Communications Act of 1934. This new Part seeks to create a regulatory environment that will foster the development of competitive markets in the local and long distance telecommunications industries. It contains provisions that are similar to the provisions of H.R. 3636, which passed the House by a vote of 423–4 in June 1994.

Title I also contains the so-called "checklist" of market-opening measures that must be implemented by the seven Regional Bell Operating Companies ("RBOCs") before they are freed from the constraints of the Consent Decree. This Consent Decree keeps the RBOCs out of the long distance business and precludes them from engaging in manufacturing activities. Many of us disagree with the balance that the majority has struck with respect to RBOC entry into the long distance business, and intend to file Additional Views to outline the nature of our disagreement.

The adoption of Title I of H.R. 1555 will have a profound effect on the architecture of Title II of the Communications Act. Title II has its roots in the Interstate Commerce Act of 1988. Ironically, the railroad industry whose activities were governed by that century-old law was largely deregulated in 1980 by the Staggers Rail Act. The Communications Act of 1934, viewed as a railroad statute, has little relevance to a competitive telecommunications marketplace.

Title I of H.R. 1555 preserves existing Title II of the Act as Part I. However, and significantly in our view, it also includes permissive authority for the Federal Communications Commission (FCC) to forebear from regulating when market forces are sufficient to protect consumers. A new Part II will create the transition to a more competitive marketplace, and, to a certain extent, will govern the activities of carriers in a competitive marketplace. Finally, Title I of H.R. 1555 creates a new Part III of Title II of the Communications Act containing Special and Temporary Provisions. These provisions govern, for a limited period of time, the manner in which the RBOCs can engage in manufacturing activities.

This architecture preserves existing "rules of the road" while market forces are permitted to develop, but which cease to have effect when those forces have developed to the point that they are sufficient to protect consumers.

TITLE II

Title II of H.R. 1555 repeals the provision of the Communications Act that prohibited telephone companies from providing cable television service in their telephone operating territory. It is very much similar to comparable provisions in H.R. 3636 in the 103rd Congress. Title II contains differing requirements for telephone companies that provide cable service in their own operating territory, depending on whether they utilize their local exchange facilities to provide cable television service. If they construct and operate stand-alone cable systems (in essence, duplicating the networks that cable companies operate) they are subjected to the same franchising requirements and "must carry" requirements as are cable operators. To the extent that the telephone company utilizes its own local exchange facilities, however, it will then be required to build and operate a video platform.

The video platform is designed to look much like a common carrier. The telephone company will be precluded from discriminating among video programming providers and will have to make services available upon request, on nondiscriminatory terms, at just and reasonable prices.

In the last several years, the FCC has attempted to circumvent the statutory prohibition on telephone company provision of cable services by encouraging the construction and operation of "video dialtone" systems. In order to permit entry, however, the Commission was forced to define what are essentially facilities used for local delivery services as "interstate access" services in order to bring them under federal jurisdiction. The result has been to require the telephone companies to comply with complex and cumbersome regulations that were designed for telephone services.

These regulations have no relevance to the design, construction, and operation of video networks, and have only served to complicate and delay the competitive offerings of telephone companies. Section 653(c), as added by Title II of H.R. 1555, clarifies that telephone company provision of cable television services will be regulated according to the provisions of Title VI of the Communications Act, freeing the companies from the unnecessary common carrier regulation to which the Commission has subjected them.

Section 202 of Title II contains provisions that deregulate the cable television business. The FCC has been criticized by the cable industry and others for what they believe to be overzealous implementation of the 1992 Cable Act, and the "effective competition" test contained in that Act has been attacked as regulating the cable industry well past the time when consumers would be protected by having access to competitive alternatives. However, in our view, the cable provisions of H.R. 1555 go too far.

For example, the bill deregulates rates for all services offered by "small" cable companies on the date of enactment. Yet it defines as "small" any unaffiliated cable system with fewer than 600,000 subscribers! (This is roughly the size of the cable system serving Las Vegas.) According to the FCC, this would deregulate, on the date of enactment, rates of *all* of the cable subscribers in Alaska, and the rates for more than half of the subscribes in Arkansas (58.3%), Georgia (61.1%), Maine (53%), Minnesota (63%), Nevada (69.2%), New Hampshire (50.7%), North Dakota (60.6%), and South Dakota (82.9%). As a result of this provision, rates would be deregulated immediately for more than 16 million households—28.8% of the cable subscribers in the United States.

In addition to the immediate deregulation of these so-called "small" systems, H.R. 1555 deregulates the "enhanced basic" tier for *all* cable systems a mere 15 months after the date of enactment. This is the date on which the FCC *publishes* its rules for the establishment of the video platform that will enable telephone companies to compete for subscribers. As a result, cable operators will be able to raise rates at will, without facing either competitors in the marketplace or government regulation.

The Administration has targeted these provisions as among those which must be changed if the President is going to sign this bill into law. Either the date for deregulation must be changed so that actual competition will govern the rates that cable operators can charge, or some residual authority for the FCC must be retained for egregious rate hikes. We intend to continue to work to improve these provisions, either on the floor or in conference with the Senate.

TITLE III

Title III of H.R. 1555 contains provisions that will affect the future of the broadcast industry. Here again, there are provisions we support, and others we believe go too far.

For example, section 301 contains the so-called "spectrum flexibility" provisions that will allow broadcasters to utilize their advanced television channels to broadcast more than just television programming. Given the characteristics of digital technology, coupled with the bandwidth that television signals require, in the near term there will be many exciting new applications for data transmission services that broadcasters can offer. Section 301 will make these possible.

However, section 302 contains the Stearns Amendment that was offered, debated and ultimately approved by the Committee. It is sweeping in its scope. Section 302 repeals *all* of the Communications Act's, and the FCC's limitations on the ownership of mass media properties. The limits on the ownership of radio stations are

repealed. The newspaper/broadcast cross ownership prohibition is repealed. The network/cable cross ownership prohibition is repealed. The broadcast/cable cross ownership prohibition is repealed. The dual network rule is repealed. The rules prohibiting duopolies in local markets are repealed and replaced with rules that will permit the establishment of many duopolies. The Commission's current limitations on the number of local stations that networks can own are repealed and replaced with other limits that are extremely generous.

We recognize that the Stearns Amendment was modified to include statutory authority for the Commission to disallow transactions that would lead to local concentration. This was a significant improvement. And this authority extends to license renewals, so that the acquisition of unlicensed mass media outlets by a licensee can be examined after the fact to ensure that undue local concentration has not resulted from such an acquisition.

But the fact remains that the Stearns Amendment goes further than it should. Many local broadcasters feel that the sweeping scope of the changes embodied in the amendment will alter the mass media landscape fundamentally, and leave a relatively few network executives in a position to dictate programming for all Americans. This is another instance in which the Administration has indicated that changes are going to have to be made if the President is going to sign this bill. We look forward to working with our colleagues to achieve those changes.

The Committee made some significant improvement in the text of the Oxley amendment adopted in the Subcommittee. The text of that Subcommittee amendment repealed—in their entirety—the alien ownership provisions of the Communications Act. The result of this repeal would have been to allow foreign telephone companies that operate in closed markets to have access to the open American market, without any comparable or reciprocal opportunities for American firms abroad. It would have permitted foreign nationals to buy American television networks and program them in any way they wanted. It would have allowed drug dealers from the Cali Cartel to acquire and operate U.S. common carrier networks, potentially impeding the legitimate law enforcement activities of the U.S. Government.

Fortunately, during the course of the Committee's consideration of H.R. 1555, Mr. Oxley, Mr. Brown of Ohio and Mr. Klink jointly offered an amendment that scaled back significantly the repeal of the alien ownership provisions that resulted from the earlier adoption of the Oxley amendment. The Oxley-Brown-Klink amendment limited the repeal to the acquisition of common carrier licenses by foreign nationals. It also included a mechanism that permits the President to determine whether reciprocal opportunities exist for American firms and requires the FCC to exercise "great deference" to the President when considering whether to grant a request for issuing or transferring a license.

Although the "great deference" language appears sufficient to meet the primary concerns about the original Oxley language, the brief interlude between the Subcommittee and full Committee markups did not allow adequate time to ensure that the Commission will not be able to substitute its own judgment for that of the

President on matters of national security, foreign and trade policy, and law enforcement. We intend to continue to explore this issue with the Administration, to ensure that the President's authority to carry out his responsibilities under the Constitution are not impeded as a result of the enactment of this provision.

CONCLUSION

As we have noted, H.R. 1555 contains many provisions that we support wholeheartedly. It also contains many provisions with which we disagree. In this respect, it is something of a "work in progress" that needs fine tuning in some places and more work in others.

The legislative process is a lengthy one. There will be additional opportunities—on the floor and in conference with the Senate—to continue our efforts to improve a bill that already accomplishes many good things. But ultimately, of course, unless this bill becomes law, our efforts will have been for naught.

We hope that the Majority will continue to work with us to achieve the goal of enacting a good telecommunications statute. We again express our willingness to work productively and cooperatively to accomplish that goal. Congress has been struggling to update the 1934 Act since the late 1970s. We hope that, at long last, we will have succeeded in crafting a new law that allows competition to determine the type, scope, and breadth of services available to the American public.

JOHN D. DINGELL.
EDWARD J. MARKEY.
W.J. "BILLY" TAUZIN.
GERRY E. STUDDS.
FRANK PALLONE, Jr.
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ELIZABETH FURSE.
BOBBY L. RUSH.
BART STUPAK.

ADDITIONAL VIEWS

In 1783, Lord North was ousted as Prime Minister of England under George III. The no-confidence vote that forced him to step down occurred on a resolution offered by one Charles James Fox. That resolution, known as Fox's "India Resolution," reads "*Resolved*, that we have seen your work, and it will not do."

Although we voted to report H.R. 1555 favorably to the House because, on balance, the bill improves upon current law in some respects, the "India Resolution" sums up our feelings about the manner in which the Committee has fashioned H.R. 1555 so as to protect the long distance industry (and telecommunications equipment manufacturers) from competition by the Bell Companies.

Many have labeled H.R. 1555 a "deregulatory" bill. And it indeed deregulates entry into several communications markets where competition does not now exist. But insofar as it protects the long distance carriers against Bell Company entry, the legislation is anything but deregulatory. It imposes onerous new regulations that will delay and make extremely difficult Bell Company entry into new lines of business, thereby protecting incumbents and unreasonably postponing the availability of new technologies, new services, and lower prices to consumers. In our view, this raising of the bar for a select group of companies constitutes an egregious breach of faith by the Government.

The Bell Companies are currently kept out of the long distance business as a result of restrictions that were imposed as part of the 1982 settlement between the Government of the United States and the then-integrated American Telephone and Telegraph Company (AT&T) that resulted in the break-up of AT&T in January, 1984. The restrictions on the Bell Companies are embodied in the 1982 Consent Decree. The Decree modifies an earlier Consent Decree, or Final Judgment, agreed to in 1956 to settle an antitrust lawsuit brought against AT&T by the Government in 1949. It is thus unknown as the Modification of Final Judgment, or the MFJ. In the eleven years since divestiture, the Decree has been administered by a U.S. District Court judge and enforced by the Department of Justice.

The standard for determining whether the Bell Companies should be permitted either to enter the long distance business or to engage in manufacturing activities is known as the "VIII(C)" standard, from section VIII(C) of the MFJ. This standard is a modified Clayton Act standard, and requires a Bell Company to demonstrate that "there is no substantial possibility that it could use its monopoly power to impede competition in the market it seeks to enter."

As it has been administered by the Judgment Court and the Department of Justice, the VIII(C) standard has proven extremely difficult for the Bell Companies to meet. This is due to a variety of

factors, among them an ossified perspective of an industry structure, a perspective that may have been valid in the late 70s but which has been dramatically overtaken by change since then; a lack of expertise and understanding of the way telecommunications markets operate; and the lack of an orderly procedure to ensure that wavier requests are timely processed.[1]

The bill passed by the House in June 1994, H.R. 3226, did not impose new and onerous regulation on the Bell Companies in order for them to enter restricted lines of business. Rather, with respect to Bell Company entry into long distance, for example, that legislation did three things:

It codified both the restrictions on providing long distance and the VIII(C) standard for determining whether entry should be permitted, notwithstanding these restrictions;

It exempted from the prohibition those services which had a long distance component, but in which that component was incidental to the delivery of another service, such as cable television; and

It created a process for the orderly review and consideration of waiver requests, and for the timely appeal of Justice Department decisions regarding entry.

Both the 1982 Consent Decree and the 1994 legislation used a standard that is forward looking: it required an analysis of the market that a Bell Company has applied to *enter*. In stark contrast, H.R. 1555 requires that before a Bell Company can even *apply* for entry, it must have implemented a series of measures to open up its *existing* market to competition. This is tantamount to requiring that each of the Bell Companies must first lose market share as a condition precedent before applying to enter new markets.

Based on the MFJ, current law has flexibility so that if a Bell Company decides, on its own, to open up its local exchange facilities to competitors, it can use the opening to buttress its arguments that it cannot impede competition in the market it is seeking to enter. In the alternative, a Bell Company may have a greater interest in maintaining its status as a monopoly and rely instead on safeguards (such as equal access) to protect against impeding competition in the market it is seeking to enter. In either case, the Bell Company controls its own destiny.

H.R. 1555, however, strips the Bell Companies of their ability, using their own business judgment, to determine how best to enter new markets. Instead, H.R. 1555 imposes new and burdensome regulatory requirements that must be met before an application to remove the restrictions can even be filed. Hence the breach of faith.

The regulatory restrictions imposed by the bill are, indeed, onerous. Perhaps most pernicious is the bill's requirement that local telephone companies must "resell" their local services at rates that are "economically feasible to the reseller." This requirement is based on the erroneous presumption that the provision of local telephone service is profitable. In fact, it is sold at prices that are substantially below cost. It has long been a matter of federal and state policy, and of industry practice, to maintain low, affordable local

[1] With respect to the lack of an orderly procedure, we note with approval that the current Assistance Attorney General for Antitrust, Anne Bingaman, has improved substantially the processing of waiver requests. Nevertheless, there remains a need for procedures that guarantee the timely processing of waiver requests, and orderly appeals.

telephone rates. In return, rates for other (frequently discretionary) services are often priced above-cost, creating a pool to help underwrite the cost of providing local service.

Thus, intraLATA toll charges are priced at levels that substantially exceed, on a per-mile basis, the charges for interLATA toll calls. Business rates are higher than residential. Rural service is priced at levels comparable to suburban service, despite the disparity in the cost of providing the service. Many states permit telephone companies to charge for unpublished numbers, even though there is only a negligible cost incurred by *not* listing numbers. So-called "vertical services" such as call waiting, call forwarding and caller ID often are priced above cost, and thus they too contribute to the pool.

In short, local telephone service is heavily subsidized. Yet as drafted, H.R. 1555 requires that such service be *further* discounted for resale carriers so as to be "economically feasible" to the reseller. The most likely beneficiaries of this provision are the long distance companies, which are interested in "bundling" local and long distance service. They will be allowed to utilize the networks of the local telephone companies, without investing a dime in plant and equipment of their own. In our view, it is outrageous that federal law would give AT&T, the largest telephone company in the world, with gross revenues that dwarf those of any of the Bell Companies, and the other long distance carriers a guaranteed statutory discount—a subsidy—for an already subsidized service.

Ultimately, local telephone subscribers will pay the price. The provision would decrease the revenues of the telephone companies. But since the basis for the discount is "economic feasibility for the reseller," as opposed to a discount that is cost-based, there is no commensurate decrease in the telephone companies' costs. The result will be to increase the amount of subsidy to make up the shortfall—a subsidy that is paid for by consumers. To the extent that Members have expressed concern about the potential for growth in the subsidy pool, termed the "Universal Service Fund" in the bill, the resale provision should cause a severe case of heartburn. And that is the "best case" scenario. The alternative is simply to increase local rates by an amount necessary to make up the difference. In either event, universal service is threatened.

It is fair to ensure that those seeking to resell local telephone service do not bear the costs of the underlying carrier's marketing efforts, nor those costs associated with billing and collection. But any discount that exceeds the cost of marketing, and of billing and collection, constitutes a subsidy.

We find it particularly ironic that despite the rhetoric about "deregulation", the resale provision of H.R. 1555 perverts the Commission's resale policies from their origins as deregulatory initiatives, and transforms them into intrusively regulatory measures. The FCC adopted its resale policy in the early 1970s in order to lessen the Commission's regulatory burdens. The Commission determined that if an underlying carrier priced or discriminated in favor of a particular customer, then others can request the same deal from the underlying carrier. The adoption of this policy lessened substantially the FCC's oversight of carrier tariff offerings under sections 201 and 202 of the Communications Act. Over AT&T's objec-

tions at the time, the courts strongly affirmed the FCC's resale policy and attached great weight to the Commission's interpretation that the policy was deregulatory.

However, the Commission's policy has never required that an underlying carrier create a resalable product. Instead, the Commission has only required that carriers cannot limit the resale of the products they create. This is an extremely important distinction in light of H.R. 1555's intent to impose, for the first time, an affirmative obligation on the local carrier to create a product that is "economically feasible"—a resalable product. It is particularly ironic that, for almost two decades, long distance carriers have relied upon repeated FCC statements and decisions that affirm that carriers have no obligation to create a resalable product when they are defending themselves against charges that particular tariffs make the resale of a particular service "unresalable".

We have characterized this provision as "pernicious." For the local telephone industry in general, and the Bell Companies in particular, that is an accurate description. It requires that the local telephone industry subsidize its competitors; the very companies with which the local telephone industry wishes to compete for long distance business. And in the case of the Bell Companies, it forces them to subsidize competitors for a substantial period of time when the Bell Companies cannot even apply for long distance relief, much less offer long distance services.

The branch of faith to which we referred also extends well beyond requiring the Bell Companies to subsidize their competitors. As we noted above, before the Bell Companies are permitted to ask state and federal regulators to allow them to enter the long distance market, they must implement a series of market opening measures to permit competition in their home market. In order to prove that their local networks have been adequately opened to competitors, and in order to obtain authority to enter the long distance business, each company must demonstrate that it is providing access to and interconnection with its network facilities to the facilities of a competing carrier. This competing carrier must offer, over its own facilities, competitive service that is comparable in price, features, and scope to both residential and business subscribers.

It is possible that this requirement can never be met. It appears that each of the Bell Companies may have to wait to apply for long distance relief until some competitor has duplicated the Bell Company's network and offers service of comparable "scope" throughout the service territory of the Bell Company.

Curiously, H.R. 1555 fails to provide a means by which the Bell Companies ever could obtain permission to offer long distance services that originate in states (or nations) in which they do not provide local telephone service. During the course of the Committee's consideration of the bill, a colloquy on this point did little to clarify how a Bell Company can obtain out-of-region and international relief. In fact, the bill's treatment of this issue goes beyond breach of faith to pure Catch–22.

The facts are these. H.R. 1555 adds a new section 245(f)(1) to the Communications Act. This section prohibits a Bell Company from offering interLATA services with two exceptions, neither of which

is relevant here. Section 245(f)(2) provides that a Bell Company, in any State to which its verification under section 245(a) applies, may offer interLATA services after the effective date of the Commission's approval of such verification. In other words, a Bell Company cannot originate interLATA traffic in any state unless the FCC has approved a state verification that the company has complied with the provisions of section 245(a).

Section 245(a) requires a Bell Company to provide the FCC with a certification from a state public utility commission that its local network has been opened and complies with the provisions of the section. Certifications are based on *facts*. If a Bell Company does not operate a network in any given state, that state's public utility commission cannot in good faith certify in fact to the Commission that the company's network has been fully opened if the company has no such network in that state. And unless the FCC has approved a state's certification, the prohibition on Bell Company provision of interLATA services remains in force.

Thus, while there is a mechanism in place that ultimately will permit a Bell Company to offer interLATA services for traffic that originates within states in which it offers local telephone service, there is no way that the Bell Companies can obtain relief for interLATA traffic that originates outside of their service territories.

We look forward to the debate in the House on this issue. We anticipate with particular interest the discussion of how the Bell Companies can obtain relief to carry U.S.-bound traffic that originates overseas, where not only are there no state public utility commissions, but there are no states at all.

Finally, the Committee adopted an amendment that requires the Bell Companies, for three years after enactment, to provide interLATA services only through a separate subsidiary. This is a burden uniquely imposed on the Bell Companies. Sprint, which offers both local and long distance service, is not so constrained, nor is AT&T, nor is any other company, even after they enter the local exchange business in direct competition with the Bell Companies.

The lack of parity between the bill's treatment of the Bell Companies and all others is striking. It will also lead to some rather ludicrous results, particularly since the separate subsidiary requirement extends to all long distance services, including those previously authorized by the Judgment Court and those authorized by section new 245(h) as added by this bill. New section 245(h) exempts from the prohibition on Bell Company provision of interLATA services a series of services that contain a long distance component, which component is incidental to the provision of an unrelated service. Among these services containing an incidental long distance component are cellular and other commercial mobile services, cable services, and signalling services.

The Committee's decision to adopt a separate subsidiary requirement will require that when a Bell Company provides cable service that includes a long distance component, that long distance transmission will have to utilize facilities owned by another company.

It will be interesting to see how this requirement will affect, for example, the operation of SWB's (formerly Southwestern Bell Telephone Company) cable system in Montgomery County, Maryland. Montgomery County is divided into two LATAs; SWB serves cable

customers in each. Perhaps the company could divest itself of inch-long sections of its system each place it crosses the LATA line, and then lease the sections back from the new owner.

H.R. 1555 compels the same silly result with respect to the Bell Companies' provision of commercial mobile services, including cellular telephone and paging services. Presumably, the Bell Companies will have to divest themselves of little pieces of their existing networks wherever they cross a LATA boundary, and then lease the pieces back from the new owners. The public interest rationale for this nonsensical requirement is difficult to discern.

In sum, H.R. 1555 is a deregulatory bill except when it comes to shielding the long distance industry from competition from the Bell Companies. It caters to the long distance industry by unilaterally and one-sidedly abrogating the agreement into which the U.S. Government entered in 1982. In our view, this breach of faith makes it considerably more difficult—and in some cases impossible—for the Bell Companies to obtain long distance relief. It imposes obligations that will mandate that the local telephone industry subsidize its local competition, even when the competitors are among the largest companies in the world.

While we support many of the market-opening initiatives embodied in this bill, we will continue our efforts to ensure that the long distance industry does not succeed in preventing competition from its most likely competitors: The Bell Companies. The provisions we have discussed here must be improved substantially in order to achieve the fairness that is essential in a rewrite of the Communications Act and the free market principles on which this legislative exercise, we had thought, was originally premised.

JOHN D. DINGELL.
W.J. "BILLY" TAUZIN.
RICK BOUCHER.
BART STUPAK.

ADDITIONAL VIEWS OF REPRESENTATIVE BART GORDON

I am happy that the House Commerce Subcommittee on Telecommunications and Finance unanimously accepted my bill, H.R. 1559, the Freedom From Toll Fraud Act, which seeks to crack down on abuses in the 1–800 industry, as an amendment to H.R. 1555, the Communications Act of 1995.

Three years ago, Congress passed a piece of legislation that I was integrally involved with, the Telephone Disclosure and Dispute Resolution Act (TDDRA), which put the brakes in abuses in the 1–900 pay-per-call industry by requiring price-per-minute disclosure and making 1–900 call blocking available to parents. Regulations by both the FCC and FTC have since put the law into effect.

Rather than comply with the law, many of the 1–900 abusers have simply moved their sex and psychic hotlines to 1–800 numbers. Now consumers are being charged high prices for making calls to 1–800 numbers that they expect to be toll-free.

Consumers call 1–800 numbers and are unknowingly transferred to either 1–900 numbers, numbers offshore, or have their charges reversed to the phone line through Automatic Number Identification (ANI). Many of these calls are being placed by children calling teleporn and psychic hotlines without their parents' knowledge.

While TDDRA gave 1–800 numbers special legal status as free to caller to prevent this problem, an exemption was made to protect legitimate businesses using 1–800 numbers if they obtained a "preexisting agreement" with the caller. Scam operators are abusing this loophole, and my legislation seeks to cease these abuses.

H.R. 1559 protects unsuspecting callers from being charged for calls they expect to be toll-free—thereby preserving the toll-free status and integrity of the legitimate $8 billion 1–800 industry—by requiring stricter cost disclosure requirements to ensure that consumers clearly know when there is a charge for a call, how much the charge will be, and how they will be billed.

Information providers (Ips) operating over 1–800 numbers must obtain legal, informed consent through either a written preathorize contract with the caller, or through the use of a preamble at the start of all non-toll-free 1–800 calls.

The written contract between the IP and the caller must include the rates of service, the IP's name, business address and phone number, the IP's pledge to notify subscribers of future rate changes, and the signature of a legally competent subscriber. Importantly, the contract must allow the subscriber to choose the method of billing: the phone bill, credit card, calling card or prepaid card.

In the absence of a written presubscription agreement, callers may be given access to information services over 1–800 numbers only after first hearing an introductory message that clearly states that there is a charge for the call and the service's total cost per

minute. Importantly, it must explain that the charges must be billed on either a credit, calling or pre-paid card, ask the caller for the card number, explain that charges for the call begin at the end of the introductory message, and that the caller may hang up at or before the end of the message without incurring any charges whatsoever.

Both of these options ensure that consumers know there is a charge for the information service and that they are giving their consent to be charged.

Finally, the bill clearly states its intent to only apply to information services provided over the phone and *not* to goods purchased over 1–800 numbers.

By requiring that all information providers secure a caller's true informed consent, the scam operators will have to close up shop. This will stop consumers from being victimized by phony toll-free 1–800 numbers and protect the legitimacy of the $8 billion unlawful 1–800 toll-free number business.

BART GORDON.

ADDITIONAL VIEWS OF ANNA G. ESHOO

During the Committee's consideration of HR 1555, I offered an amendment to clarify the roe of the FCC in setting standards for cable compatibility. My amendment adds Section 624A of the 1934 Communications Act, and requires the FCC to set minimal technical standards when implementing regulations to ensure the compatibility between cable "set-top" boxes, televisions, and video casette recorders. The amendment I offered simply states that on the issue of cable compatibility standards, as provided under Subsection (c)1(A), government standards should prescribe the minimum degree of common design and operation necessary to achieve this end. My amendment also adds language to Section 624A to remind the FCC that its efforts to ensure cable compatability should not result in a preference for one home automation production over another.

I want to underscore that my amendment does not deny FCC a role in developing or enforcing standards for telecommunication networks. It merely clarifies that when the FCC is considering a standard to meet the requirements of Subsection (c)1(A), it should not implement a standard which is too broad or attempt to solve more than what was required of Subsection (c)1(A).

Likewise, my amendment does not affect Section 203 H.R. 1555, which ensures that "set-top" boxes will be made available to consumers through retail stores. I support the effort by the Committee to allow retailers to sell set-top boxes, and my amendment does not conflict with the directive that the FCC assure the retail commercial availability of cable converters.

In short, I believe the FCC has a role in facilitating marketplace solutions for incompatible networks and products. But the FCC should intervene in this process only when industry efforts have failed, only when it is necessary for the benefit of consumers, and only to the extent necessary to achieve basic interconnection and interoperability.

Finally, I believe consumers should be given the freedom to decide what technologies they use in their home. My amendment will ensure consumers have this freedom by protecting them from overbroad technology standards which decrease technology innovation, decrease competition, and limit choice.

DISSENTING VIEWS

OVERVIEW

Over a number of years, Congress has sought to update antiquated communications laws while remaining true to the three core principles of the Communications Act of 1934 that have guided communications policy for decades: universal service, diversity, and localism. These three principles have served our nation well and have helped bring Americans the finest communications technology and services in the world. The challenge for policymakers is to reform the rules in a way that retains these core values as they are impacted by two new factors: rapid technological change and fierce competition.

We believe that H.R. 1555 goes a long way in accomplishing this important goal. Indeed, the bill contains many provisions that we strongly support. In fact, many of the key policy proposals embodied in the legislation trace their roots to the Markey-Fields legislation of last year (H.R. 3636), which was approved by the House by a 423–4 vote.

The core provisions of the bill encourage the deployment of advanced communications technologies by injecting competition into the market for local telephone service and the market for delivery of interactive services and video programming. Competition will spur technological advance and innovation in services offered to the public. We strongly endorse a competitive model for our communications marketplace.

Moreover, H.R. 1555 recognizes that concomitant with creating and fostering competition, preserving and enhancing the provision of universal telephone service are vital components of national telecommunications policy. Accordingly, the legislation establishes a mechanism to ensure that universal service is preserved and enhanced. We believe that there must be a process to ensure that as change and competition are introduced into the local telephone market, that the long-standing policy of universal service not only endures but is updated to evolve with the rapid changes in the communications industry. We commend the authors of the legislation for embracing this important telecommunications policy principle.

The legislation, however, has two glaring flaws at this point. The two fatally flawed areas of the bill, as reported by the Committee, are the cable and broadcasting provisions in Titles II and III, respectively. These provisions are flawed because they fundamentally depart from the competitive model upon which the rest of the bill is based. Instead of preserving and strengthening the principles of diversity and localism, the broadcasting provisions undermine them. We believe these provisions are anti-competitive, anti-consumer and contrary to the public interest. Instead of looking to

the future, these provisions return us to the policies and practices of the past.

MASS MEDIA CONCENTRATION

The drastic and indiscriminate elimination of mass media ownership rules proposed by this bill, in response to pressure from special political and corporate interests, would eviscerate the public interest of diversity and localism. The proposed changes will not create entertainment and information sources for consumers. Nor will they enhance the ability of the broadcasting medium to meet the informational and civic needs of the communities it serves. Instead, H.R. 1555 will concentrate great wealth and media power in the hands of a few.

The mass media provisions of H.R. 1555, which were adopted in the form of an amendment offered by Mr. Stearns (R–FL), are sweeping in scope. The "network duopoly" rule is repealed. The broadcast-cable crossownership rule is repealed. The network-cable crossownership rule is repealed. The broadcast-newspaper crossownership rule is repealed. National limits on radio station ownership are repealed. Limits on local ownership of radio stations are also eliminated. The "one-to-a-market" rule is repealed, allowing for the creation of television duopolies in local markets. Finally, the national audience reach limitation for television networks is allowed to double from 25 percent of the country to 50 percent.

Although we will address each of these rule changes separately, it is important to note at the outset that their aggregate effect is to encourage the rapid consolidation of mass media ownership in this country and the elimination of diverse sources of opinion and expression. They are a powerful toxin to democracy and a death knell for community control of its own media.

H.R. 1555 will intensify control of information and opinion in entire cities and regions of the country. Mass media outlets will increasingly become beholden to policies and programming originating in New York and Hollywood. In this new electronic environment, diversity and localism will suffer and large segments of the population will enjoy fewer and fewer options.

H.R. 1555 would encourage a "communications cannibalism" in mass media properties on both the national and local levels. We believe that the inexorable (and *rapid*, if deregulation in the radio industry offers any omen) consolidation of media—television, radio, cable, and telephone—by a very small handful of very large companies will have adverse consequences for the nation.

Our system of democratic self-government relies on an informed citizenry. The broadcast deregulation provisions in Title III subject mass media outlets to a new "digital Darwinism," where only the largest entities will prevail. Moreover, because diversity of ownership is our only proxy for diversity of viewpoints, elimination of ownership limits eliminates the best tool we have to help ensure that the public has access to a wide array of viewpoints in local news and information.

BIPARTISAN CONCERN

The limits on mass media ownership that this bill would sweep away were not created solely by liberals. On the contrary, both lib-

erals and conservatives, Democrats and Republicans, have insisted on such rules and developed them in bipartisan fashion over a number of decades. In fact, the broadcast-cable crossownership rule was part of legislation sponsored by Democrats and signed by President Reagan in 1984. The network-cable and the broadcast-newspaper crossownership rules were adopted by the FCC during the Nixon and Ford Administrations.

THE ROYAL FLUSH

Why were these rules developed? They were borne from experience. On the local level, powerful conglomerates in the 1960's and 1970's were amassing multiple ownership of media outlets. At the time, in the top 50 television markets (comprising 75 percent of the nation's television homes), 30 markets had one of the local TV stations owned by a major newspaper in the same market. By 1967, some 76 communities had only one AM radio station and only one newspaper, with cross-owning interests between the two. Fourteen communities had one AM radio station, one television station, and only one daily newspaper, all commonly owned. Moreover, in 1968 it was reported that the infant cable industry was already seeing a trend toward media concentration, with 30 percent of cable systems controlled by broadcasters.

Across the country, media moguls were assembling what was called a "Royal Flush." Atlanta, Georgia, was one example where a single company owned:

A VHF television station;
a high power AM radio station;
an FM radio station;
the cable system; and,
a newspaper.

All in one community. Needless to say, if an entity obtained a Royal Flush, it was the hand.

H.R. 1555 would allow local media concentration to take root in communities across the nation in a manner that would make Citizen Kane look like an underachiever. It would go far beyond the Royal Flush—it would rig the game against all but the most powerful conglomerate players.

While H.R. 1555 does allow the FCC to look at "undue concentration" of media voices within a local community, it authorizes it only after the acquisition of a second nonbroadcast mass media property. In other words, the FCC is powerless to address media concentration issues under H.R. 1555 if a communications conglomerate aggregates broadcast properties and holds only one nonbroadcast property such as a newspaper, cable system or phone company. The new Royal Flush would allow the following:

A VHF television station;
a UHF television station;
an unlimited number of AM radio stations;
an unlimited number of FM radio stations;
a wireless cable system; and
a daily newspaper.

Again, in this scenario, the FCC could not address concentration issues. The legislation specifically prohibits the FCC from looking at mass media concentration issues until a broadcast licensee com-

bines with a *second non*broadcast mass media property. Only if this new Royal Flush (and we recognize we're stretching the card game analogy at this new Royal Flush already has more cards than poker would allow) tried to obtain a cable system, another newspaper (if another one exists), or was bought by the local phone company, could the FCC disallow such concentrated ownership.

We believe the sweeping broadcast deregulation contained in Title III is contrary to the public interest because it permits an unprecedented and dangerous combination of power in just a few individuals at the local level.

We turn now to a critique of the individual provisions.

Repeal of the "Network Duopoly Rule"

The network duopoly rule prohibits anyone from owning 2 TV networks. This rule was put in place in 1941 and led to the breakup of NBC Red and Blue. NBC Blue became the ABC television network. While this rule would allow ABC to go out and start a new network, it also permits ABC and NBC to merge back together again after a 50-year hiatus. It would allow FOX to buy CBS. Yet allowing such buyouts and mergers to take place will not inject competition into the marketplace.

After waiting decades for a viable fourth national television network to merge (FOX), and with Paramount and Warner Brothers attempting to create a fifth and sixth competing network, H.R. 1555 would risk a decrease in the number of independently-owned television networks in the country by repealing this rule.

Rather than returning network ownership rules to the 1930's, this provision should be modified to prevent consolidation of television network ownership. The bill should stipulate that an entity can own 2 TV networks provided these networks are created, and not simply the result of a purchase or merger of existing television networks.

Repeal of the TV "one-to-a-market" rule

The bill would allow ownership of 2 TV stations within a market. We believe that great care must be taken when the FCC allows for ownership of two television stations within a local market under this legislation. Even if the dominant VHF television station in a locality purchases the weakest UHF station, for example, that dominant VHF station will likely become more dominant. In general, we do not see the overriding need to repeal this rule. Diminution of diversity in local markets across the country will be a direct result.

Repeal of the Broadcast-Cable Crossownership Rule

This rule prevents TV-cable combinations within local markets. Adopted by the FCC during the Nixon Administration, this rule helps to protect fair completion in the local media marketplace and safeguards diversity in mass media outlets within local communities. Simply put, this rule prevents a cable system from acquiring a local TV station in the same city.

Television broadcasters today rely upon so-called "must carry" rules to ensure their carriage on local cable systems. These rules are currently subject to litigation in the courts.

If the court invalidates these rules, the broadcast-cable crossownership repeal contained in H.R. 1555 could have adverse consequences. For example, if a cable company has a financial interest in one of the TV stations within the local market (or 2 TV stations if it is one of the new local duopolies permitted by H.R. 1555), some or all of the remaining broadcasters may be refused carriage or discriminated against in such carriage. Without safeguards, repeal of this rule would allow a local cable system-local television combination to utilize the bottleneck of cable system access to stifle media voices and distort the advertising market.

Yet even without any judicial decision with respect to the status of must carry obligations, repeal of this rule will have anti-competitive consequences. H.R. 1555 does not extend must carry rights to any new channels offered by broadcasters. In developing new section 336 of the Communication Act of 1934, the authors of H.R. 1555 stipulate that if the Commission decides to award licenses for advanced television services, the supplementary services or channels that a broadcaster may develop utilizing digital compression are not granted must carry right son cable systems.

Although numerous broadcasters in a locality might be using digital compression technology to create 3, 4, or 5 additional TV channels each, the cable system is not obligated to carry these additional channels. This is a competitively neutral provision only if all the local television stations are treated by the cable system in similar fashion.

With repeal of the broadcast-cable crossownership rule, however, the local cable system could immediately favor the television station in which it had a financial interest. The cable system could do this simply by carrying the additional or supplementary channels and services of that TV station and denying such opportunity to the other broadcasters within the same community.

Repeal of the Network-Cable Crossownership Rule

This rule, which was also adopted by the FCC in 1970 during the Nixon Administration, prohibits TV network and cable company combinations. Under the bill, TCI and NBC could now merge. Time Warner could buy CBS. If a national TV network owns a cable system serving a particular locality, it would have tremendous incentive to bypass its affiliate and put its national programming directly on the cable system. We believe repeal of this rule is unwarranted and would have anticompetitive effects.

Repeal of the Broadcast-Newspaper Crossownership Rule

This rule prohibits local television station and local newspaper combinations. This rule was adopted in 1975 by the FCC during the Ford Administration. We believe that repeal of this rule is unwarranted. There is no clamor to repeal it. Many communities in this country have become one-newspaper towns. We believe it is important to safeguard diversity by retaining this rule.

Deregulation of the national TV audience reach limitation

The bill would lift the current cap limiting television networks to 25 percent coverage of the nation to 35 percent immediately. It would then lift the cap to 50 percent 1 year later.

We believe that the relationship between networks and television affiliates has served our country well. H.R. 1555 does more than tip the balance between TV networks and their affiliates toward the networks. It completely disrupts that balance.

Local broadcasters in communities across the country are fighting to remain *local* broacasters in this legislation. Increasing the national audience caps to 50 percent puts localism in jeopardy. The doubling of the audience cap will hurt diversity.

The nature of the network-affiliate relationship today is that networks must count on their affiliates to air national programming while affiliates count on the networks to provide national news, sports and entertainment to add to a mix of local news and independently-produced programming. Tilting the balance too much toward the networks will create a concentration of nationally-produced programming and corresponding loss of locally-oriented programming.

If networks can own stations that cover the largest markets in the country, we lose the tradition—and the capability—of having local affiliates pre-empt network programming to bring viewers important local news, public interest programming, and local sports. As Ed Reilly, President of McGraw Hill Broadcasting Company said in testimony before the Committee: "A network-owned station almost *never* preempts a network program to cover a local sports event or to air a local charity telethon."

Because American society is built upon local community expression, the policy favoring localism is fundamental to the licensing of broadcast stations. Localism permits broadcasters to tailor their programming to the needs and interests of their communities. Moreover, as trends toward national homogenization of the media grow—for example, cable channels and direct broadcast satellite service—localism increases in importance. Expansion of national media outlets increases the need for local media outlets with the locally ubiquitous reach of broadcast television stations.

In short, relaxation of the national audience caps is an anti-competitive proposal. Deregulation of the audience cap will intensify concentration in the hands of the vertically-integrated, national television networks. Once they are permitted to gobble up additional local stations, these mega-networks will have an increased ability to sell national advertising by controlling local distribution.

No one will argue that, in general, it is not more efficient to simply make local broadcast stations passive conduits for network transmissions from New York. Localism is an expensive value. We believe it is a vitally important value, however, and like universal service, it is a principle of communications policy rooted in the Communications Act of 1934. It should be preserved and enhanced as we reform our laws for the next century.

Elimination of national and local radio station ownership limits

In many respects, the complete elimination of ownership restrictions in the radio marketplace has received scant attention as compared to the other mass media provisions in the bill. We feel that radio is an important and vibrant medium of mass communication and that local ownership rules to protect diversity and localism are

needed. The radio industry has already been deregulated substantially in the last few years.

Prior to September 1992, FCC rules permitted an individual to own a maximum of 12 AM stations and 12 FM stations. In September 1992, the national ownership limits were increased to 18 AM and 18 FM stations. They were allowed to increase to the current rules of two years later. The current FCC rules limit national ownership to 40 stations (20 AM/20 FM) and limit local ownership to 4 stations (2 AM/2 FM).

We believe that the rules promulgated by the FCC in 1992 have had direct and detrimental effects on the ability of some stations to compete in both the major metropolitan markets and the smaller and medium-sized markets associated with rural areas. In some instances this has hindered certain stations' ability to continue to provide the diverse array of viewpoints and programming choices that the public has learned to enjoy and expect.

The adverse effects of radio deregulation are only now coming to light in many localities. We believe it is ill-advised to eliminate local ownership limitations until a more thorough analysis of the consequences such deregulation is already having on localism and competition has been completed.

Some of the downside effects of radio deregulation since 1992 include the increased number of closings, acquisitions, and mergers that resulted in part from the inability of small independently-owned radio stations to compete with stations owned by capital-rich national broadcasting chains, and a corresponding harm to media diversity.

As a result of loosened ownership restrictions in radio, stations are purchased in many situations in order to eliminate them as competitors. Typically, the new management then re-formats the programming for the combined radio stations solely to attract the largest combined audience, thus further reducing diversity.

In general, radio duopolies have created enormous pressure to cut costs and achieve economies of scale, each time to the detriment of the public interest in the fields of news and public affairs. The duopolization or consolidation of American radio continues at a rapid pace. In March, 22.2 percent of all 10,121 commercial radio stations in the country were involved in a Local Marketing Agreement (LMA)[1] or duopoly combine. In April 1993, the duopoly/LMA percentage stood at just 8.8. The top-100 markets, in-

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[1] An LMA is a type of joint venture that generally involves the sale by a licensee of discrete blocks of time to a broker who then supplies the programming to fill that time and sells the commercial spot announcements to support it. In radio, the FCC requires that a licensee's time brokerage of any other radio station for more than 15 percent of the brokered station's weekly broadcast hours results in counting the brokered station toward the brokering licensee's national and local ownership limits.

LMAs, which first showed up in 1990 and until 1993 served as a significant forerunner to the industry's consolidation, represent a phenomenon well past its peak. Their number has declined significantly over the last year as the number of duopolies has increased. The duopoly era started with the Fall 1992 Arbitron rankings. See "Radio Business Report" (hereinafter RBR), April 10, 1995, at 14.

Television LMAs enable separately owned stations to function cooperatively and are currently not subject to FCC guidelines of control and attribution. They represent a device to circumvent the ownership provisions—and thus the elements of licensee responsibility—of the Communications Act. LMAs would be legitimized under H.R. 1555.

According to "Broadcasting & Cable," June 5, 1995, at 8, the number of LMAs where one operator manages two TV stations in a market now stands at least thirty-six, including 10 in the top-30 markets.

deed the top-50, have experienced the strongest duopoly growth in the months from November 1994 through March 1995. In Arbitron-rated markets (4,105 stations), industry consolidation stands at 44.5%, or 1,826 stations in duopolies and LMAs in markets 1–261. In the top-50 markets, the percentage is 52.3% (667 of 1,276 stations).[2]

It is clear that the changes enacted by the FCC in 1992 have spurred a *rapid consolidation* by a few players in each market as well as the growth of a few large chain operators who dominate their individual markets both in audience and revenue share. For example, in Syracuse, NewCity controls 50.3% of the revenue; in Louisville, Clear Channel/Snow controls 46.3%; in Cincinnati, Jacor controls 42.8%; while in Modesto, Reno, and Spokane, a single company, Citadel, controls, respectively, 49.6%, 43.9%, and 40.9% of the revenue in these markets.

At the end of 1994, duopolies controlled 35.1% of the 12+ audience shares and 48.5% of the revenue in the 144 major markets surveyed by James H. Duncan, Jr., publisher of Duncan's American Radio, Inc. *Even without further deregulation,* Duncan predicts that given both a healthy general and radio economy, by the end of 1995, duopolies will control about 50% of the 12+ audience shares and 64% of revenue. Duncan believes that by the end of 1997 the duopolization process will be fairly mature, at which time ". . . about 60% to 65% of 12+ shares will be controlled by duopolies, and perhaps 72% to 77% of revenue shares."[3]

As if to confirm these projections, "RBR," in its issue of April 3, 1995, reports that in Buffalo, which it describes as one of the most completely duopolized markets in America, four (4) owners, all duopolies, controlled 73.9% of the 12+ shares in the fall of 1994, whereas in the spring of 1992 seven (7) owners, with no duopolies, controlled 75.4%.

It is clear that the radio deregulation since 1992 has already led to a loss of ownership diversity. It has also led to a loss of jobs. In a report on radio station ownership released in November, the FCC's Mass Media Bureau tentatively observed that with some 500 stations changing hands under duopoly, an average of 5 people per station lost jobs or a total of 2,500 eliminated positions.[4] We believe that H.R. 1555 needlessly accelerates this trend and will result in a dramatic loss of both diversity and jobs in a historically vibrant medium. Finally, the considerable consolidation in the radio industry that has occurred under limited deregulation provides a useful, if not perfect, parallel for the likely effects of deregulation of national and local ownership rules in the television broadcast industry.

PUBLIC INTEREST

In spite of the manifold benefits bestowed by H.R. 1555 on the nation's television industry, the bill fails to elevate the public interest obligations of broadcasters to meet the needs of parents and children. It is apparent that broadcasters are failing to meet the informational and educational needs of the child audience as required

[2] See "RBR," April 10, 1995, at 14.
[3] See "RBR," September 9, 1994, at 9.
[4] See "Radio Station Ownership Report," Mass Media Bureau, FCC, October 20, 1994, at 30.

by the Children's Television Act of 1990. Moreover, the issue of increasing levels of violence in our society has focused attention on the graphic violence and other objectionable programming often found on both on broadcast and cable programming.

PARENTS, CHILDREN AND TELEVISED VIOLENCE

Parents are right to be concerned about the effect of violent television programming on children. Many parents are aware that children in this country spend more time watching television than in school. The American Psychological Association reports that by the time a child finishes elementary school, the typical American 11-year-old will have watched 100,000 acts of violence and 8,000 murders on television. This is not a new issue, but the consequences of our failure to address it is becoming acute.

Back in the 1950s, Senator Estes Kefauver denounced the rise in "televiolence". He linked it to the rise in violent crime and took particular note of the ways in which teen criminals modeled themselves after television gangs. Then in the 1960s, Senator Thomas Dodd held hearings on the topic of television violence. The networks responded by promising to reduce violence, which they did, for a while. Psychiatrists call this a "flight into health"—a temporary escape from therapy that leaves the problem untreated.

In 1993, the Subcommittee on Telecommunications and Finance held five hearings in the last Congress on the subject of televised violence (see "Violence on Television," Hearings before the Subcommittee on Telecommunications and Finance of the Committee on Energy and Commerce, Serial No. 103–79.) Twenty-nine witnesses testified. As a result, Congress and much of the public is now aware of the cumulative research linking television violence to increased aggression and violent behavior.

The Subcommittee received testimony on several negative effects from the overload of violent images on children. Advertisers spend $30 billion annually using the medium of television to influence behavior because they know that it works. It should come as no surprise, then, when psychologists and researchers document that negative lessons taught by this same medium can effectively teach negative behavior.

For example, Dr. William Dietz, on behalf of The American Academy of Pediatrics, testified that epidemiologic and experimental studies have demonstrated the association between the viewing of televised violence and aggressive behavior. "The absence of the consequences of the violence that they see, and the rapidity with which difficulties are resolved by the use of violence, increase the likelihood that violence will be among the first strategies that a child selects, rather than the last. Also, the rewards that the heroes receive for their violent behavior legitimize and tacitly endorse violence as a means of solving problems. Finally, the frequency with which children view violence, and the lack of long-term consequences for the victims of violence, desensitizes children and makes them more passive to acts of violence and less likely to intervene when violence occurs."

The Surgeon General's Report (1972), the National Institute of Mental Health Report (1982), the Carnegie Council on Adolescent Development (1992), the American Medical Association (1976,

1982, 1993), and the Centers for Disease Control (1993) have all confirmed the adverse effects of televised violence on the shaping of a child's values and perceptions.

Despite repeated documentation of what society knows to be a serious problem, solutions have proved elusive. And when the hot glare of Congressional attention turns elsewhere, violence on television begins to increase again.

That is why we have concluded that parents must be given the technological ability to block violent shows when they are not in the room to supervise their children. Technology exists—called a V-Chip ("v" for violence) or C-Chip ("c" for children)—that allows parents in their own homes to block, in advance, any program rated violent. The decision to block is the parent's; the decision to rate is the broadcaster's. In this way, we can facilitate the job of parenting in the pervasive presence of television without having the government deciding which shows are acceptable and which shows are not.

The V-Chip can be made available in all television sets very inexpensively because of previous action taken by Congress and by this subcommittee. In 1990, we passed the Decoder Circuitry Act requiring all new TV sets to include the electronics that make it possible for the deaf and hard-of-hearing to receive closed-captioning. The same electronics have tremendous unused capacity to read any codes sent to the viewer embedded in the TV signal itself.

Polling and reader surveys suggest that the public wants this blocking technology. For example, a readers survey by USA Today in 1993 found that 68 percent of its readers supported the V-Chip; by 1995, this support had risen to 90 percent.

A trial of the V-Chip in Canada by Shaw Communications has already demonstrated the ease with which this technology can block shows at varying ratings levels. In the United States, the Electronics Industries Association, on behalf of the TV set manufacturers, have already settled on a standard for the V-Chip and some manufacturers are considering including the V-Chip in some sets. Moreover, the National Cable Television Association has come out in support of such blocking technology, although with the important condition that they will not implement it as long as their broadcast brethren refuse to implement it too. And that is the problem—broadcasters in particular are unwilling to send information to parents electronically. Without that signal, the V-Chip won't work.

It is understandable as a business matter that broadcasters would resist technology that has the potential to reduce viewership. Less viewers means less Nielsen ratings and, therefore, lower advertising revenues. However, as a public policy matter, the V-Chip facilitates the protection of children by concerned parents as we enter the world of 200-channel TV. The task of parenting in that world will be infinitely more difficult than a decade ago when television was still dominated by just three big networks.

Moreover, the audience lost through the V-Chip—children—is precisely that segment of the audience that programmers say they are not trying to reach when they write violent scenes into scripts.

In today's world, where most children have two working parents, it is unrealistic to expect that mom or dad will sit with their child

for hours watching television and be there to turn off violent programs. Parents are perfectly willing to take responsibility for the programs their children watch—but they need the ability to enforce their programming choices. It is the least restrictive means of accomplishing the compelling governmental purpose of protecting the health and welfare of children and increasing the likelihood they will become productive, nonviolent citizens.

This approach strikes a reasonable balance between the needs of parents in today's violent society and the business concerns of both broadcast and cable executive.

The V-Chip should be added to this bill.

CHILDREN'S TELEVISION

In addition to its failure to do anything to reduce the harm to children from violent television, the legislation does nothing to restore positive programming for children.

The profound influence of television on children and the limited number of educational programs for children compelled Congress to enact the Children's Television Act in 1990. This was the first time that Congress recognized children as a special audience that deserved special attention from broadcast licensees. Congress concluded that television broadcasters were failing to provide positive informational programs for children and were increasingly squeezing 14 minutes or more of advertising into half-hour shows. Indeed, a recent report by Squire Rushnell, former vice president for children's programs at ABC–TV, found that the availability of educational programs for children had gone from approximately 11 hours per week on the three networks combined in 1980, to approximately 1.5 hours per week in 1990.

The Act contained the following two major provisions:

(1) reinstatement of commercial time limits during children's programming to not more than 10.5 minutes/hour on weekends and not more than 12 minutes/hour on weekdays.

(2) a requirement that commercial television broadcast licensees, as part of their public interest obligations, meet the educational and informational needs of the child audience through their overall programming as well as through programming *specifically designed* to meet the educational and information needs of children.

The Act was designed to increase the amount of educational and informational television programming available to children and to protect children from over-commercialization of programming.

The broadcasting community's failure to do so has led the Federal Communications Commission to institute a rulemaking on the Children's Television Act. Unfortunately, the rulemaking suggests requiring broadcasters to air as little as one hour per week on their channel to be in compliance with the Act. This laughably low minimum standard is, nevertheless, opposed by the National Association of Broadcasters.

We believe that the failure of H.R. 1555 to address this issue, in the context of deregulation that will boost the value of broadcast properties by millions of dollars (the licenses for which broadcasters receive from the public for free), is an abdication of our responsibility and another major deficiency in the bill.

CABLE DEREGULATION

H.R. 1555 goes far astray from its premise of "competition before deregulation" with respect to the provisions in Title II of the bill deregulating the cable industry. Much like the broadcast deregulation provisions in Title III, these provisions look backward not forward and repeat the mistaken policies of the past.

The cable industry was deregulated once before. And when it was, in 1984, the industry took advantage of its monopoly status and raised rates on subscribers. According to the General Accounting Office, average cable rates rose at roughly three times the rate of inflation. Residents of Newark, New Jersey saw rate increases of more than 130 percent. Residents of certain communities in Connecticut saw their rates rise 222 percent. Cable companies charged $5 per month just to use the remote control.

In response to consumer complaints, Congress passed the 1992 Cable Act to restrain hyperinflationary monopoly price hikes and to help create competition to the industry by making access to cable programming available to competitors. Cable rates stabilized and costs to consumers for equipment and installation went way down.

The FCC has estimated that the 1992 Cable Act has saved consumers approximately $3 billion. H.R. 1555, however, allows cable monopolies to strip those savings from consumers by permitting the cable industry to return to past practice and gouge consumers BEFORE competition arrives.

The cable rate provisions in the Cable Act are temporary. They are specifically designed to protect consumers until effective competition offers them an affordable marketplace choice. When effective competition arrives, rate restrictions on the incumbent cable company cease to exist. It's that simple.

The bill, however, deregulates rates for cable programming services for so-called "small cable systems" immediately upon enactment. These are systems which largely serve rural America. As a result, it will be consumers in rural America who see their cable rates rise first. This provision deregulates any cable system which has less than 1 percent of all cable subscribers (approximately 600,000 subscribers) and is not affiliated with an entity that earns in excess of $250 million in gross annual revenues. According to the National Telecommunications and Information Administration (NTIA), this provision would deregulate cable systems affecting 28.8 percent of all cable subscribers.

These systems would be deregulated irrespective of the fact that they would have no effective competition in the marketplace. Nor would the FCC have any residual authority to rein in renegade operators who raise rates egregiously. In short, almost 30 percent of the country's cable customers would be left without any protection with respect to rates charged for popular programming such as CNN, ESPN, CSPAN and Discovery.

For the big cable systems—those affecting the 70 percent of cable consumers not served by the "small systems"—deregulation comes a mere 15 months after the date of enactment. Again, regardless of whether or not there is not effective competition to these cable systems, they are deregulated. And, as in the case of small cable

systems, the FCC would have no residual authority to protect consumers when monopoly rate gouging reappears.

To suggest that there will not be some unscrupulous cable operators who take advantage of the utter lack of an affordable marketplace choice to jack up their rates is pure folly. It is imperative, therefore, either to retain consumer protection provisions to rein in the industry renegades or to continue regulating monopolies until effective competition arrives.

Deregulation of the cable industry is based on the flawed supposition that competition is coming soon and that the industry needs to be freed from regulations so as to obtain capital to compete against the local phone companies. Implicit in the supposition is that the cable industry is suffering greatly from rules that prevent it from charging monopoly prices and that banks will refuse to lend them money until operators can charge monopoly rents.

Although it vehemently objects to the imposition of rules to protect consumers and promote competition, the cable industry is not faring poorly under regulation. For example, in a recent article in USA Today (5^{31}95, at 1B), it was noted that the nation's largest cable company, Tele-Communications Inc., added 5.4 percent more customers in 1994; the second largest cable company, Time Warner, grew by 4 percent; and the third largest, Comcast, grew by 4.4 percent. Cable companies also saw a 4.8 percent spike in the number of of customers who bought premium channels.

In addition, in the first quarter of 1995, operating cash flow for large cable MSO's was up. According to a recent article in Cable World (6^{19}95), TCI's first-quarter 1995 operating cash flow was up $14 million to $464 million over 1994 same-period totals; Time Warner's was up 5 percent to $256 million, Jones Intercable was up 8 percent; Comcast Corp.'s rose to $217.2 million from 141.5 the previous year; and Cablevision System's Corp.'s jumped 36 percent. Overall, the article also reports, cable stocks (Kagan MSO Average) have risen 13 percent in the first 6 months of 1995.

Finally, the number of cable channels has not dwindled and faded under regulation. On the contrary, it has grown, in spite of, or perhaps because of, regulation of the industry, from 79 channels to 128 channels in 1994.

CABLE COMPETITION

According to the FCC, out of the more than 11,000 cable systems in the United States, less than 30 communities have seen their incumbent cable system deregulated because it met the effective competition test by having another competitor come to town in head-to-head competition. That's less than one-half of 1 percent of all systems nationwide and a minuscule amount of subscribers. The idea that robust competition is going to materialize for the other 99.5 percent of cable systems within 15 months is dubious.

To be sure, the 18-inch direct broadcast satellite (DBS) systems are now operational and signing up customers. There are about 600,000 DBS subscribers nationwide today, representing less than 1 percent of the market. However, as long as DBS dishes cost $700 or $800 a piece, DBS will not be an affordable alternative for the vast majority of consumers.

And to be sure, the phone companies are coming. When and where? Nobody knows for certain. Their arrival in larger cities and towns could be 2 years away or 5 years away. For some rural areas it could be much longer. What we do know for certain is that there is no city, town, county, village, neighborhood or hamlet in the country that currently has the telephone company offering effective cable competition to an incumbent cable company.

It is clear that H.R. 1555 deregulates cable systems before effective competition arrives to offer consumers an affordable alternative. We believe it is obvious that cable rates will rise dramatically as a result.

PREDATORY PRICING

Not only does H.R. 1555 prematurely deregulate cable monopolies, it contains provisions that would snuff out fledgling competitors before they can take wing in a community. Section 202(g) of the legislation eliminates prohibitions against predatory pricing. It would allow cable monopolies to target unfairly a new competitor's customers for temporary lower prices and special offers. These lower prices and special offers to undercut a competitor would not be available to all subscribers in the cable systems' franchise areas. Rather, other subscribers would subsidize lower rates to undercut competitors. In this way, cable monopolies can crush competition in its cradle.

Nascent competitors, such as wireless cable systems and direct broadcast satellite (DBS) systems, would suffer greatly from this anticompetitive provision. H.R. 1555 would significantly thwart the ability of consumers to reap the benefits of competition in the form of greater choice, higher quality, and lower price, if section 202(g) is retained in the bill.

Not content simply to deregulate monopolies before competition arrives, H.R. 1555 also contains provisions that frustrate, rather than promote, the emergence of a competitive market. Instead of coddling communications monopolies, the provisions of Title II deregulating the cable industry should be drastically modified to remain consistent with the underlying premise of the legislation. The current cable provisions constitute a glaring flaw in a bill whose ostensible purpose is to promote competition in the telecommunications marketplace.

COMPLAINT THRESHOLD

H.R. 1555 also modifies the complaint threshold that must be met to review cable rates charged to ascertain whether they exceed legal limitations. Current law allows the admittedly low threshold of a single consumer complaint to trigger FCC analysis of a cable operator's rates. The legislation requires that 10 consumers or 5 percent of all subscribers of a cable system, whichever is greater, must complain to the FCC to induce a rate proceeding. In other words, H.R. 1555 would require that in a cable system of 20,000 subscribers, 1,000 consumers would have to complain. Increasing the complaint threshold merely to 10 subscribers would have a significant effect. According to the FCC, some 2,281 communities had a single consumer complaint; 1,383 communities had more than one but less than five complaints; and only 124 communities had

more than 5 consumer complaints. Moving the complaint level to 5 percent of subscribers is a clear attempt to create an impossibly high threshold in order to insulate cable companies from provisions originally designed in the Cable Act of 1992 for consumer protection and empowerment.

Finally, if there was any attempt to make government procedures less bureaucratic and FCC procedures more consumer-friendly, it was not in evidence in the drafting of these provisions. The legislation does not allow for the 5 percent consumers complaint threshold to be met by having 1,000 consumers sign a petition. In Section 202(f)(1), the legislation requires that consumers "file separate, individual complaints" against rate increases. It is ironic that when it comes to protecting cable giants, the legislation is not only bereft of consumer-friendly provisions, but instead endorses more bureaucratic forms, more cumbersome regulations. So much for getting Washington off the backs of the people.

CONCLUSION

We believe that the final bill should balance the introduction of competitive markets with measures designed to protect ratepayers, new market entrants and the consuming public from potential monopoly abuses. Universal service, diversity and localism should remain our guide stars as we develop a telecommunications blueprint for the 21st century. We look forward to working with all our colleagues on achieving the enactment of a comprehensive pro-consumer, pro-competitive communications law this year.

At this point, however, the bill is unbalanced. It favors monopolies more than it breaks them down and encourages communications consolidation more than it creates new economic opportunities for small businesses and entrepreneurs. And in legislation that affects multibillion dollar issues and every American who owns a telephone or a television, it is woefully deficient in protecting consumers from potential monopoly abuses, or empowering them with new technology. It is our hope that these provisions can be amended and improved during further deliberation of the bill in the House.

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