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H. R. 3636

To promote a national communications infrastructure to encourage deployment of advanced communications services through competition, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 22, 1993

Mr. MARKEY (for himself, Mr. FIELDS of Texas, Mr. BOUCHER, Mr. OXLEY, Mr. HALL of Texas, Mr. MOORHEAD, Mr. BRYANT, Mr. BARTON of Texas, Mr. LEHMAN, Mr. HASTERT, Mr. RICHARDSON, Mr. GILLMOR, and Ms. SCHENK) introduced the following bill; which was referred to the Committee on Energy and Commerce

FEBRUARY 10, 1994

Additional sponsors: Mr. MOAKLEY, Mr. STUDDS, Mr. FRANK of Massachusetts, Mr. LEVY, Mr. MEEHAN, Mr. OLVER, Mr. FRANKS of Connecticut, Mr. MACHTLEY, Mr. BLUTE, and Mr. McHUGH

A BILL

To promote a national communications infrastructure to encourage deployment of advanced communications services through competition, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “National Communica-
3 tions Competition and Information Infrastructure Act of
4 1993”.

5 **TITLE I—TELECOMMUNI-**
6 **CATIONS INFRASTRUCTURE**
7 **AND COMPETITION**

8 **SEC. 101. POLICY; DEFINITIONS.**

9 (a) POLICY.—Section 1 of the Communications Act
10 of 1934 (47 U.S.C. 151) is amended—

11 (1) by inserting “(a)” after “SECTION 1.”; and

12 (2) by adding at the end thereof the following
13 new subsection:

14 “(b) The purposes described in subsection (a), as
15 they relate to common carrier services, include—

16 “(1) to preserve and enhance universal tele-
17 communications service at affordable rates;

18 “(2) to encourage the continued development
19 and deployment of advanced and reliable capabilities
20 and services in telecommunications networks;

21 “(3) to ensure that the costs of such networks
22 and services are allocated equitably among users and
23 are constrained by competition whenever possible;

24 “(4) to ensure a seamless and open nationwide
25 telecommunications network through joint planning,

1 coordination, and service arrangements between and
2 among carriers; and

3 “(5) to ensure that common carriers’ networks
4 function at a high standard of quality in delivering
5 advances in network capabilities and services.”.

6 (b) DEFINITIONS.—Section 3 of such Act (47 U.S.C.
7 153) is amended by adding at the end thereof the follow-
8 ing new subsections:

9 “(hh) ‘Information service’ means the offering of a
10 capability for generating, acquiring, storing, transforming,
11 processing, retrieving, utilizing, or making available infor-
12 mation via telecommunications, and includes electronic
13 publishing, but does not include any use of any such capa-
14 bility for the management, control, or operation of a tele-
15 communications system or the management of a tele-
16 communications service.

17 “(ii) ‘Equal access’ means to afford, to any person
18 seeking to provide an information service or a competing
19 telecommunications service, reasonable and nondiscrim-
20 inatory access—

21 “(1) to databases, signaling systems, poles,
22 ducts, conduits, and rights-of-way owned or con-
23 trolled by a local exchange carrier, or other facilities
24 or information (including customer numbers) inte-

1 gral to the transmission, routing, or other provision
2 of telephone exchange services;

3 “(2) that is at least equal in type and quality
4 to the access which the carrier affords to itself or to
5 any other person; and

6 “(3) that is sufficient to ensure the full inter-
7 operability of the equipment and facilities of the car-
8 rier and of the person seeking such access.

9 “(jj) ‘Open platform service’ means a switched, end-
10 to-end digital telecommunications service, subject to title
11 II of this Act, which (1) provides subscribers with suffi-
12 cient network capability to access multimedia information
13 services, (2) is widely available throughout each State, (3)
14 is provided based on accepted standards, and (4) is avail-
15 able to all customers on a single line basis upon reasonable
16 request.

17 “(kk) ‘Local exchange carrier’ means any person that
18 is engaged in the provision of telephone exchange service
19 or telephone exchange access service.

20 “(ll) ‘Telephone exchange access service’ means the
21 offering of telephone exchange services or facilities for the
22 purpose of the origination or termination of interexchange
23 telecommunications services to or from an exchange area.

24 “(mm) ‘Telecommunications’ means the trans-
25 mission, between or among points specified by the cus-

1 tomer, of information of the customer's choosing, without
 2 change in the form or content of the information as sent
 3 and received, by means of an electromagnetic transmission
 4 medium, including all instrumentalities, facilities, appara-
 5 tus, and services (including the collection, storage, for-
 6 warding, switching, and delivery of such information) es-
 7 sential to such transmission.

8 “(nn) ‘Telecommunications service’ means the offer-
 9 ing, on a common carrier or other basis, of telecommuni-
 10 cations facilities, or of telecommunications by means of
 11 such facilities. Such term does not include an information
 12 service.”.

13 **SEC. 102. EQUAL ACCESS AND NETWORK FUNCTIONALITY**
 14 **AND QUALITY.**

15 (a) AMENDMENT.—Section 201 of the Communica-
 16 tions Act of 1934 (47 U.S.C. 201) is amended by adding
 17 at the end thereof the following new subsections:

18 “(c) EQUAL ACCESS.—

19 “(1) OPENNESS AND ACCESSIBILITY OBLIGA-
 20 TIONS.—

21 “(A) COMMON CARRIER OBLIGATIONS.—

22 The duty of a common carrier under subsection
 23 (a) to furnish communications service includes
 24 the duty to furnish that service in accordance
 25 with such regulations with respect to the open-

1 ness and accessibility of common carrier net-
2 works as the Commission may prescribe as nec-
3 essary or desirable in the public interest pursu-
4 ant to this subsection.

5 “(B) ADDITIONAL OBLIGATIONS OF LOCAL
6 EXCHANGE CARRIERS.—The duty under such
7 subsection of a local exchange carrier includes
8 the duty—

9 “(i) to provide, in accordance with the
10 regulations prescribed under paragraph
11 (2), equal access to and interconnection
12 with the facilities of the carrier’s networks
13 to any other carrier or person providing
14 telecommunications services reasonably re-
15 questing such equal access and inter-
16 connection, so that the networks are fully
17 interoperable; and

18 “(ii) to offer unbundled features,
19 functions, and capabilities in accordance
20 with requirements prescribed by the Com-
21 mission pursuant to this subsection and
22 other laws.

23 “(2) EQUAL ACCESS AND INTERCONNECTION
24 REGULATIONS.—

1 “(A) REGULATIONS REQUIRED.—The
2 Commission shall, within 1 year after the date
3 of enactment of this subsection, establish regu-
4 lations that provide reasonable and nondiscrim-
5 inatory equal access to and interconnection with
6 the facilities of a local exchange carrier’s net-
7 work at any technically feasible and economi-
8 cally reasonable point within the carrier’s net-
9 work on reasonable terms and conditions, to
10 any other carrier or person providing tele-
11 communications services requesting such access.
12 The Commission shall establish such regula-
13 tions after consultation with the Joint Board
14 established pursuant to subparagraph (D).
15 Such regulations shall provide for actual col-
16 location of equipment necessary for interconnec-
17 tion at the premises of a local exchange carrier,
18 except that the regulations shall provide for vir-
19 tual collocation where the local exchange carrier
20 demonstrates that actual collocation is not prac-
21 tical for technical reasons or because of space
22 limitations.

23 “(B) COMPENSATION.—The Commission
24 shall establish rules, within 1 year after the
25 date of enactment of this subsection, for the

1 just and reasonable compensation to the ex-
2 change carrier providing such interconnection
3 and equal access pursuant to subparagraph (A).

4 “(C) EXEMPTIONS AND MODIFICATIONS.—
5 Notwithstanding any other provision of this
6 subsection, a local exchange carrier in a rural
7 area shall not be required to provide equal ac-
8 cess and interconnection to another local ex-
9 change carrier. The Commission may modify
10 the requirements of this paragraph for any local
11 exchange carrier that has, in the aggregate na-
12 tionwide, fewer than 500,000 subscriber lines
13 installed, to the extent that the Commission de-
14 termines that compliance with such require-
15 ments would be unduly economically burden-
16 some, technologically infeasible, or otherwise
17 not in the public interest.

18 “(D) JOINT BOARD ON EQUAL ACCESS AND
19 INTERCONNECTION STANDARDS.—Within 30
20 days after the date of enactment of this sub-
21 section, the Commission shall convene a Fed-
22 eral-State Joint Board under section 410(c) for
23 the purpose of preparing a recommended deci-
24 sion for the Commission with respect to the

1 equal access and interconnection regulations re-
2 quired by this paragraph.

3 “(E) ENFORCEMENT OF EXISTING REGU-
4 LATIONS.—Nothing in this section shall be con-
5 strued to prohibit the Commission from enforc-
6 ing regulations prescribed prior to the date of
7 enactment of this section in fulfilling the re-
8 quirements of this subsection to the extent that
9 such regulations are consistent with the provi-
10 sions of this subsection.

11 “(3) STATE PREEMPTION.—Notwithstanding
12 section 2(b), no State or local government may, after
13 one year after the date of enactment of this sub-
14 section—

15 “(A) effectively prohibit any provider of
16 any telecommunication services from providing
17 that or any other such service, or impose any
18 restrictions on entry into the business of provid-
19 ing any such service that is inconsistent with
20 this subsection or any other provision of this
21 Act, or any regulation thereunder;

22 “(B) prohibit any carrier or other person
23 providing telecommunications services from ex-
24 ercising the access and interconnection rights
25 provided under this subsection; or

1 “(C) impose any limitation on the exercise
2 of such rights that is inconsistent with this sub-
3 section or the regulations prescribed under this
4 subsection.

5 “(4) TARIFFS.—

6 “(A) GENERALLY.—A local exchange car-
7 rier shall, within 18 months after the date of
8 enactment of this subsection, prepare and file
9 tariffs in accordance with this Act with respect
10 to the services or elements offered to comply
11 with the equal access and interconnection regu-
12 lations required under this subsection. The
13 costs that a carrier incurs in providing such
14 services or elements of exchange services shall
15 be borne solely by the users of the features and
16 functions comprising such services or which
17 uses or includes such service element. The Com-
18 mission shall review such tariffs to ensure
19 that—

20 “(i) the charges for such services or
21 elements of exchange services are cost-
22 based; and

23 “(ii) the terms and conditions con-
24 tained in such tariffs do not bundle to-

1 gether any separable elements, features, or
2 functions.

3 “(B) SUPPORTING INFORMATION.—A local
4 exchange carrier shall submit supporting infor-
5 mation with its tariffs for equal access and
6 interconnection that is sufficient to enable the
7 Commission and the public to determine the re-
8 lationship between the proposed charges and
9 the costs of providing such services or elements
10 of exchange services. The submission of such
11 information shall be pursuant to rules adopted
12 by the Commission to ensure that similarly sit-
13 uated carriers provide such information in a
14 uniform fashion.

15 “(5) PRICING FLEXIBILITY.—(A) Within 270
16 days after the date of enactment of this subsection,
17 the Commission, by regulation, shall establish cri-
18 teria for determining—

19 “(i) whether a telecommunications service
20 or provider of such service has become, or is
21 reasonably certain imminently to become, sub-
22 ject to competition, either within a geographic
23 area or within a class or category of service;

24 “(ii) whether such competition will effec-
25 tively prevent rates for such service that are un-

1 just or unreasonable or that are unjustly or un-
2 reasonably discriminatory; and

3 “(iii) appropriate flexible pricing proce-
4 dures that can be used in lieu of the filing of
5 tariff schedules, or in lieu of other pricing pro-
6 cedures established by the Commission, and
7 that are consistent with the public interest, con-
8 venience, and necessity.

9 “(B) The Commission, with respect to rates for
10 interstate or foreign communications, and State
11 commissions, with respect to rates for intrastate
12 communications, shall, upon application—

13 “(i) render determinations in accordance
14 with the criteria established under clauses (i)
15 and (ii) of subparagraph (A) concerning the
16 services or providers that are the subject of
17 such application; and

18 “(ii) upon a proper showing, establish an
19 appropriate flexible pricing procedure consistent
20 with the criteria established under clause (iii) of
21 such subparagraph.

22 The Commission shall approve or reject any such ap-
23 plication within 180 days after its submission.

24 “(6) JOINT BOARD TO PRESERVE UNIVERSAL
25 SERVICE.—

“(A) ESTABLISHMENT; FUNCTIONS.—

Within 30 days after the date of enactment of this subsection, 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. As a part of preparing such recommendations, the Joint Board shall survey providers of telephone exchange service and consult with State commissions in order to determine the pecuniary difference between the cost of providing universal service and the prices determined to be appropriate for such service. In making such recommendations, the Joint Board shall base policies for the preservation of universal service on the following principles:

“(i) A plan adopted by the Commission and the States should ensure the continued viability of universal service by maintaining quality services at affordable prices.

“(ii) Such plan should define the nature and extent of the services encompassed within carriers’ universal service ob-

1 ligations and should seek to promote ac-
2 cess to advanced telecommunications serv-
3 ices for all Americans by including ad-
4 vanced telecommunications services in the
5 definition of universal service, while main-
6 taining affordable rates.

7 “(iii) Such plan should establish spe-
8 cific and predictable mechanisms to pro-
9 vide adequate and sustainable support for
10 universal service.

11 “(iv) All providers of telecommuni-
12 cations services should make an equitable
13 and nondiscriminatory contribution to
14 preservation of universal service.

15 “(B) REPORT; COMMISSION RESPONSE.—
16 The Joint Board convened pursuant to sub-
17 paragraph (A) shall report its recommendations
18 within 270 days after the date of enactment of
19 this subsection. The Commission shall complete
20 any proceeding to implement such recommenda-
21 tions within one year after such date of enact-
22 ment. A State may adopt regulations to imple-
23 ment the Joint Board’s recommendations, ex-
24 cept that such regulations shall not, after 18
25 months after such date of enactment, be incon-

1 sistent with regulations prescribed by the Com-
2 mission to implement such recommendations.

3 “(7) RESALE.—The resale or sharing of tele-
4 phone exchange service (or unbundled elements of
5 such service) in conjunction with the furnishing of a
6 telecommunications service or any information serv-
7 ice shall not be prohibited nor subject to unreason-
8 able conditions by the carrier, the Commission, or
9 any State.

10 “(8) REVIEW OF STANDARDS AND REQUIRE-
11 MENTS.—At least once every three years, the Com-
12 mission shall—

13 “(A) conduct a proceeding in which inter-
14 ested parties shall have an opportunity to com-
15 ment on whether the standards and require-
16 ments established by or under this subsection
17 have opened the networks of carriers to reason-
18 able and nondiscriminatory access by providers
19 of telecommunications services and information
20 services;

21 “(B) review the definition of universal
22 service and evaluate the extent to which univer-
23 sal service has been protected and access to ad-
24 vanced services has been facilitated pursuant to

1 this subsection and the plans and regulations
2 thereunder; and

3 “(C) submit to the Congress a report con-
4 taining a statement of the Commission’s find-
5 ings pursuant to such proceeding, and including
6 an identification of any defects or delays ob-
7 served in attaining the objectives of this sub-
8 section and a plan for correcting such defects
9 and delays.

10 “(9) STUDY OF RURAL PHONE SERVICE.—No
11 later than 1 year after the date of enactment of this
12 subsection, the Commission shall initiate an inquiry
13 to examine the effects of competition in the provision
14 of telephone exchange access and telephone exchange
15 service on the availability and rates for telephone ex-
16 change access and telephone exchange service fur-
17 nished by rural exchange carriers.

18 “(d) NETWORK FUNCTIONALITY AND QUALITY.—

19 “(1) FUNCTIONALITY AND RELIABILITY OBLI-
20 GATIONS.—The duty of a common carrier under
21 subsection (a) to furnish communications service in-
22 cludes the duty to furnish that service in accordance
23 with such regulations of functionality and reliability
24 as the Commission may prescribe as necessary or de-

1 sirable in the public interest pursuant to this sub-
2 section.

3 “(2) COORDINATED PLANNING FOR INTEROPER-
4 ABILITY AND OTHER PURPOSES.—The Commission
5 shall establish—

6 “(A) procedures for the conduct of coordi-
7 nated network planning by common carriers
8 and other providers of telecommunications or
9 information services, subject to Commission su-
10 pervision, for the effective and efficient inter-
11 connection and interoperability of public and
12 private networks; and

13 “(B) procedures for the development, sub-
14 ject to Commission supervision, of—

15 “(i) standards for the interconnection
16 and interoperability of such networks;

17 “(ii) standards for the design of such
18 networks that promote access to network
19 capabilities and services by individuals with
20 disabilities; and

21 “(iii) standards to ensure that the de-
22 sign of such networks does not impede ac-
23 cess to information services by subscribers
24 to telephone exchange service furnished by
25 a rural exchange carrier.

1 “(3) OPEN PLATFORM SERVICE.—

2 “(A) STUDY.—No later than 90 days after
3 the enactment of this subsection, the Commis-
4 sion shall initiate an inquiry to consider the
5 rules and policies necessary to make open plat-
6 form service available to all subscribers at rea-
7 sonable rates based on the reasonably identifi-
8 able costs of providing such services, utilizing
9 existing facilities to the maximum extent fea-
10 sible and economically practicable. The inquiry
11 required under this paragraph shall be com-
12 pleted within 120 days after initiation.

13 “(B) REGULATIONS.—On the basis of the
14 results of the inquiry required under subpara-
15 graph (A), the Commission shall prescribe and
16 make effective such regulations as are necessary
17 to implement the inquiry’s conclusions. Such
18 regulations may require a local exchange carrier
19 to file, in the appropriate jurisdiction, tariffs
20 for the origination and termination of open
21 platform service as soon as such service is eco-
22 nomically and technically feasible. In establish-
23 ing any such regulations, the Commission shall
24 take into account the proximate and long-term
25 deployment plans of local exchange carriers,

1 and may establish a procedure to delay for a
2 reasonable period of time any requirement of
3 open platform service if a petition from a local
4 exchange carrier demonstrates that compliance
5 with such requirement would significantly delay
6 the deployment of a more advanced technology.
7 Any such regulations shall provide for the allo-
8 cation of all costs of facilities jointly used to
9 provide open platform service and telephone ex-
10 change service. Nothing in this subsection shall
11 be construed to limit a State's authority to con-
12 tinue to regulate any services subject to State
13 jurisdiction under this Act.

14 “(C) CONTINUING OVERSIGHT.—Com-
15 mencing not later than 2 years after the date
16 of enactment of this subsection, the Commis-
17 sion shall conduct an inquiry on the progress of
18 open platform service deployment. The Commis-
19 sion shall submit a report to the Congress on
20 the results of such inquiry within 90 days after
21 the commencement of such inquiry and annu-
22 ally thereafter for the succeeding 5 years.

23 “(4) ACCESSIBILITY REGULATIONS.—

24 “(A) REGULATIONS.—The Commission
25 shall, within 1 year after enactment of this sec-

tion, prescribe such regulations as are necessary to ensure that advances in network services deployed by local exchange carriers shall be accessible and usable by individuals with disabilities, including individuals with functional limitations of hearing, vision, movement, manipulation, speech and interpretation of information, unless the cost of making the services accessible and usable would result in an undue burden or adverse competitive impact. Such regulations shall seek to 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.

“(B) COMPATIBILITY.—Such regulations shall require that whenever an undue burden or adverse competitive impact would result from the requirements in subparagraph (A), 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 re-

1 sult in an undue burden or adverse competitive
2 impact.

3 “(C) UNDUE BURDEN.—The term ‘undue
4 burden’ means significant difficulty or expense.
5 In determining whether the activity necessary
6 to comply with the requirements of this para-
7 graph would result in an undue burden, the fac-
8 tors to be considered include:

9 “(i) The nature and cost of the activ-
10 ity.

11 “(ii) The impact on the operation of
12 the facility involved in the deployment of
13 the network service.

14 “(iii) The financial resources of the
15 local exchange carrier.

16 “(iv) The type of operations of the
17 local exchange carrier.

18 “(D) ADVERSE COMPETITIVE IMPACT.—In
19 determining whether the activity necessary to
20 comply with the requirements of this paragraph
21 would result in adverse competitive impact, the
22 following factors shall be considered:

23 “(i) whether such activity would raise
24 the cost of the network service in question
25 beyond the level at which there would be

1 sufficient consumer demand by the general
2 population to make the network service
3 profitable; and

4 “(ii) whether such activity would, with
5 respect to the network service in question,
6 put the local exchange carrier at a com-
7 petitive disadvantage. This factor may be
8 considered so long as competing network
9 service providers are not held to the same
10 obligation with respect to access by per-
11 sons with disabilities.

12 “(E) EFFECTIVE DATE.—The regulations
13 required by this paragraph shall become effec-
14 tive 18 months after the date of enactment of
15 this subsection.

16 “(5) QUALITY RULES.—(A) The Commission
17 shall designate or otherwise establish network reli-
18 ability and quality performance measures or bench-
19 marks for common carriers for the purpose of ensur-
20 ing the continued maintenance and evolution of com-
21 mon carrier facilities and service. Not later than 180
22 days after the date of enactment of this subsection,
23 the Commission shall initiate a rulemaking proceed-
24 ing to establish performance measures or bench-

1 marks for maintaining common carrier network
2 quality.

3 “(B) Such rules and regulations shall include—

4 “(i) quantitative network reliability and
5 service quality performance measures or bench-
6 marks;

7 “(ii) procedures to monitor and evaluate
8 common carrier efforts to increase network reli-
9 ability and service quality; and

10 “(iii) procedures to resolve network reli-
11 ability and service quality complaints.

12 “(C) Throughout the process of developing net-
13 work reliability and service quality performance
14 measures or benchmarks, as required by subpara-
15 graph (A), the Commission shall coordinate and con-
16 sult with service and equipment providers and users
17 and State regulatory bodies to ensure their concerns
18 and interests are given full consideration in such
19 process.

20 “(6) RURAL EXEMPTION.—The Commission
21 may modify, or grant exemptions from, the require-
22 ments of this subsection in the case of a common
23 carrier providing telecommunications services in a
24 rural area.”.

1 (b) CONFORMING AMENDMENT.—Section 2(b) of the
2 Communications Act of 1934 (47 U.S.C.152(b)) is amend-
3 ed by inserting “201(c) and (d),” after “Except as pro-
4 vided in sections”.

5 **SEC. 103. DISCRIMINATORY INTERCONNECTION.**

6 Section 208 of the Communications Act of 1934 is
7 amended by adding at the end thereof the following new
8 subsection:

9 “(c) EXPEDITED REVIEW OF CERTAIN COM-
10 PLAINTS.—The Commission shall issue a final order with
11 respect to any complaint arising from alleged violations
12 of the rules and orders prescribed pursuant to section
13 201(c) within 180 days after such complaint is filed.”.

14 **SEC. 104. EXPEDITED LICENSING OF NEW TECHNOLOGIES**
15 **AND SERVICES.**

16 Section 7 of the Communications Act of 1934 (47
17 U.S.C. 157) is amended by adding at the end thereof the
18 following new subsection:

19 “(c) LICENSING OF NEW TECHNOLOGIES.—

20 “(1) EXPEDITED RULEMAKING.—Within 24
21 months after making a determination under sub-
22 section (b) that a technology or service related to the
23 furnishing of telecommunications services is in the
24 public interest, the Commission shall, with respect to
25 any such service requiring a license or other author-

1 ization from the Commission, adopt and make effective rules for—

3 “(A) the provision of such technology or
4 service; and

5 “(B) the filing of applications for the licenses or authorizations necessary to offer such
6 technology or service to the public, and shall act
7 on any such application within 24 months after
8 it is filed.

10 “(2) REVIEW OF APPLICATIONS.—Any application
11 filed by a carrier under this subsection for the
12 construction or extension of a line shall also be subject to section 214 and to any necessary approval by
13 the appropriate State commissions.”.

15 **SEC. 105. NEW OR EXTENDED LINES.**

16 Section 214 of the Communications Act of 1934 is
17 amended by adding at the end the following new subsection:
18 section:

19 “(e) Any application filed under this section by a provider of telephone exchange service for authority to construct or extend a line shall address the means by which
20 such construction or extension will meet the network access needs of individuals with disabilities.”.

1 **TITLE II—COMMUNICATIONS**
2 **COMPETITIVENESS**

3 **SEC. 201. CABLE SERVICE PROVIDED BY TELEPHONE COM-**
4 **PANIES.**

5 (a) GENERAL REQUIREMENT.—

6 (1) AMENDMENT.—Section 613(b) of the Com-
7 munications Act of 1934 (47 U.S.C. 533(b)) is
8 amended to read as follows:

9 “(b)(1) Subject to the requirements of part V and
10 the other provisions of this title, any common carrier sub-
11 ject in whole or in part to title II of this Act may, either
12 through its own facilities or through an affiliate owned
13 by, operated by, controlled by, or under common control
14 with the common carrier, provide video programming di-
15 rectly to subscribers in its telephone service area.

16 “(2) Subject to the requirements of part V and the
17 other provisions of this title, any common carrier subject
18 in whole or in part to title II of this Act may provide chan-
19 nels of communications or pole, line, or conduit space, or
20 other rental arrangements, to any entity which is directly
21 or indirectly owned by, operated by, controlled by, or
22 under common control with such common carrier, if such
23 facilities or arrangements are to be used for, or in connec-
24 tion with, the provision of video programming directly to
25 subscribers in its telephone service area.”.

1 (2) CONFORMING AMENDMENT.—Section 602
2 of the Communications Act of 1934 (47 U.S.C. 531)
3 is amended—

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

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

9 “(18) the term ‘telephone service area’ when
10 used in connection with a common carrier subject in
11 whole or in part to title II of this Act means the
12 area within which such carrier provides telephone ex-
13 change service as of November 20, 1993, but if any
14 common carrier after such date transfers its ex-
15 change service facilities to another common carrier,
16 the area to which such facilities provide telephone
17 exchange service shall be treated as part of the tele-
18 phone service area of the acquiring common carrier
19 and not of the selling common carrier.

20 (b) PROVISIONS FOR REGULATION OF CABLE SERV-
21 ICE PROVIDED BY TELEPHONE COMPANIES.—Title VI of
22 the Communications Act of 1934 (47 U.S.C. 521 et seq.)
23 is amended by adding at the end the following new part:

**“PART V—CABLE SERVICE PROVIDED BY
TELEPHONE COMPANIES**

“SEC. 651. DEFINITIONS.

“For purposes of this part—

“(1) the term ‘affiliated video programming’ means any video programming which is (A) owned or controlled by, or under common control with, a common carrier, and (B) provided by the common carrier or an affiliate directly to subscribers in its telephone service area;

“(2) 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) actual working control, as defined in the order of the Commission 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, 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;

1 “(3) the term ‘video platform’ has the same
2 meaning as the term ‘basic platform’ in the order of
3 the Commission entitled ‘Telephone Company-Cable
4 Television Cross-Ownership Rules, Sections 63.54–
5 63.58’, CC Docket No. 87–266, adopted July 16,
6 1992; and

7 “(4) the term ‘rural area’ means a geographic
8 area that does not include either—

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

12 “(B) any territory, incorporated or unin-
13 corporated, included in an urbanized area.

14 **“SEC. 652. SEPARATE VIDEO PROGRAMMING AFFILIATE.**

15 “(a) IN GENERAL.—Except as provided in subsection
16 (d) of this section, a common carrier subject to title II
17 of this Act shall not provide video programming directly
18 to subscribers in its telephone service area unless such
19 video programming is provided through a video program-
20 ming affiliate that is separate from such carrier.

21 “(b) BOOKS AND MARKETING.—

22 “(1) IN GENERAL.—A video programming affili-
23 ate of a common carrier shall—

1 “(A) maintain books, records, and ac-
2 counts separate from such carrier which iden-
3 tify all transactions with such carrier;

4 “(B) carry out directly (or through any
5 nonaffiliate) its own promotion, except that in-
6 stitutional advertising carried out by such car-
7 rier shall be permitted so long as each party
8 bears its pro rata share of the costs; and

9 “(C) not own real or personal property in
10 common with such carrier.

11 “(2) INBOUND TELEMARKETING.—Notwith-
12 standing paragraph (1)(B), a common carrier may
13 provide inbound telemarketing or referral services
14 related to the provision of video programming by a
15 video programming affiliate of such carrier. If such
16 services are provided to a video programming affili-
17 ate, such services shall be made available to any
18 video programmer or cable operator on request, on
19 nondiscriminatory terms, at compensatory prices,
20 and subject to regulations of the Commission to en-
21 sure that the carrier’s method of providing
22 telemarketing or referral and its price structure do
23 not competitively disadvantage any video program-
24 mer or cable operator, regardless of size, including

1 those which do not use the carrier's telemarketing
2 services.

3 “(3) JOINT TELEMARKETING.—Notwithstand-
4 ing paragraph (1)(B), a common carrier may peti-
5 tion the Commission for permission to market video
6 programming directly, upon showing that a cable op-
7 erator or other entity directly or indirectly provides
8 telecommunications services and markets such serv-
9 ices jointly with video programming services. The
10 common carrier shall specify the geographic region
11 covered by the petition. Any such petition shall be
12 granted or denied within 180 days.

13 “(c) BUSINESS TRANSACTIONS WITH CARRIER SUB-
14 JECT TO REGULATION.—Any contract, agreement, ar-
15 rangement, or other manner of conducting business, be-
16 tween a common carrier and its video programming affili-
17 ate, providing for—

18 “(1) the sale, exchange, or leasing of property
19 between such affiliate and such carrier;

20 “(2) the furnishing of goods or services between
21 such affiliate and such carrier; or

22 “(3) the transfer to or use by such affiliate for
23 its benefit of any asset or resource of such carrier,
24 shall be pursuant to regulation prescribed by the Commis-
25 sion, shall be on a fully compensatory and auditable basis,

1 shall be without cost to the telephone service ratepayers
2 of the carrier, shall be filed with the Commission, and
3 shall be in compliance with rules established by the Com-
4 mission which will be sufficient to enable the Commission
5 to assess the compliance of any transaction.

6 “(d) WAIVER.—

7 “(1) CRITERIA FOR WAIVER.—The Commission
8 may waive any of the requirements of this section
9 for small or rural telephone companies, and may, be-
10 ginning 5 years after the date of enactment of this
11 section, waive such requirements for any common
12 carrier, if the Commission determines, after notice
13 and comment, that—

14 “(A) such waiver will not affect the ability
15 of the Commission to ensure that all video pro-
16 gramming activity is carried out without any
17 support from telephone ratepayers;

18 “(B) the interests of telephone ratepayers
19 or cable subscribers will not be harmed if such
20 waiver is granted; and

21 “(C) such waiver otherwise is in the public
22 interest.

23 “(2) DEADLINE FOR ACTION.—The Commission
24 shall act to approve or disapprove a waiver applica-
25 tion within 180 days after the date it is filed.

1 **“SEC. 653. ESTABLISHMENT OF VIDEO PLATFORM.**

2 “(a) COMMON CARRIER OBLIGATIONS.—Any com-
3 mon carrier subject to title II of this Act and that pro-
4 vides, through a video programming affiliate, video pro-
5 gramming directly to subscribers in its telephone service
6 area, shall establish a video platform. The Commission,
7 together with the States, shall establish regulations to pro-
8 hibit a carrier from discriminating in favor of its video
9 programming affiliate in providing access to such platform
10 or with regard to rates, terms, and conditions for access
11 to such platform. The Commission shall take final action
12 on any application under section 214 seeking authority to
13 establish a video platform within one year after the date
14 such application is filed.

15 “(b) COMMISSION STUDY.—The Commission shall
16 conduct a study of whether it is in the public interest to
17 extend the requirements of subsection (a) to cable opera-
18 tors in lieu of the requirements of section 612. The Com-
19 mission shall submit to the Congress a report on the re-
20 sults of such study not later than 2 years after the date
21 of enactment of this section.

22 **“SEC. 654. PROVISION OF AFFILIATED VIDEO PROGRAM-**
23 **MING.**

24 “(a) LIMITATION.—A common carrier which pro-
25 vides, through its video programming affiliate, affiliated
26 video programming directly to subscribers in its telephone

1 service area, shall make available such capacity as is re-
2 quested by unaffiliated video program providers upon rea-
3 sonable notice. A common carrier shall not be required
4 under this subsection to provide more than 75 percent of
5 the equipped capacity of its video platform to unaffiliated
6 video program providers.

7 “(b) EVALUATION BY COMMISSION.—The Commis-
8 sion shall, not later than 2 years after the date of enact-
9 ment of this part, evaluate the effect of subsection (a) on
10 the video programming marketplace and, on the basis of
11 that evaluation, make recommendations to Congress con-
12 cerning appropriate modifications, if any, to subsection
13 (a).

14 “(c) BROADCAST SIGNAL CARRIAGE EXCLUDED.—
15 The carriage of local broadcast signals pursuant to section
16 614 shall not constitute the provision of affiliated video
17 programming for purposes of subsection (a).

18 “(d) TERMINATION.—Subsection (a) shall cease to be
19 effective five years after the date of enactment of this part.

20 **“SEC. 655. PROHIBITION OF CROSS-SUBSIDIZATION.**

21 “(a) COMMON CARRIER PROHIBITIONS.—The Com-
22 mission shall prescribe regulations to prohibit a common
23 carrier from engaging in any practice that results in the
24 inclusion in rates for telephone exchange service of any
25 operating expenses, costs, depreciation charges, capital in-

1 vestments, or other expenses associated with the provision
2 of video programming by the common carrier or its video
3 programming affiliate.

4 “(b) CABLE OPERATOR PROHIBITIONS.—The Com-
5 mission shall prescribe regulations to prohibit a cable op-
6 erator from engaging in any practice that results in the
7 inclusion in rates for cable service of any operating ex-
8 penses, costs, depreciation charges, capital investments, or
9 other expenses associated with the provision of tele-
10 communications service by the cable operator or its tele-
11 communications service affiliate.

12 **“SEC. 656. PROHIBITION ON BUYOUTS.**

13 “(a) GENERAL PROHIBITION.—No common carrier
14 that provides telephone exchange service, nor any entity
15 owned by or under common ownership or control with such
16 carrier, may purchase or otherwise obtain control over any
17 cable system that is located within its telephone service
18 area and is owned by an unaffiliated person.

19 “(b) EXCEPTIONS.—Notwithstanding subsection (a),
20 a common carrier may—

21 “(1) obtain a controlling interest in, or form a
22 joint venture or other partnership with, a cable sys-
23 tem that serves a rural area;

24 “(2) obtain a controlling interest in, or form a
25 joint venture or other partnership with, a cable sys-

1 tem or systems, if such systems in the aggregate
2 serve less than 10 percent of the households in the
3 telephone service area of such carrier and its affili-
4 ated common carriers; or

5 “(3) acquire the use of that part of the trans-
6 mission facilities of such a cable system extending
7 from the last multi-user terminal to the premises of
8 the end user if such use is reasonably limited in
9 scope and duration.

10 “(c) WAIVER.—

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

14 “(A) because of the nature of the market
15 served by the cable system concerned—

16 “(i) the incumbent cable operator
17 would be subjected to undue economic dis-
18 tress by the enforcement of such sub-
19 section; or

20 “(ii) the cable system would not be
21 economically viable if such subsection were
22 enforced; and

23 “(B) the local franchising authority ap-
24 proves of such waiver.

1 “(2) DEADLINE FOR ACTION.—The Commission
2 shall act to approve or disapprove a waiver applica-
3 tion within 180 days after the date it is filed.

4 **“SEC. 657. PENALTIES.**

5 “If the Commission finds that any common carrier
6 has knowingly violated any provision of this part, the
7 Commission shall assess such fines and penalties as it
8 deems appropriate pursuant to title V of this Act.

9 **“SEC. 658. CONSUMER PROTECTION.**

10 “(a) JOINT BOARD REQUIRED.—The Commission
11 shall, within 30 days after the date of enactment of this
12 part, convene a Federal-State Joint Board under the pro-
13 visions of section 410(c) for the purpose of establishing
14 the practices, classifications, and regulations as may be
15 necessary to ensure proper jurisdictional separation and
16 allocation of the costs of establishing and providing a video
17 platform and allocations of those costs between regulated
18 and unregulated services, including affiliated video pro-
19 gramming. The Board shall issue its recommendations to
20 the Commission within 270 days after the date of enact-
21 ment of this part.

22 “(b) COMMISSION REGULATIONS REQUIRED.—The
23 Commission, with respect to interstate switched access
24 service, and the States, with respect to telephone exchange
25 service and intrastate interexchange service, shall, within

1 one year after the date of the enactment of this part, es-
2 tablish such rules and regulations as may be necessary to
3 implement section 655.

4 “(c) NO EFFECT ON CARRIER REGULATION AU-
5 THORITY.—Nothing in this section shall be construed to
6 limit or supersede the authority of any State or the Com-
7 mission with respect to the allocation of costs associated
8 with intrastate or interstate communication services.

9 **“SEC. 659. APPLICABILITY OF FRANCHISE AND OTHER RE-**
10 **QUIREMENTS.**

11 “(a) IN GENERAL.—Except as provided in subsection
12 (b)—

13 “(1) the provisions of part II and sections 628,
14 631 and 632 of this title, and section 325 of title
15 III, shall apply, and

16 “(2) the provisions of parts III and IV (other
17 than sections 628, 631, and 632) of this title shall
18 not apply,

19 to any video platform established by a common carrier in
20 accordance with the requirements of this part.

21 “(b) IMPLEMENTATION OF REQUIREMENTS.—

22 “(1) REGULATIONS.—The Commission shall
23 prescribe regulations to ensure that a video pro-
24 gramming affiliate of a common carrier shall estab-
25 lish a video platform under this part that provides

1 (A) capacity for public, educational, and govern-
2 mental use, (B) capacity for commercial use, (C)
3 carriage of commercial and non-commercial broad-
4 cast television stations, and (D) an opportunity for
5 commercial broadcast stations to choose between
6 mandatory carriage and reimbursement for
7 retransmission of the signal of such station. In pre-
8 scribing such regulations, the Commission shall im-
9 pose obligations that are no greater or lesser than
10 the obligations contained in the provisions described
11 in subsection (a)(1) of this section.

12 “(2) FEES.—A video programming affiliate of
13 any common carrier that establishes a video plat-
14 form under this part shall be subject to the payment
15 of fees imposed by a local franchising authority, in
16 lieu of the fees required under section 622. The rate
17 at which such fees are imposed shall not exceed the
18 rate at which franchise fees are imposed on any
19 cable operator transmitting video programming in
20 the same service area.

21 **“SEC. 660. RURAL AREA EXEMPTION.**

22 “The provisions of sections 652, 653, 654, and 656
23 shall not apply to video programming provided in a rural
24 area by a common carrier that provides telephone ex-
25 change service in the same area.”.



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