

Public Law 102-385
102d Congress

An Act

Oct. 5, 1992
[S. 12]

To amend the Communications Act of 1934 to provide increased consumer protection and to promote increased competition in the cable television and related markets, and for other purposes.

Cable Television
Consumer
Protection and
Competition Act
of 1992.
Business and
industry.
47 USC 609 note.
47 USC 521 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Cable Television Consumer Protection and Competition Act of 1992".

SEC. 2. FINDINGS; POLICY; DEFINITIONS.

(a) **FINDINGS.**—The Congress finds and declares the following:

(1) Pursuant to the Cable Communications Policy Act of 1984, rates for cable television services have been deregulated in approximately 97 percent of all franchises since December 29, 1986. Since rate deregulation, monthly rates for the lowest priced basic cable service have increased by 40 percent or more for 28 percent of cable television subscribers. Although the average number of basic channels has increased from about 24 to 30, average monthly rates have increased by 29 percent during the same period. The average monthly cable rate has increased almost 3 times as much as the Consumer Price Index since rate deregulation.

(2) For a variety of reasons, including local franchising requirements and the extraordinary expense of constructing more than one cable television system to serve a particular geographic area, most cable television subscribers have no opportunity to select between competing cable systems. Without the presence of another multichannel video programming distributor, a cable system faces no local competition. The result is undue market power for the cable operator as compared to that of consumers and video programmers.

(3) There has been a substantial increase in the penetration of cable television systems over the past decade. Nearly 56,000,000 households, over 60 percent of the households with televisions, subscribe to cable television, and this percentage is almost certain to increase. As a result of this growth, the cable television industry has become a dominant nationwide video medium.

(4) The cable industry has become highly concentrated. The potential effects of such concentration are barriers to entry for new programmers and a reduction in the number of media voices available to consumers.

(5) The cable industry has become vertically integrated; cable operators and cable programmers often have common ownership. As a result, cable operators have the incentive and ability to favor their affiliated programmers. This could make it more difficult for noncable-affiliated programmers to secure

carriage on cable systems. Vertically integrated program suppliers also have the incentive and ability to favor their affiliated cable operators over nonaffiliated cable operators and programming distributors using other technologies.

(6) There is a substantial governmental and First Amendment interest in promoting a diversity of views provided through multiple technology media.

(7) There is a substantial governmental and First Amendment interest in ensuring that cable subscribers have access to local noncommercial educational stations which Congress has authorized, as expressed in section 396(a)(5) of the Communications Act of 1934. The distribution of unique non-commercial, educational programming services advances that interest.

(8) The Federal Government has a substantial interest in making all nonduplicative local public television services available on cable systems because—

(A) public television provides educational and informational programming to the Nation's citizens, thereby advancing the Government's compelling interest in educating its citizens;

(B) public television is a local community institution, supported through local tax dollars and voluntary citizen contributions in excess of \$10,800,000,000 since 1972, that provides public service programming that is responsive to the needs and interests of the local community;

(C) the Federal Government, in recognition of public television's integral role in serving the educational and informational needs of local communities, has invested more than \$3,000,000,000 in public broadcasting since 1969; and

(D) absent carriage requirements there is a substantial likelihood that citizens, who have supported local public television services, will be deprived of those services.

(9) The Federal Government has a substantial interest in having cable systems carry the signals of local commercial television stations because the carriage of such signals is necessary to serve the goals contained in section 307(b) of the Communications Act of 1934 of providing a fair, efficient, and equitable distribution of broadcast services.

(10) A primary objective and benefit of our Nation's system of regulation of television broadcasting is the local origination of programming. There is a substantial governmental interest in ensuring its continuation.

(11) Broadcast television stations continue to be an important source of local news and public affairs programming and other local broadcast services critical to an informed electorate.

(12) Broadcast television programming is supported by revenues generated from advertising broadcast over stations. Such programming is otherwise free to those who own television sets and do not require cable transmission to receive broadcast signals. There is a substantial governmental interest in promoting the continued availability of such free television programming, especially for viewers who are unable to afford other means of receiving programming.

(13) As a result of the growth of cable television, there has been a marked shift in market share from broadcast television to cable television services.

(14) Cable television systems and broadcast television stations increasingly compete for television advertising revenues. As the proportion of households subscribing to cable television increases, proportionately more advertising revenues will be reallocated from broadcast to cable television systems.

(15) A cable television system which carries the signal of a local television broadcaster is assisting the broadcaster to increase its viewership, and thereby attract additional advertising revenues that otherwise might be earned by the cable system operator. As a result, there is an economic incentive for cable systems to terminate the retransmission of the broadcast signal, refuse to carry new signals, or reposition a broadcast signal to a disadvantageous channel position. There is a substantial likelihood that absent the reimposition of such a requirement, additional local broadcast signals will be deleted, repositioned, or not carried.

(16) As a result of the economic incentive that cable systems have to delete, reposition, or not carry local broadcast signals, coupled with the absence of a requirement that such systems carry local broadcast signals, the economic viability of free local broadcast television and its ability to originate quality local programming will be seriously jeopardized.

(17) Consumers who subscribe to cable television often do so to obtain local broadcast signals which they otherwise would not be able to receive, or to obtain improved signals. Most subscribers to cable television systems do not or cannot maintain antennas to receive broadcast television services, do not have input selector switches to convert from a cable to antenna reception system, or cannot otherwise receive broadcast television services. The regulatory system created by the Cable Communications Policy Act of 1984 was premised upon the continued existence of mandatory carriage obligations for cable systems, ensuring that local stations would be protected from anticompetitive conduct by cable systems.

(18) Cable television systems often are the single most efficient distribution system for television programming. A Government mandate for a substantial societal investment in alternative distribution systems for cable subscribers, such as the "A/B" input selector antenna system, is not an enduring or feasible method of distribution and is not in the public interest.

(19) At the same time, broadcast programming that is carried remains the most popular programming on cable systems, and a substantial portion of the benefits for which consumers pay cable systems is derived from carriage of the signals of network affiliates, independent television stations, and public television stations. Also cable programming placed on channels adjacent to popular off-the-air signals obtains a larger audience than on other channel positions. Cable systems, therefore, obtain great benefits from local broadcast signals which, until now, they have been able to obtain without the consent of the broadcaster or any copyright liability. This has resulted in an effective subsidy of the development of cable systems by local broadcasters. While at one time, when cable systems did not attempt to compete with local broadcasters for program-

ming, audience, and advertising, this subsidy may have been appropriate, it is so no longer and results in a competitive imbalance between the 2 industries.

(20) The Cable Communications Policy Act of 1984, in its amendments to the Communications Act of 1934, limited the regulatory authority of franchising authorities over cable operators. Franchising authorities are finding it difficult under the current regulatory scheme to deny renewals to cable systems that are not adequately serving cable subscribers.

(21) Cable systems should be encouraged to carry low-power television stations licensed to the communities served by those systems where the low-power station creates and broadcasts, as a substantial part of its programming day, local programming.

(b) STATEMENT OF POLICY.—It is the policy of the Congress in this Act to—

(1) promote the availability to the public of a diversity of views and information through cable television and other video distribution media;

(2) rely on the marketplace, to the maximum extent feasible, to achieve that availability;

(3) ensure that cable operators continue to expand, where economically justified, their capacity and the programs offered over their cable systems;

(4) where cable television systems are not subject to effective competition, ensure that consumer interests are protected in receipt of cable service; and

(5) ensure that cable television operators do not have undue market power vis-a-vis video programmers and consumers.

(c) DEFINITIONS.—Section 602 of the Communications Act of 1934 (47 U.S.C. 531) is amended—

47 USC 522.

(1) by redesignating paragraph (16) as paragraph (19);

(2) by striking “and” at the end of paragraph (15);

(3) by redesignating paragraphs (11) through (15) as paragraphs (13) through (17), respectively;

(4) by redesignating paragraphs (1) through (10) as paragraphs (2) through (11), respectively;

(5) by inserting before paragraph (2) (as so redesignated) the following new paragraph:

“(1) the term ‘activated channels’ means those channels engineered at the headend of a cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel designated for public, educational, or governmental use;”;

(6) by inserting after paragraph (11) (as so redesignated) the following new paragraph:

“(12) the term ‘multichannel video programming distributor’ means a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming;” and

(7) by inserting after paragraph (17) (as so redesignated) the following new paragraph:

"(18) 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".

SEC. 3. REGULATION OF RATES.

(a) AMENDMENT.—Section 623 of the Communications Act of 1934 (47 U.S.C. 543) is amended to read as follows:

"SEC. 623. REGULATION OF RATES.

"(a) COMPETITION PREFERENCE; LOCAL AND FEDERAL REGULATION.—

"(1) IN GENERAL.—No Federal agency or State may regulate the rates for the provision of cable service except to the extent provided under this section and section 612. Any franchising authority may regulate the rates for the provision of cable service, or any other communications service provided over a cable system to cable subscribers, but only to the extent provided under this section. No Federal agency, State, or franchising authority may regulate the rates for cable service of a cable system that is owned or operated by a local government or franchising authority within whose jurisdiction that cable system is located and that is the only cable system located within such jurisdiction.

"(2) PREFERENCE FOR COMPETITION.—If the Commission finds that a cable system is subject to effective competition, the rates for the provision of cable service by such system shall not be subject to regulation by the Commission or by a State or franchising authority under this section. If the Commission finds that a cable system is not subject to effective competition—

"(A) the rates for the provision of basic cable service shall be subject to regulation by a franchising authority, or by the Commission if the Commission exercises jurisdiction pursuant to paragraph (6), in accordance with the regulations prescribed by the Commission under subsection (b); and

"(B) the rates for cable programming services shall be subject to regulation by the Commission under subsection (c).

"(3) 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) the franchising authority will adopt and administer regulations with respect to the rates subject to regulation under this section that are consistent with the regulations prescribed by the Commission under subsection (b);

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

"(C) procedural laws and regulations applicable to rate regulation proceedings by such authority provide a reasonable opportunity for consideration of the views of interested parties.

"(4) 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) the franchising authority has adopted or is administering regulations with respect to the rates subject to regulation under this section that are not consistent with the regulations prescribed by the Commission under subsection (b);

“(B) the franchising authority does not have the legal authority to adopt, or the personnel to administer, such regulations; or

“(C) procedural laws and regulations applicable to rate regulation proceedings by such authority do not provide a reasonable opportunity for consideration of the views of interested parties.

If the Commission disapproves a franchising authority's certification, the Commission shall notify the franchising authority of any revisions or modifications necessary to obtain approval.

“(5) 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) EXERCISE OF JURISDICTION BY COMMISSION.—If the Commission disapproves a franchising authority's certification under paragraph (4), or revokes such authority's jurisdiction under paragraph (5), 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). 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.

“(b) ESTABLISHMENT OF BASIC SERVICE TIER RATE REGULATIONS.—

“(1) COMMISSION OBLIGATION TO SUBSCRIBERS.—The Commission shall, by regulation, ensure that the rates for the basic service tier are reasonable. Such regulations shall be designed to achieve the goal of protecting subscribers of any cable system that is not subject to effective competition from rates for the basic service tier that exceed the rates that would be charged for the basic service tier if such cable system were subject to effective competition.

“(2) COMMISSION REGULATIONS.—Within 180 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission shall prescribe, and periodically thereafter revise, regulations to carry out its

obligations under paragraph (1). In prescribing such regulations, the Commission—

“(A) shall seek to reduce the administrative burdens on subscribers, cable operators, franchising authorities, and the Commission;

“(B) may adopt formulas or other mechanisms and procedures in complying with the requirements of subparagraph (A); and

“(C) shall take into account the following factors:

“(i) the rates for cable systems, if any, that are subject to effective competition;

“(ii) the direct costs (if any) of obtaining, transmitting, and otherwise providing signals carried on the basic service tier, including signals and services carried on the basic service tier pursuant to paragraph (7)(B), and changes in such costs;

“(iii) only such portion of the joint and common costs (if any) of obtaining, transmitting, and otherwise providing such signals as is determined, in accordance with regulations prescribed by the Commission, to be reasonably and properly allocable to the basic service tier, and changes in such costs;

“(iv) the revenues (if any) received by a cable operator from advertising from programming that is carried as part of the basic service tier or from other consideration obtained in connection with the basic service tier;

“(v) the reasonably and properly allocable portion of any amount assessed as a franchise fee, tax, or charge of any kind imposed by any State or local authority on the transactions between cable operators and cable subscribers or any other fee, tax, or assessment of general applicability imposed by a governmental entity applied against cable operators or cable subscribers;

“(vi) any amount required, in accordance with paragraph (4), to satisfy franchise requirements to support public, educational, or governmental channels or the use of such channels or any other services required under the franchise; and

“(vii) a reasonable profit, as defined by the Commission consistent with the Commission's obligations to subscribers under paragraph (1).

“(3) **EQUIPMENT.**—The regulations prescribed by the Commission under this subsection shall include standards to establish, on the basis of actual cost, the price or rate for—

“(A) installation and lease of the equipment used by subscribers to receive the basic service tier, including a converter box and a remote control unit and, if requested by the subscriber, such addressable converter box or other equipment as is required to access programming described in paragraph (8); and

“(B) installation and monthly use of connections for additional television receivers.

“(4) **COSTS OF FRANCHISE REQUIREMENTS.**—The regulations prescribed by the Commission under this subsection shall include standards to identify costs attributable to satisfying

franchise requirements to support public, educational, and governmental channels or the use of such channels or any other services required under the franchise.

"(5) IMPLEMENTATION AND ENFORCEMENT.—The regulations prescribed by the Commission under this subsection shall include additional standards, guidelines, and procedures concerning the implementation and enforcement of such regulations, which shall include—

"(A) procedures by which cable operators may implement and franchising authorities may enforce the regulations prescribed by the Commission under this subsection;

"(B) procedures for the expeditious resolution of disputes between cable operators and franchising authorities concerning the administration of such regulations;

"(C) standards and procedures to prevent unreasonable charges for changes in the subscriber's selection of services or equipment subject to regulation under this section, which standards shall require that charges for changing the service tier selected shall be based on the cost of such change and shall not exceed nominal amounts when the system's configuration permits changes in service tier selection to be effected solely by coded entry on a computer terminal or by other similarly simple method; and

"(D) standards and procedures to assure that subscribers receive notice of the availability of the basic service tier required under this section.

"(6) NOTICE.—The procedures prescribed by the Commission pursuant to paragraph (5)(A) shall require a cable operator to provide 30 days' advance notice to a franchising authority of any increase proposed in the price to be charged for the basic service tier.

"(7) COMPONENTS OF BASIC TIER SUBJECT TO RATE REGULATION.—

"(A) MINIMUM CONTENTS.—Each cable operator of a cable system shall provide its subscribers a separately available basic service tier to which subscription is required for access to any other tier of service. Such basic service tier shall, at a minimum, consist of the following:

"(i) All signals carried in fulfillment of the requirements of sections 614 and 615.

"(ii) Any public, educational, and governmental access programming required by the franchise of the cable system to be provided to subscribers.

"(iii) Any signal of any television broadcast station that is provided by the cable operator to any subscriber, except a signal which is secondarily transmitted by a satellite carrier beyond the local service area of such station.

"(B) PERMITTED ADDITIONS TO BASIC TIER.—A cable operator may add additional video programming signals or services to the basic service tier. Any such additional signals or services provided on the basic service tier shall be provided to subscribers at rates determined under the regulations prescribed by the Commission under this subsection.

"(8) BUY-THROUGH OF OTHER TIERS PROHIBITED.—

"(A) PROHIBITION.—A cable operator may not require the subscription to any tier other than the basic service tier required by paragraph (7) as a condition of access to video programming offered on a per channel or per program basis. A cable operator may not discriminate between subscribers to the basic service tier and other subscribers with regard to the rates charged for video programming offered on a per channel or per program basis.

"(B) EXCEPTION; LIMITATION.—The prohibition in subparagraph (A) shall not apply to a cable system that, by reason of the lack of addressable converter boxes or other technological limitations, does not permit the operator to offer programming on a per channel or per program basis in the same manner required by subparagraph (A). This subparagraph shall not be available to any cable operator after—

"(i) the technology utilized by the cable system is modified or improved in a way that eliminates such technological limitation; or

"(ii) 10 years after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, subject to subparagraph (C).

"(C) WAIVER.—If, in any proceeding initiated at the request of any cable operator, the Commission determines that compliance with the requirements of subparagraph (A) would require the cable operator to increase its rates, the Commission may, to the extent consistent with the public interest, grant such cable operator a waiver from such requirements for such specified period as the Commission determines reasonable and appropriate.

"(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) criteria prescribed in accordance with paragraph (2) for identifying, in individual cases, rates for cable programming services that are unreasonable;

"(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; 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 filing of such complaint and that are determined to be unreasonable.

"(2) FACTORS TO BE CONSIDERED.—In establishing the criteria for determining in individual cases whether rates for

cable programming services are unreasonable under paragraph (1)(A), the Commission shall consider, among other factors—

“(A) the rates for similarly situated cable systems offering comparable cable programming services, taking into account similarities in facilities, regulatory and governmental costs, the number of subscribers, and other relevant factors;

“(B) the rates for cable systems, if any, that are subject to effective competition;

“(C) the history of the rates for cable programming services of the system, including the relationship of such rates to changes in general consumer prices;

“(D) the rates, as a whole, for all the cable programming, cable equipment, and cable services provided by the system, other than programming provided on a per channel or per program basis;

“(E) capital and operating costs of the cable system, including the quality and costs of the customer service provided by the cable system; and

“(F) the revenues (if any) received by a cable operator from advertising from programming that is carried as part of the service for which a rate is being established, and changes in such revenues, or from other consideration obtained in connection with the cable programming services concerned.

“(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.

“(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.

“(e) DISCRIMINATION; SERVICES FOR THE HEARING IMPAIRED.—Nothing in this title shall be construed as prohibiting any Federal agency, State, or a franchising authority from—

“(1) prohibiting discrimination among subscribers and potential subscribers to cable service, except that no Federal agency, State, or franchising authority may prohibit a cable operator from offering reasonable discounts to senior citizens or other economically disadvantaged group discounts; or

“(2) requiring and regulating the installation or rental of equipment which facilitates the reception of cable service by hearing impaired individuals.

“(f) NEGATIVE OPTION BILLING PROHIBITED.—A cable operator shall not charge a subscriber for any service or equipment that the subscriber has not affirmatively requested by name. For purposes of this subsection, a subscriber's failure to refuse a cable operator's proposal to provide such service or equipment shall not be deemed to be an affirmative request for such service or equipment.

"(g) **COLLECTION OF INFORMATION.**—The Commission shall, by regulation, require cable operators to file with the Commission or a franchising authority, as appropriate, within one year after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992 and annually thereafter, such financial information as may be needed for purposes of administering and enforcing this section.

"(h) **PREVENTION OF EVASIONS.**—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 standards, guidelines, and procedures to prevent evasions, including evasions that result from retiering, of the requirements of this section and shall, thereafter, periodically review and revise such standards, guidelines, and procedures.

"(i) **SMALL SYSTEM BURDENS.**—In developing and prescribing regulations pursuant to this section, the Commission shall design such regulations to reduce the administrative burdens and cost of compliance for cable systems that have 1,000 or fewer subscribers.

"(j) **RATE REGULATION AGREEMENTS.**—During the term of an agreement made before July 1, 1990, by a franchising authority and a cable operator providing for the regulation of basic cable service rates, where there was not effective competition under Commission rules in effect on that date, nothing in this section (or the regulations thereunder) shall abridge the ability of such franchising authority to regulate rates in accordance with such an agreement.

"(k) **REPORTS ON AVERAGE PRICES.**—The Commission shall annually publish statistical reports on the average rates for basic cable service and other cable programming, and for converter boxes, remote control units, and other equipment, of—

"(1) cable systems that the Commission has found are subject to effective competition under subsection (a)(2), compared with

"(2) cable systems that the Commission has found are not subject to such effective competition.

"(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 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.

"(2) The term 'cable programming service' means any video programming provided over a cable system, regardless of service tier, including installation or rental of equipment used for

the receipt of such video programming, other than (A) video programming carried on the basic service tier, and (B) video programming offered on a per channel or per program basis.”

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect 180 days after the date of enactment of this Act, except that the authority of the Federal Communications Commission to prescribe regulations is effective on such date of enactment. 47 USC 543 note.

SEC. 4. CARRIAGE OF LOCAL COMMERCIAL TELEVISION SIGNALS.

Part II of title VI of the Communications Act of 1934 is amended by inserting after section 613 (47 U.S.C. 533) the following new section:

“SEC. 614. CARRIAGE OF LOCAL COMMERCIAL TELEVISION SIGNALS. 47 USC 534.

“(a) **CARRIAGE OBLIGATIONS.**—Each cable operator shall carry, on the cable system of that operator, the signals of local commercial television stations and qualified low power stations as provided by this section. Carriage of additional broadcast television signals on such system shall be at the discretion of such operator, subject to section 325(b).

“(b) **SIGNALS REQUIRED.**—

“(1) **IN GENERAL.**—(A) A cable operator of a cable system with 12 or fewer usable activated channels shall carry the signals of at least three local commercial television stations, except that if such a system has 300 or fewer subscribers, it shall not be subject to any requirements under this section so long as such system does not delete from carriage by that system any signal of a broadcast television station.

“(B) A cable operator of a cable system with more than 12 usable activated channels shall carry the signals of local commercial television stations, up to one-third of the aggregate number of usable activated channels of such system.

“(2) **SELECTION OF SIGNALS.**—Whenever the number of local commercial television stations exceeds the maximum number of signals a cable system is required to carry under paragraph (1), the cable operator shall have discretion in selecting which such stations shall be carried on its cable system, except that—

“(A) under no circumstances shall a cable operator carry a qualified low power station in lieu of a local commercial television station; and

“(B) if the cable operator elects to carry an affiliate of a broadcast network (as such term is defined by the Commission by regulation), such cable operator shall carry the affiliate of such broadcast network whose city of license reference point, as defined in section 76.53 of title 47, Code of Federal Regulations (in effect on January 1, 1991), or any successor regulation thereto, is closest to the principal headend of the cable system.

“(3) **CONTENT TO BE CARRIED.**—(A) A cable operator shall carry in its entirety, on the cable system of that operator, the primary video, accompanying audio, and line 21 closed caption transmission of each of the local commercial television stations carried on the cable system and, to the extent technically feasible, program-related material carried in the vertical blanking interval or on subcarriers. Retransmission of other material in the vertical blanking interval or other nonprogram-related material (including teletext and other subscription and

advertiser-supported information services) shall be at the discretion of the cable operator. Where appropriate and feasible, operators may delete signal enhancements, such as ghost-canceling, from the broadcast signal and employ such enhancements at the system headend or headends.

“(B) The cable operator shall carry the entirety of the program schedule of any television station carried on the cable system unless carriage of specific programming is prohibited, and other programming authorized to be substituted, under section 76.67 or subpart F of part 76 of title 47, Code of Federal Regulations (as in effect on January 1, 1991), or any successor regulations thereto.

“(4) SIGNAL QUALITY.—

“(A) NONDEGRADATION; TECHNICAL SPECIFICATIONS.—The signals of local commercial television stations that a cable operator carries shall be carried without material degradation. The Commission shall adopt carriage standards to ensure that, to the extent technically feasible, the quality of signal processing and carriage provided by a cable system for the carriage of local commercial television stations will be no less than that provided by the system for carriage of any other type of signal.

“(B) ADVANCED TELEVISION.—At such time as the Commission prescribes modifications of the standards for television broadcast signals, the Commission shall initiate a proceeding to establish any changes in the signal carriage requirements of cable television systems necessary to ensure cable carriage of such broadcast signals of local commercial television stations which have been changed to conform with such modified standards.

“(5) DUPLICATION NOT REQUIRED.—Notwithstanding paragraph (1), a cable operator shall not be required to carry the signal of any local commercial television station that substantially duplicates the signal of another local commercial television station which is carried on its cable system, or to carry the signals of more than one local commercial television station affiliated with a particular broadcast network (as such term is defined by regulation). If a cable operator elects to carry on its cable system a signal which substantially duplicates the signal of another local commercial television station carried on the cable system, or to carry on its system the signals of more than one local commercial television station affiliated with a particular broadcast network, all such signals shall be counted toward the number of signals the operator is required to carry under paragraph (1).

“(6) CHANNEL POSITIONING.—Each signal carried in fulfillment of the carriage obligations of a cable operator under this section shall be carried on the cable system channel number on which the local commercial television station is broadcast over the air, or on the channel on which it was carried on July 19, 1985, or on the channel on which it was carried on January 1, 1992, at the election of the station, or on such other channel number as is mutually agreed upon by the station and the cable operator. Any dispute regarding the positioning of a local commercial television station shall be resolved by the Commission.

"(7) SIGNAL AVAILABILITY.—Signals carried in fulfillment of the requirements of this section shall be provided to every subscriber of a cable system. Such signals shall be viewable via cable on all television receivers of a subscriber which are connected to a cable system by a cable operator or for which a cable operator provides a connection. If a cable operator authorizes subscribers to install additional receiver connections, but does not provide the subscriber with such connections, or with the equipment and materials for such connections, the operator shall notify such subscribers of all broadcast stations carried on the cable system which cannot be viewed via cable without a converter box and shall offer to sell or lease such a converter box to such subscribers at rates in accordance with section 623(b)(3).

"(8) IDENTIFICATION OF SIGNALS CARRIED.—A cable operator shall identify, upon request by any person, the signals carried on its system in fulfillment of the requirements of this section.

"(9) NOTIFICATION.—A cable operator shall provide written notice to a local commercial television station at least 30 days prior to either deleting from carriage or repositioning that station. No deletion or repositioning of a local commercial television station shall occur during a period in which major television ratings services measure the size of audiences of local television stations. The notification provisions of this paragraph shall not be used to undermine or evade the channel positioning or carriage requirements imposed upon cable operators under this section.

"(10) COMPENSATION FOR CARRIAGE.—A cable operator shall not accept or request monetary payment or other valuable consideration in exchange either for carriage of local commercial television stations in fulfillment of the requirements of this section or for the channel positioning rights provided to such stations under this section, except that—

"(A) any such station may be required to bear the costs associated with delivering a good quality signal or a baseband video signal to the principal headend of the cable system;

"(B) a cable operator may accept payments from stations which would be considered distant signals under section 111 of title 17, United States Code, as indemnification for any increased copyright liability resulting from carriage of such signal; and

"(C) a cable operator may continue to accept monetary payment or other valuable consideration in exchange for carriage or channel positioning of the signal of any local commercial television station carried in fulfillment of the requirements of this section, through, but not beyond, the date of expiration of an agreement thereon between a cable operator and a local commercial television station entered into prior to June 26, 1990.

"(c) LOW POWER STATION CARRIAGE OBLIGATION.—

"(1) REQUIREMENT.—If there are not sufficient signals of full power local commercial television stations to fill the channels set aside under subsection (b)—

"(A) a cable operator of a cable system with a capacity of 35 or fewer usable activated channels shall be required to carry one qualified low power station; and

"(B) a cable operator of a cable system with a capacity of more than 35 usable activated channels shall be required to carry two qualified low power stations.

"(2) USE OF PUBLIC, EDUCATIONAL, OR GOVERNMENTAL CHANNELS.—A cable operator required to carry more than one signal of a qualified low power station under this subsection may do so, subject to approval by the franchising authority pursuant to section 611, by placing such additional station on public, educational, or governmental channels not in use for their designated purposes.

"(d) REMEDIES.—

"(1) COMPLAINTS BY BROADCAST STATIONS.—Whenever a local commercial television station believes that a cable operator has failed to meet its obligations under this section, such station shall notify the operator, in writing, of the alleged failure and identify its reasons for believing that the cable operator is obligated to carry the signal of such station or has otherwise failed to comply with the channel positioning or repositioning or other requirements of this section. The cable operator shall, within 30 days of such written notification, respond in writing to such notification and either commence to carry the signal of such station in accordance with the terms requested or state its reasons for believing that it is not obligated to carry such signal or is in compliance with the channel positioning and repositioning and other requirements of this section. A local commercial television station that is denied carriage or channel positioning or repositioning in accordance with this section by a cable operator may obtain review of such denial by filing a complaint with the Commission. Such complaint shall allege the manner in which such cable operator has failed to meet its obligations and the basis for such allegations.

"(2) OPPORTUNITY TO RESPOND.—The Commission shall afford such cable operator an opportunity to present data and arguments to establish that there has been no failure to meet its obligations under this section.

"(3) REMEDIAL ACTIONS; DISMISSAL.—Within 120 days after the date a complaint is filed, the Commission shall determine whether the cable operator has met its obligations under this section. If the Commission determines that the cable operator has failed to meet such obligations, the Commission shall order the cable operator to reposition the complaining station or, in the case of an obligation to carry a station, to commence carriage of the station and to continue such carriage for at least 12 months. If the Commission determines that the cable operator has fully met the requirements of this section, it shall dismiss the complaint.

"(e) INPUT SELECTOR SWITCH RULES ABOLISHED.—No cable operator shall be required—

"(1) to provide or make available any input selector switch as defined in section 76.5(mm) of title 47, Code of Federal Regulations, or any comparable device; or

"(2) to provide information to subscribers about input selector switches or comparable devices.

"(f) REGULATIONS BY COMMISSION.—Within 180 days after the date of enactment of this section, the Commission shall, following a rulemaking proceeding, issue regulations implementing the requirements imposed by this section. Such implementing regula-

tions shall include necessary revisions to update section 76.51 of title 47 of the Code of Federal Regulations.

“(g) SALES PRESENTATIONS AND PROGRAM LENGTH COMMERCIALS.—

“(1) CARRIAGE PENDING PROCEEDING.—Pending the outcome of the proceeding under paragraph (2), nothing in this Act shall require a cable operator to carry on any tier, or prohibit a cable operator from carrying on any tier, the signal of any commercial television station or video programming service that is predominantly utilized for the transmission of sales presentations or program length commercials.

“(2) PROCEEDING CONCERNING CERTAIN STATIONS.—Within 270 days after the date of enactment of this section, the Commission, notwithstanding prior proceedings to determine whether broadcast television stations that are predominantly utilized for the transmission of sales presentations or program length commercials are serving the public interest, convenience, and necessity, shall complete a proceeding in accordance with this paragraph to determine whether broadcast television stations that are predominantly utilized for the transmission of sales presentations or program length commercials are serving the public interest, convenience, and necessity. In conducting such proceeding, the Commission shall provide appropriate notice and opportunity for public comment. The Commission shall consider the viewing of such stations, the level of competing demands for the spectrum allocated to such stations, and the role of such stations in providing competition to nonbroadcast services offering similar programming. In the event that the Commission concludes that one or more of such stations are serving the public interest, convenience, and necessity, the Commission shall qualify such stations as local commercial television stations for purposes of subsection (a). In the event that the Commission concludes that one or more of such stations are not serving the public interest, convenience, and necessity, the Commission shall allow the licensees of such stations a reasonable period within which to provide different programming, and shall not deny such stations a renewal expectancy solely because their programming consisted predominantly of sales presentations or program length commercials.

“(h) DEFINITIONS.—

“(1) LOCAL COMMERCIAL TELEVISION STATION.—

“(A) IN GENERAL.—For purposes of this section, the term ‘local commercial television station’ means any full power television broadcast station, other than a qualified noncommercial educational television station within the meaning of section 615(l)(1), licensed and operating on a channel regularly assigned to its community by the Commission that, with respect to a particular cable system, is within the same television market as the cable system.

“(B) EXCLUSIONS.—The term ‘local commercial television station’ shall not include—

“(i) low power television stations, television translator stations, and passive repeaters which operate pursuant to part 74 of title 47, Code of Federal Regulations, or any successor regulations thereto;

"(ii) a television broadcast station that would be considered a distant signal under section 111 of title 17, United States Code, if such station does not agree to indemnify the cable operator for any increased copyright liability resulting from carriage on the cable system; or

"(iii) a television broadcast station that does not deliver to the principal headend of a cable system either a signal level of -45dBm for UHF signals or -49dBm for VHF signals at the input terminals of the signal processing equipment, if such station does not agree to be responsible for the costs of delivering to the cable system a signal of good quality or a baseband video signal.

"(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, 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.

"(ii) In considering requests filed pursuant to clause (i), the Commission shall afford particular attention to the value of localism by taking into account such factors as—

"(I) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community;

"(II) whether the television station provides coverage or other local service to such community;

"(III) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community; and

"(IV) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.

"(iii) A cable operator shall not delete from carriage the signal of a commercial television station during the pendency of any proceeding pursuant to this subparagraph.

"(iv) In the rulemaking proceeding required by subsection (f), the Commission shall provide for expedited consideration of requests filed under this subparagraph.

"(2) QUALIFIED LOW POWER STATION.—The term 'qualified low power station' means any television broadcast station conforming to the rules established for Low Power Television Stations contained in part 74 of title 47, Code of Federal Regulations, only if—

“(A) such station broadcasts for at least the minimum number of hours of operation required by the Commission for television broadcast stations under part 73 of title 47, Code of Federal Regulations;

“(B) such station meets all obligations and requirements applicable to television broadcast stations under part 73 of title 47, Code of Federal Regulations, with respect to the broadcast of nonentertainment programming; programming and rates involving political candidates, election issues, controversial issues of public importance, editorials, and personal attacks; programming for children; and equal employment opportunity; and the Commission determines that the provision of such programming by such station would address local news and informational needs which are not being adequately served by full power television broadcast stations because of the geographic distance of such full power stations from the low power station’s community of license;

“(C) such station complies with interference regulations consistent with its secondary status pursuant to part 74 of title 47, Code of Federal Regulations;

“(D) such station is located no more than 35 miles from the cable system’s headend, and delivers to the principal headend of the cable system an over-the-air signal of good quality, as determined by the Commission;

“(E) the community of license of such station and the franchise area of the cable system are both located outside of the largest 160 Metropolitan Statistical Areas, ranked by population, as determined by the Office of Management and Budget on June 30, 1990, and the population of such community of license on such date did not exceed 35,000; and

“(F) there is no full power television broadcast station licensed to any community within the county or other political subdivision (of a State) served by the cable system.

Nothing in this paragraph shall be construed to change the secondary status of any low power station as provided in part 74 of title 47, Code of Federal Regulations, as in effect on the date of enactment of this section.”

SEC. 5. CARRIAGE OF NONCOMMERCIAL STATIONS.

Part II of title VI of the Communications Act of 1934 (47 U.S.C. 531 et seq.) is further amended by inserting after section 614 (as added by section 4 of this Act) the following new section:

“SEC. 615. CARRIAGE OF NONCOMMERCIAL EDUCATIONAL TELEVISION.

47 USC 535.

“(a) CARRIAGE OBLIGATIONS.—In addition to the carriage requirements set forth in section 614, each cable operator of a cable system shall carry the signals of qualified noncommercial educational television stations in accordance with the provisions of this section.

“(b) REQUIREMENTS TO CARRY QUALIFIED STATIONS.—

“(1) GENERAL REQUIREMENT TO CARRY EACH QUALIFIED STATION.—Subject to paragraphs (2) and (3) and subsection (e), each cable operator shall carry, on the cable system of that cable operator, any qualified local noncommercial educational television station requesting carriage.

"(2)(A) SYSTEMS WITH 12 OR FEWER CHANNELS.—Notwithstanding paragraph (1), a cable operator of a cable system with 12 or fewer usable activated channels shall be required to carry the signal of one qualified local noncommercial educational television station; except that a cable operator of such a system shall comply with subsection (c) and may, in its discretion, carry the signals of other qualified noncommercial educational television stations.

"(B) In the case of a cable system described in subparagraph (A) which operates beyond the presence of any qualified local noncommercial educational television station—

"(i) the cable operator shall import and carry on that system the signal of one qualified noncommercial educational television station;

"(ii) the selection for carriage of such a signal shall be at the election of the cable operator; and

"(iii) in order to satisfy the requirements for carriage specified in this subsection, the cable operator of the system shall not be required to remove any other programming service actually provided to subscribers on March 29, 1990; except that such cable operator shall use the first channel available to satisfy the requirements of this subparagraph.

"(3) SYSTEMS WITH 13 TO 36 CHANNELS.—(A) Subject to subsection (c), a cable operator of a cable system with 13 to 36 usable activated channels—

"(i) shall carry the signal of at least one qualified local noncommercial educational television station but shall not be required to carry the signals of more than three such stations, and

"(ii) may, in its discretion, carry additional such stations.

"(B) In the case of a cable system described in this paragraph which operates beyond the presence of any qualified local noncommercial educational television station, the cable operator shall import and carry on that system the signal of at least one qualified noncommercial educational television station to comply with subparagraph (A)(i).

"(C) The cable operator of a cable system described in this paragraph which carries the signal of a qualified local noncommercial educational station affiliated with a State public television network shall not be required to carry the signal of any additional qualified local noncommercial educational television stations affiliated with the same network if the programming of such additional stations is substantially duplicated by the programming of the qualified local noncommercial educational television station receiving carriage.

"(D) A cable operator of a system described in this paragraph which increases the usable activated channel capacity of the system to more than 36 channels on or after March 29, 1990, shall, in accordance with the other provisions of this section, carry the signal of each qualified local noncommercial educational television station requesting carriage, subject to subsection (e).

"(c) CONTINUED CARRIAGE OF EXISTING STATIONS.—Notwithstanding any other provision of this section, all cable operators shall continue to provide carriage to all qualified local noncommercial educational television stations whose signals were car-

ried on their systems as of March 29, 1990. The requirements of this subsection may be waived with respect to a particular cable operator and a particular such station, upon the written consent of the cable operator and the station.

"(d) **PLACEMENT OF ADDITIONAL SIGNALS.**—A cable operator required to add the signals of qualified local noncommercial educational television stations to a cable system under this section may do so, subject to approval by the franchising authority pursuant to section 611, by placing such additional stations on public, educational, or governmental channels not in use for their designated purposes.

"(e) **SYSTEMS WITH MORE THAN 36 CHANNELS.**—A cable operator of a cable system with a capacity of more than 36 usable activated channels which is required to carry the signals of three qualified local noncommercial educational television stations shall not be required to carry the signals of additional such stations the programming of which substantially duplicates the programming broadcast by another qualified local noncommercial educational television station requesting carriage. Substantial duplication shall be defined by the Commission in a manner that promotes access to distinctive noncommercial educational television services.

"(f) **WAIVER OF NONDUPLICATION RIGHTS.**—A qualified local noncommercial educational television station whose signal is carried by a cable operator shall not assert any network nonduplication rights it may have pursuant to section 76.92 of title 47, Code of Federal Regulations, to require the deletion of programs aired on other qualified local noncommercial educational television stations whose signals are carried by that cable operator.

"(g) **CONDITIONS OF CARRIAGE.**—

"(1) **CONTENT TO BE CARRIED.**—A cable operator shall retransmit in its entirety the primary video, accompanying audio, and line 21 closed caption transmission of each qualified local noncommercial educational television station whose signal is carried on the cable system, and, to the extent technically feasible, program-related material carried in the vertical blanking interval, or on subcarriers, that may be necessary for receipt of programming by handicapped persons or for educational or language purposes. Retransmission of other material in the vertical blanking interval or on subcarriers shall be within the discretion of the cable operator.

"(2) **BANDWIDTH AND TECHNICAL QUALITY.**—A cable operator shall provide each qualified local noncommercial educational television station whose signal is carried in accordance with this section with bandwidth and technical capacity equivalent to that provided to commercial television broadcast stations carried on the cable system and shall carry the signal of each qualified local noncommercial educational television station without material degradation.

"(3) **CHANGES IN CARRIAGE.**—The signal of a qualified local noncommercial educational television station shall not be repositioned by a cable operator unless the cable operator, at least 30 days in advance of such repositioning, has provided written notice to the station and all subscribers of the cable system. For purposes of this paragraph, repositioning includes (A) assignment of a qualified local noncommercial educational television station to a cable system channel number different from the cable system channel number to which the station was

assigned as of March 29, 1990, and (B) deletion of the station from the cable system. The notification provisions of this paragraph shall not be used to undermine or evade the channel positioning or carriage requirements imposed upon cable operators under this section.

"(4) GOOD QUALITY SIGNAL REQUIRED.—Notwithstanding the other provisions of this section, a cable operator shall not be required to carry the signal of any qualified local noncommercial educational television station which does not deliver to the cable system's principal headend a signal of good quality or a baseband video signal, as may be defined by the Commission.

"(5) CHANNEL POSITIONING.—Each signal carried in fulfillment of the carriage obligations of a cable operator under this section shall be carried on the cable system channel number on which the qualified local noncommercial educational television station is broadcast over the air, or on the channel on which it was carried on July 19, 1985, at the election of the station, or on such other channel number as is mutually agreed upon by the station and the cable operator. Any dispute regarding the positioning of a qualified local noncommercial educational television station shall be resolved by the Commission.

"(h) AVAILABILITY OF SIGNALS.—Signals carried in fulfillment of the carriage obligations of a cable operator under this section shall be available to every subscriber as part of the cable system's lowest priced service tier that includes the retransmission of local commercial television broadcast signals.

"(i) PAYMENT FOR CARRIAGE PROHIBITED.—

"(1) IN GENERAL.—A cable operator shall not accept monetary payment or other valuable consideration in exchange for carriage of the signal of any qualified local noncommercial educational television station carried in fulfillment of the requirements of this section, except that such a station may be required to bear the cost associated with delivering a good quality signal or a baseband video signal to the principal headend of the cable system.

"(2) DISTANT SIGNAL EXCEPTION.—Notwithstanding the provisions of this section, a cable operator shall not be required to add the signal of a qualified local noncommercial educational television station not already carried under the provision of subsection (c), where such signal would be considered a distant signal for copyright purposes unless such station indemnifies the cable operator for any increased copyright costs resulting from carriage of such signal.

"(j) REMEDIES.—

"(1) COMPLAINT.—Whenever a qualified local noncommercial educational television station believes that a cable operator of a cable system has failed to comply with the signal carriage requirements of this section, the station may file a complaint with the Commission. Such complaint shall allege the manner in which such cable operator has failed to comply with such requirements and state the basis for such allegations.

"(2) OPPORTUNITY TO RESPOND.—The Commission shall afford such cable operator an opportunity to present data, views, and arguments to establish that the cable operator has complied with the signal carriage requirements of this section.

"(3) REMEDIAL ACTIONS; DISMISSAL.—Within 120 days after the date a complaint is filed under this subsection, the Commission shall determine whether the cable operator has complied with the requirements of this section. If the Commission determines that the cable operator has failed to comply with such requirements, the Commission shall state with particularity the basis for such findings and order the cable operator to take such remedial action as is necessary to meet such requirements. If the Commission determines that the cable operator has fully complied with such requirements, the Commission shall dismiss the complaint.

"(k) IDENTIFICATION OF SIGNALS.—A cable operator shall identify, upon request by any person, those signals carried in fulfillment of the requirements of this section.

"(l) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED NONCOMMERCIAL EDUCATIONAL TELEVISION STATION.—The term 'qualified noncommercial educational television station' means any television broadcast station which—

"(A)(i) under the rules and regulations of the Commission in effect on March 29, 1990, is licensed by the Commission as a noncommercial educational television broadcast station and which is owned and operated by a public agency, nonprofit foundation, corporation, or association; and

"(ii) has as its licensee an entity which is eligible to receive a community service grant, or any successor grant thereto, from the Corporation for Public Broadcasting, or any successor organization thereto, on the basis of the formula set forth in section 396(k)(6)(B); or

"(B) is owned and operated by a municipality and transmits predominantly noncommercial programs for educational purposes.

Such term includes (I) the translator of any noncommercial educational television station with five watts or higher power serving the franchise area, (II) a full-service station or translator if such station or translator is licensed to a channel reserved for noncommercial educational use pursuant to section 73.606 of title 47, Code of Federal Regulations, or any successor regulations thereto, and (III) such stations and translators operating on channels not so reserved as the Commission determines are qualified as noncommercial educational stations.

"(2) QUALIFIED LOCAL NONCOMMERCIAL EDUCATIONAL TELEVISION STATION.—The term 'qualified local noncommercial educational television station' means a qualified noncommercial educational television station—

"(A) which is licensed to a principal community whose reference point, as defined in section 76.53 of title 47, Code of Federal Regulations (as in effect on March 29, 1990), or any successor regulations thereto, is within 50 miles of the principal headend of the cable system; or

"(B) whose Grade B service contour, as defined in section 73.683(a) of such title (as in effect on March 29, 1990), or any successor regulations thereto, encompasses the principal headend of the cable system."

SEC. 6. RETRANSMISSION CONSENT FOR CABLE SYSTEMS.

Section 325 of the Communications Act of 1934 (47 U.S.C. 325) is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(2) by inserting immediately after subsection (a) the following new subsection:

“(b)(1) Following the date that is one year after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, no cable system or other multichannel video programming distributor shall retransmit the signal of a broadcasting station, or any part thereof, except—

“(A) with the express authority of the originating station;

or

“(B) pursuant to section 614, in the case of a station electing, in accordance with this subsection, to assert the right to carriage under such section.

“(2) The provisions of this subsection shall not apply to—

“(A) retransmission of the signal of a noncommercial broadcasting station;

“(B) retransmission directly to a home satellite antenna of the signal of a broadcasting station that is not owned or operated by, or affiliated with, a broadcasting network, if such signal was retransmitted by a satellite carrier on May 1, 1991;

“(C) retransmission of the signal of a broadcasting station that is owned or operated by, or affiliated with, a broadcasting network directly to a home satellite antenna, if the household receiving the signal is an unserved household; or

“(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.

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.

Regulations.

“(3)(A) Within 45 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission shall commence a rulemaking proceeding to establish regulations to govern the exercise by television broadcast stations of the right to grant retransmission consent under this subsection and of the right to signal carriage under section 614, and such other regulations as are necessary to administer the limitations contained in paragraph (2). The Commission shall consider in such proceeding the impact that the grant of retransmission consent by television stations may have on the rates for the basic service tier and shall ensure that the regulations prescribed under this subsection do not conflict with the Commission’s obligation under section 623(b)(1) to ensure that the rates for the basic service tier are reasonable. Such rulemaking proceeding shall be completed within 180 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992.

“(B) The regulations required by subparagraph (A) shall require that television stations, within one year after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992 and every three years thereafter, make an election between

the right to grant retransmission consent under this subsection and the right to signal carriage under section 614. If there is more than one cable system which services the same geographic area, a station's election shall apply to all such cable systems.

"(4) If an originating television station elects under paragraph (3)(B) to exercise its right to grant retransmission consent under this subsection with respect to a cable system, the provisions of section 614 shall not apply to the carriage of the signal of such station by such cable system.

"(5) The exercise by a television broadcast station of the right to grant retransmission consent under this subsection shall not interfere with or supersede the rights under section 614 or 615 of any station electing to assert the right to signal carriage under that section.

"(6) Nothing in this section shall be construed as modifying the compulsory copyright license established in section 111 of title 17, United States Code, or as affecting existing or future video programming licensing agreements between broadcasting stations and video programmers."

SEC. 7. AWARD OF FRANCHISES; PROMOTION OF COMPETITION.

(a) ADDITIONAL COMPETITIVE FRANCHISES.—

(1) AMENDMENT.—Section 621(a)(1) of the Communications Act of 1934 (47 U.S.C. 541(a)(1)) is amended by inserting before the period at the end the following: "; except that a franchising authority may not grant an exclusive franchise and may not unreasonably refuse to award an additional competitive franchise. Any applicant whose application for a second franchise has been denied by a final decision of the franchising authority may appeal such final decision pursuant to the provisions of section 635 for failure to comply with this subsection".

(2) CONFORMING AMENDMENT.—Section 635(a) of the Communications Act of 1934 (47 U.S.C. 555(a)) is amended by inserting "621(a)(1)," after "section".

(b) FRANCHISE REQUIREMENTS.—Section 621(a) of the Communications Act of 1934 (47 U.S.C. 541(a)) is amended by adding at the end the following new paragraph:

"(4) In awarding a franchise, the franchising authority—

"(A) shall allow the applicant's cable system a reasonable period of time to become capable of providing cable service to all households in the franchise area;

"(B) may require adequate assurance that the cable operator will provide adequate public, educational, and governmental access channel capacity, facilities, or financial support; and

"(C) may require adequate assurance that the cable operator has the financial, technical, or legal qualifications to provide cable service."

(c) MUNICIPAL AUTHORITIES PERMITTED TO OPERATE SYSTEMS.—Section 621 of the Communications Act of 1934 (47 U.S.C. 541) is amended—

(1) by inserting "and subsection (f)" before the comma in subsection (b)(1); and

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

"(f) No provision of this Act shall be construed to—

"(1) prohibit a local or municipal authority that is also, or is affiliated with, a franchising authority from operating as a multichannel video programming distributor in the fran-

chise area, notwithstanding the granting of one or more franchises by such franchising authority; or

"(2) require such local or municipal authority to secure a franchise to operate as a multichannel video programming distributor."

SEC. 8. CONSUMER PROTECTION AND CUSTOMER SERVICE.

Section 632 of the Communications Act of 1934 (47 U.S.C. 552) is amended to read as follows:

"SEC. 632. CONSUMER PROTECTION AND CUSTOMER SERVICE.

"(a) **FRANCHISING AUTHORITY ENFORCEMENT.**—A franchising authority may establish and enforce—

"(1) customer service requirements of the cable operator; and

"(2) construction schedules and other construction-related requirements, including construction-related performance requirements, of the cable operator.

"(b) **COMMISSION STANDARDS.**—The Commission shall, within 180 days of enactment of the Cable Television Consumer Protection and Competition Act of 1992, establish standards by which cable operators may fulfill their customer service requirements. Such standards shall include, at a minimum, requirements governing—

"(1) cable system office hours and telephone availability;

"(2) installations, outages, and service calls; and

"(3) communications between the cable operator and the subscriber (including standards governing bills and refunds).

"(c) 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.

"(2) **CUSTOMER SERVICE REQUIREMENT AGREEMENTS.**—Nothing in this section shall be construed to preclude a franchising authority and a cable operator from agreeing to customer service requirements that exceed the standards established by the Commission under subsection (b). Nothing in this title shall be construed to prevent the establishment or enforcement of any municipal law or regulation, or any State law, concerning customer service that imposes customer service requirements that exceed the standards set by the Commission under this section, or that addresses matters not addressed by the standards set by the Commission under this section."

SEC. 9. LEASED COMMERCIAL ACCESS.

(a) **PURPOSE.**—Section 612(a) of the Communications Act of 1934 (47 U.S.C. 532(a)) is amended by inserting "to promote competition in the delivery of diverse sources of video programming and" after "purpose of this section is".

(b) **COMMISSION RULES ON MAXIMUM REASONABLE RATES AND OTHER TERMS AND CONDITIONS.**—Section 612(c) of such Act (47 U.S.C. 532(c)) is amended—

(1) in paragraph (1) by inserting "and with rules prescribed by the Commission under paragraph (4)" after "purpose of this section"; and

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

"(4)(A) The Commission shall have the authority to—

“(i) determine the maximum reasonable rates that a cable operator may establish pursuant to paragraph (1) for commercial use of designated channel capacity, including the rate charged for the billing of rates to subscribers and for the collection of revenue from subscribers by the cable operator for such use;

“(ii) establish reasonable terms and conditions for such use, including those for billing and collection; and

“(iii) establish procedures for the expedited resolution of disputes concerning rates or carriage under this section.

Regulations.

“(B) Within 180 days after the date of enactment of this paragraph, the Commission shall establish rules for determining maximum reasonable rates under subparagraph (A)(i), for establishing terms and conditions under subparagraph (A)(ii), and for providing procedures under subparagraph (A)(iii).”

(c) ACCESS FOR QUALITY MINORITY PROGRAMMING SOURCES AND QUALIFIED EDUCATIONAL PROGRAMMING SOURCES.—Section 612 of such Act (47 U.S.C. 532) is amended by adding at the end thereof the following new subsection:

“(i)(1) Notwithstanding the provisions of subsections (b) and (c), a cable operator required by this section to designate channel capacity for commercial use may use any such channel capacity for the provision of programming from a qualified minority programming source or from any qualified educational programming source, whether or not such source is affiliated with the cable operator. The channel capacity used to provide programming from a qualified minority programming source or from any qualified educational programming source pursuant to this subsection may not exceed 33 percent of the channel capacity designated pursuant to this section. No programming provided over a cable system on July 1, 1990, may qualify as minority programming or educational programming on that cable system under this subsection.

“(2) For purposes of this subsection, the term ‘qualified minority programming source’ means a programming source which devotes substantially all of its programming to coverage of minority viewpoints, or to programming directed at members of minority groups, and which is over 50 percent minority-owned, as the term ‘minority’ is defined in section 309(i)(3)(C)(ii).

“(3) For purposes of this subsection, the term ‘qualified educational programming source’ means a programming source which devotes substantially all of its programming to educational or instructional programming that promotes public understanding of mathematics, the sciences, the humanities, and the arts and has a documented annual expenditure on programming exceeding \$15,000,000. The annual expenditure on programming means all annual costs incurred by the programming source to produce or acquire programs which are scheduled to be televised, and specifically excludes marketing, promotion, satellite transmission and operational costs, and general administrative costs.

“(4) Nothing in this subsection shall substitute for the requirements to carry qualified noncommercial educational television stations as specified under section 615.”

(d) CONFORMING AMENDMENT.—Paragraph (5) of section 612(b) of the Communications Act of 1934 (47 U.S.C. 532(b)) is amended to read as follows:

"(5) For the purposes of this section, the term 'commercial use' means the provision of video programming, whether or not for profit."

SEC. 10. CHILDREN'S PROTECTION FROM INDECENT PROGRAMMING ON LEASED ACCESS CHANNELS.

(a) **AUTHORITY TO ENFORCE.**—Section 612(h) of the Communications Act of 1934 (47 U.S.C. 532(h)) is amended—

(1) by inserting "or the cable operator" after "franchising authority"; and

(2) by adding at the end thereof the following: "This subsection shall permit a cable operator to enforce prospectively a written and published policy of prohibiting programming that the cable operator reasonably believes describes or depicts sexual or excretory activities or organs in a patently offensive manner as measured by contemporary community standards."

(b) **COMMISSION REGULATIONS.**—Section 612 of the Communications Act of 1934 (47 U.S.C. 532) is amended by inserting after subsection (i) (as added by section 9(c) of this Act) the following new subsection:

"(j)(1) Within 120 days following the date of the enactment of this subsection, the Commission shall promulgate regulations designed to limit the access of children to indecent programming, as defined by Commission regulations, and which cable operators have not voluntarily prohibited under subsection (h) by—

"(A) requiring cable operators to place on a single channel all indecent programs, as identified by program providers, intended for carriage on channels designated for commercial use under this section;

"(B) requiring cable operators to block such single channel unless the subscriber requests access to such channel in writing; and

"(C) requiring programmers to inform cable operators if the program would be indecent as defined by Commission regulations.

"(2) Cable operators shall comply with the regulations promulgated pursuant to paragraph (1)."

Regulations.
47 USC 531 note.

(c) **PROHIBITS SYSTEM USE.**—Within 180 days following the date of the enactment of this Act, the Federal Communications Commission shall promulgate such regulations as may be necessary to enable a cable operator of a cable system to prohibit the use, on such system, of any channel capacity of any public, educational, or governmental access facility for any programming which contains obscene material, sexually explicit conduct, or material soliciting or promoting unlawful conduct.

(d) **CONFORMING AMENDMENT.**—Section 638 of the Communications Act of 1934 (47 U.S.C. 558) is amended by striking the period at the end and inserting the following: "unless the program involves obscene material."

SEC. 11. LIMITATIONS ON OWNERSHIP, CONTROL, AND UTILIZATION.

(a) **CROSS-OWNERSHIP.**—Section 613(a) of the Communications Act of 1934 (47 U.S.C. 533(a)) is amended—

(1) by inserting "(1)" immediately after "(a)"; and

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

"(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) CLARIFICATION OF LOCAL AUTHORITY TO REGULATE OWNERSHIP.—Section 613(d) of the Communications Act of 1934 (47 U.S.C. 533(d)) is amended—

(1) by striking “any media” and inserting “any other media”; and

(2) by adding at the end thereof the following: “Nothing in this section shall be construed to prevent any State or franchising authority from prohibiting the ownership or control of a cable system in a jurisdiction by any person (1) because of such person's ownership or control of any other cable system in such jurisdiction; or (2) in circumstances in which the State or franchising authority determines that the acquisition of such a cable system may eliminate or reduce competition in the delivery of cable service in such jurisdiction.”.

(c) COMMISSION REGULATIONS.—Section 613 of the Communications Act of 1934 (47 U.S.C. 533) is amended—

(1) by redesignating subsections (f) and (g) as subsections (g) and (h), respectively; and

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

“(f)(1) In order to enhance effective competition, the Commission shall, within one year after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, conduct a proceeding—

“(A) to prescribe rules and regulations establishing reasonable limits on the number of cable subscribers a person is authorized to reach through cable systems owned by such person, or in which such person has an attributable interest;

“(B) to prescribe rules and regulations establishing reasonable limits on the number of channels on a cable system that can be occupied by a video programmer in which a cable operator has an attributable interest; and

“(C) to consider the necessity and appropriateness of imposing limitations on the degree to which multichannel video programming distributors may engage in the creation or production of video programming.

“(2) In prescribing rules and regulations under paragraph (1), the Commission shall, among other public interest objectives—

“(A) ensure that no cable operator or group of cable operators can unfairly impede, either because of the size of any individual operator or because of joint actions by a group of operators of sufficient size, the flow of video programming from the video programmer to the consumer;

“(B) ensure that cable operators affiliated with video programmers do not favor such programmers in determining carriage on their cable systems or do not unreasonably restrict

the flow of the video programming of such programmers to other video distributors;

“(C) take particular account of the market structure, ownership patterns, and other relationships of the cable television industry, including the nature and market power of the local franchise, the joint ownership of cable systems and video programmers, and the various types of non-equity controlling interests;

“(D) account for any efficiencies and other benefits that might be gained through increased ownership or control;

“(E) make such rules and regulations reflect the dynamic nature of the communications marketplace;

“(F) not impose limitations which would bar cable operators from serving previously unserved rural areas; and

“(G) not impose limitations which would impair the development of diverse and high quality video programming.”

SEC. 12. REGULATION OF CARRIAGE AGREEMENTS.

Part II of title VI of the Communications Act of 1934 is amended by inserting after section 615 (as added by section 5 of this Act) the following new section:

47 USC 536.

“SEC. 616. REGULATION OF CARRIAGE AGREEMENTS.

“(a) REGULATIONS.—Within one year after the date of enactment of this section, the Commission shall establish regulations governing program carriage agreements and related practices between cable operators or other multichannel video programming distributors and video programming vendors. Such regulations shall—

“(1) include provisions designed to prevent a cable operator or other multichannel video programming distributor from requiring a financial interest in a program service as a condition for carriage on one or more of such operator’s systems;

“(2) include provisions designed to prohibit a cable operator or other multichannel video programming distributor from coercing a video programming vendor to provide, and from retaliating against such a vendor for failing to provide, exclusive rights against other multichannel video programming distributors as a condition of carriage on a system;

“(3) contain provisions designed to prevent a multichannel video programming distributor from engaging in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or nonaffiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors;

“(4) provide for expedited review of any complaints made by a video programming vendor pursuant to this section;

“(5) provide for appropriate penalties and remedies for violations of this subsection, including carriage; and

“(6) provide penalties to be assessed against any person filing a frivolous complaint pursuant to this section.

“(b) DEFINITION.—As used in this section, the term ‘video programming vendor’ means a person engaged in the production, creation, or wholesale distribution of video programming for sale.”

SEC. 13. SALES OF CABLE SYSTEMS.

Part II of title VI of the Communications Act of 1934 is further amended by adding at the end thereof the following new section:

"SEC. 617. SALES OF CABLE SYSTEMS.

47 USC 537.

"(a) **3-YEAR HOLDING PERIOD REQUIRED.**—Except as provided in this section, no cable operator may sell or otherwise transfer ownership in a cable system within a 36-month period following either the acquisition or initial construction of such system by such operator.

"(b) **TREATMENT OF MULTIPLE TRANSFERS.**—In the case of a sale of multiple systems, if the terms of the sale require the buyer to subsequently transfer ownership of one or more such systems to one or more third parties, such transfers shall be considered a part of the initial transaction.

"(c) **EXCEPTIONS.**—Subsection (a) shall not apply to—

"(1) any transfer of ownership interest in any cable system which is not subject to Federal income tax liability;

"(2) any sale required by operation of any law or any act of any Federal agency, any State or political subdivision thereof, or any franchising authority; or

"(3) any sale, assignment, or transfer, to one or more purchasers, assignees, or transferees controlled by, controlling, or under common control with, the seller, assignor, or transferor.

"(d) **WAIVER AUTHORITY.**—The Commission may, consistent with the public interest, waive the requirement of subsection (a), except that, if the franchise requires franchise authority approval of a transfer, the Commission shall not waive such requirements unless the franchise authority has approved the transfer. The Commission shall use its authority under this subsection to permit appropriate transfers in the cases of default, foreclosure, or other financial distress.

"(e) **LIMITATION ON DURATION OF FRANCHISING AUTHORITY POWER TO DISAPPROVE TRANSFERS.**—In the case of any sale or transfer of ownership of any cable system after the 36-month period following acquisition of such system, a franchising authority shall, if the franchise requires franchising authority approval of a sale or transfer, have 120 days to act upon any request for approval of such sale or transfer that contains or is accompanied by such information as is required in accordance with Commission regulations and by the franchising authority. If the franchising authority fails to render a final decision on the request within 120 days, such request shall be deemed granted unless the requesting party and the franchising authority agree to an extension of time."

SEC. 14. SUBSCRIBER BILL ITEMIZATION.

Section 622(c) of the Communications Act of 1934 (47 U.S.C. 542(c)) is amended to read as follows:

"(c) Each cable operator may identify, consistent with the regulations prescribed by the Commission pursuant to section 623, as a separate line item on each regular bill of each subscriber, each of the following:

"(1) The amount of the total bill assessed as a franchise fee and the identity of the franchising authority to which the fee is paid.

"(2) The amount of the total bill assessed to satisfy any requirements imposed on the cable operator by the franchise

agreement to support public, educational, or governmental channels or the use of such channels.

"(3) The amount of any other fee, tax, assessment, or charge of any kind imposed by any governmental authority on the transaction between the operator and the subscriber."

SEC. 15. NOTICE TO CABLE SUBSCRIBERS ON UNSOLICITED SEXUALLY EXPLICIT PROGRAMS.

Section 624(d) of the Communications Act of 1934 (47 U.S.C. 544(d)) is amended by adding at the end the following new paragraph:

"(3)(A) If a cable operator provides a premium channel without charge to cable subscribers who do not subscribe to such premium channel, the cable operator shall, not later than 30 days before such premium channel is provided without charge—

"(i) notify all cable subscribers that the cable operator plans to provide a premium channel without charge;

"(ii) notify all cable subscribers when the cable operator plans to offer a premium channel without charge;

"(iii) notify all cable subscribers that they have a right to request that the channel carrying the premium channel be blocked; and

"(iv) block the channel carrying the premium channel upon the request of a subscriber.

"(B) For the purpose of this section, the term 'premium channel' shall mean any pay service offered on a per channel or per program basis, which offers movies rated by the Motion Picture Association of America as X, NC-17, or R."

SEC. 16. TECHNICAL STANDARDS; EMERGENCY ANNOUNCEMENTS; PROGRAMMING CHANGES; HOME WIRING.

(a) **TECHNICAL STANDARDS.**—Section 624(e) of the Communications Act of 1934 (47 U.S.C. 544(e)) is amended to read as follows:

"(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."

(b) **EMERGENCY ANNOUNCEMENTS.**—Section 624 of such Act (47 U.S.C. 544) is amended by adding at the end the following new subsection:

"(g) Notwithstanding any such rule, regulation, or order, each cable operator shall comply with such standards as the Commission shall prescribe to ensure that viewers of video programming on cable systems are afforded the same emergency information as is afforded by the emergency broadcasting system pursuant to Commission regulations in subpart G of part 73, title 47, Code of Federal Regulations."

(c) **PROGRAMMING CHANGES.**—Section 624 of such Act (47 U.S.C. 544) is further amended—

Regulations.

(1) in subsection (b)(1), by inserting “, except as provided in subsection (h),” after “but may not”; and

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

“(h) A franchising authority may require a cable operator to do any one or more of the following:

“(1) Provide 30 days’ advance written notice of any change in channel assignment or in the video programming service provided over any such channel.

“(2) Inform subscribers, via written notice, that comments on programming and channel position changes are being recorded by a designated office of the franchising authority.”.

(d) HOME WIRING.—Section 624 of such Act (47 U.S.C. 544) is further amended by adding at the end the following new subsection:

“(i) Within 120 days after the date of enactment of this subsection, the Commission shall prescribe rules concerning the disposition, after a subscriber to a cable system terminates service, of any cable installed by the cable operator within the premises of such subscriber.”.

Regulations.

SEC. 17. CONSUMER ELECTRONICS EQUIPMENT COMPATIBILITY.

The Communications Act of 1934 is amended by adding after section 624 (47 U.S.C. 544) the following new section:

“SEC. 624A. CONSUMER ELECTRONICS EQUIPMENT COMPATIBILITY. 47 USC 544a.

“(a) FINDINGS.—The Congress finds that—

“(1) new and recent models of television receivers and video cassette recorders often contain premium features and functions that are disabled or inhibited because of cable scrambling, encoding, or encryption technologies and devices, including converter boxes and remote control devices required by cable operators to receive programming;

“(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.

“(b) COMPATIBLE INTERFACES.—

“(1) REPORT; REGULATIONS.—Within 1 year after the date of enactment of this section, the Commission, in consultation with representatives of the cable industry and the consumer electronics industry, shall report to Congress on means of assuring compatibility between televisions and video cassette recorders and cable systems, consistent with the need to prevent theft of cable service, so that cable subscribers will be able to enjoy the full benefit of both the programming available on cable systems and the functions available on their televisions and video cassette recorders. Within 180 days after the date of submission of the report required by this subsection, the Commission shall issue such regulations as are necessary to assure such compatibility.

“(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.

"(c) RULEMAKING REQUIREMENTS.—

"(1) FACTORS TO BE CONSIDERED.—In prescribing the regulations required by this section, the Commission shall consider—

"(A) 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) to watch a program on one channel while simultaneously using a video cassette recorder to tape a program on another channel;

"(ii) to use a video cassette recorder to tape two consecutive programs that appear on different channels; and

"(iii) to use advanced television picture generation and display features; and

"(B) 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) to specify the technical requirements with which a television receiver or video cassette recorder must comply in order to be sold as 'cable compatible' or 'cable ready';

"(B) to require cable operators offering channels whose reception requires a converter box—

"(i) to notify subscribers that they may be unable to benefit from the special functions of their television receivers and video cassette recorders, including functions that permit subscribers—

"(I) to watch a program on one channel while simultaneously using a video cassette recorder to tape a program on another channel;

"(II) to use a video cassette recorder to tape two consecutive programs that appear on different channels; and

"(III) to use advanced television picture generation and display features; and

"(ii) to the extent technically and economically feasible, to offer subscribers the option of having all other channels delivered directly to the subscribers' television receivers or video cassette recorders without passing through the converter box;

"(C) to promote the commercial availability, from cable operators and retail vendors that are not affiliated with

cable systems, of converter boxes and of remote control devices compatible with converter boxes;

“(D) to require a cable operator who offers subscribers the option of renting a remote control unit—

“(i) to notify subscribers that they may purchase a commercially available remote control device from any source that sells such devices rather than renting it from the cable operator; and

“(ii) to specify the types of remote control units that are compatible with the converter box supplied by the cable operator; and

“(E) 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.

“(d) REVIEW OF REGULATIONS.—The Commission shall periodically review and, if necessary, modify the regulations issued pursuant to this section in light of any actions taken in response to such regulations and to reflect improvements and changes in cable systems, television receivers, video cassette recorders, and similar technology.”.

SEC. 18. FRANCHISE RENEWAL.

(a) COMMENCEMENT OF PROCEEDINGS.—Section 626(a) of the Communications Act of 1934 (47 U.S.C. 546(a)) is amended to read as follows:

“SEC. 626. (a)(1) A franchising authority may, on its own initiative during the 6-month period which begins with the 36th month before the franchise expiration, commence a proceeding which affords the public in the franchise area appropriate notice and participation for the purpose of (A) identifying the future cable-related community needs and interests, and (B) reviewing the performance of the cable operator under the franchise during the then current franchise term. If the cable operator submits, during such 6-month period, a written renewal notice requesting the commencement of such a proceeding, the franchising authority shall commence such a proceeding not later than 6 months after the date such notice is submitted.

“(2) The cable operator may not invoke the renewal procedures set forth in subsections (b) through (g) unless—

“(A) such a proceeding is requested by the cable operator by timely submission of such notice; or

“(B) such a proceeding is commenced by the franchising authority on its own initiative.”.

(b) PROCEEDING ON RENEWAL PROPOSAL.—Section 626(c)(1) of the Communications Act of 1934 (47 U.S.C. 546(c)(1)) is amended—

(1) by inserting “pursuant to subsection (b)” after “renewal of a franchise”; and

(2) by striking “completion of any proceedings under subsection (a)” and inserting the following: “date of the submission of the cable operator’s proposal pursuant to subsection (b)”.

(c) REVIEW CRITERIA.—Section 626(c)(1)(B) of the Communications Act of 1934 (47 U.S.C. 546(c)(1)(B)) is amended by striking “mix, quality, or level” and inserting “mix or quality”.

(d) CORRECTION OF FAILURES.—Section 626(d) of the Communications Act of 1934 (47 U.S.C. 546(d)) is amended—

(1) by inserting "that has been submitted in compliance with subsection (b)" after "Any denial of a proposal for renewal"; and

(2) by striking "or has effectively acquiesced" and inserting "or the cable operator gives written notice of a failure or inability to cure and the franchising authority fails to object within a reasonable time after receipt of such notice".

(e) HARMLESS ERROR.—Section 626(e)(2)(A) of the Communications Act of 1934 (47 U.S.C. 546(e)(2)(A)) is amended by inserting after "franchising authority" the following: ", other than harmless error,".

(f) CONFLICT BETWEEN REVOCATION AND RENEWAL PROCEEDINGS.—Section 626 of the Communications Act of 1934 (47 U.S.C. 546) is amended by adding at the end the following new subsection:

"(i) Notwithstanding the provisions of subsections (a) through (h), any lawful action to revoke a cable operator's franchise for cause shall not be negated by the subsequent initiation of renewal proceedings by the cable operator under this section."

SEC. 19. DEVELOPMENT OF COMPETITION AND DIVERSITY IN VIDEO PROGRAMMING DISTRIBUTION.

Part III of title VI of the Communications Act of 1934 is amended by inserting after section 627 (47 U.S.C. 547) the following new section:

47 USC 548.

"SEC. 628. DEVELOPMENT OF COMPETITION AND DIVERSITY IN VIDEO PROGRAMMING DISTRIBUTION.

"(a) PURPOSE.—The purpose of this section is to promote the public interest, convenience, and necessity by increasing competition and diversity in the multichannel video programming market, to increase the availability of satellite cable programming and satellite broadcast programming to persons in rural and other areas not currently able to receive such programming, and to spur the development of communications technologies.

"(b) PROHIBITION.—It shall be unlawful for a cable operator, a satellite cable programming vendor in which a cable operator has an attributable interest, or a satellite broadcast programming vendor to engage in unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or to prevent any multichannel video programming distributor from providing satellite cable programming or satellite broadcast programming to subscribers or consumers.

"(c) REGULATIONS REQUIRED.—

"(1) PROCEEDING REQUIRED.—Within 180 days after the date of enactment of this section, the Commission shall, in order to promote the public interest, convenience, and necessity by increasing competition and diversity in the multichannel video programming market and the continuing development of communications technologies, prescribe regulations to specify particular conduct that is prohibited by subsection (b).

"(2) MINIMUM CONTENTS OF REGULATIONS.—The regulations to be promulgated under this section shall—

"(A) establish effective safeguards to prevent a cable operator which has an attributable interest in a satellite cable programming vendor or a satellite broadcast programming vendor from unduly or improperly influencing the decision of such vendor to sell, or the prices, terms, and conditions of sale of, satellite cable programming or satellite

broadcast programming to any unaffiliated multichannel video programming distributor;

“(B) prohibit discrimination by a satellite cable programming vendor in which a cable operator has an attributable interest or by a satellite broadcast programming vendor in the prices, terms, and conditions of sale or delivery of satellite cable programming or satellite broadcast programming among or between cable systems, cable operators, or other multichannel video programming distributors, or their agents or buying groups; except that such a satellite cable programming vendor in which a cable operator has an attributable interest or such a satellite broadcast programming vendor shall not be prohibited from—

“(i) imposing reasonable requirements for creditworthiness, offering of service, and financial stability and standards regarding character and technical quality;

“(ii) establishing different prices, terms, and conditions to take into account actual and reasonable differences in the cost of creation, sale, delivery, or transmission of satellite cable programming or satellite broadcast programming;

“(iii) establishing different prices, terms, and conditions which take into account economies of scale, cost savings, or other direct and legitimate economic benefits reasonably attributable to the number of subscribers served by the distributor; or

“(iv) entering into an exclusive contract that is permitted under subparagraph (D);

“(C) prohibit practices, understandings, arrangements, and activities, including exclusive contracts for satellite cable programming or satellite broadcast programming between a cable operator and a satellite cable programming vendor or satellite broadcast programming vendor, that prevent a multichannel video programming distributor from obtaining such programming from any satellite cable programming vendor in which a cable operator has an attributable interest or any satellite broadcast programming vendor in which a cable operator has an attributable interest for distribution to persons in areas not served by a cable operator as of the date of enactment of this section; and

“(D) with respect to distribution to persons in areas served by a cable operator, prohibit exclusive contracts for satellite cable programming or satellite broadcast programming between a cable operator and a satellite cable programming vendor in which a cable operator has an attributable interest or a satellite broadcast programming vendor in which a cable operator has an attributable interest, unless the Commission determines (in accordance with paragraph (4)) that such contract is in the public interest.

“(3) LIMITATIONS.—

“(A) GEOGRAPHIC LIMITATIONS.—Nothing in this section shall require any person who is engaged in the national or regional distribution of video programming to make such programming available in any geographic area beyond

which such programming has been authorized or licensed for distribution.

"(B) APPLICABILITY TO SATELLITE RETRANSMISSIONS.—Nothing in this section shall apply (i) to the signal of any broadcast affiliate of a national television network or other television signal that is retransmitted by satellite but that is not satellite broadcast programming, or (ii) to any internal satellite communication of any broadcast network or cable network that is not satellite broadcast programming.

"(4) PUBLIC INTEREST DETERMINATIONS ON EXCLUSIVE CONTRACTS.—In determining whether an exclusive contract is in the public interest for purposes of paragraph (2)(D), the Commission shall consider each of the following factors with respect to the effect of such contract on the distribution of video programming in areas that are served by a cable operator:

"(A) the effect of such exclusive contract on the development of competition in local and national multichannel video programming distribution markets;

"(B) the effect of such exclusive contract on competition from multichannel video programming distribution technologies other than cable;

"(C) the effect of such exclusive contract on the attraction of capital investment in the production and distribution of new satellite cable programming;

"(D) the effect of such exclusive contract on diversity of programming in the multichannel video programming distribution market; and

"(E) the duration of the exclusive contract.

"(5) SUNSET PROVISION.—The prohibition required by paragraph (2)(D) shall cease to be effective 10 years after the date of enactment of this section, unless the Commission finds, in a proceeding conducted during the last year of such 10-year period, that such prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming.

"(d) ADJUDICATORY PROCEEDING.—Any multichannel video programming distributor aggrieved by conduct that it alleges constitutes a violation of subsection (b), or the regulations of the Commission under subsection (c), may commence an adjudicatory proceeding at the Commission.

"(e) REMEDIES FOR VIOLATIONS.—

"(1) REMEDIES AUTHORIZED.—Upon completion of such adjudicatory proceeding, the Commission shall have the power to order appropriate remedies, including, if necessary, the power to establish prices, terms, and conditions of sale of programming to the aggrieved multichannel video programming distributor.

"(2) ADDITIONAL REMEDIES.—The remedies provided in paragraph (1) are in addition to and not in lieu of the remedies available under title V or any other provision of this Act.

"(f) PROCEDURES.—The Commission shall prescribe regulations to implement this section. The Commission's regulations shall—

"(1) provide for an expedited review of any complaints made pursuant to this section;

"(2) establish procedures for the Commission to collect such data, including the right to obtain copies of all contracts and documents reflecting arrangements and understandings alleged

Regulations.

to violate this section, as the Commission requires to carry out this section; and

“(3) provide for penalties to be assessed against any person filing a frivolous complaint pursuant to this section.

“(g) **REPORTS.**—The Commission shall, beginning not later than 18 months after promulgation of the regulations required by subsection (c), annually report to Congress on the status of competition in the market for the delivery of video programming.

“(h) **EXEMPTIONS FOR PRIOR CONTRACTS.**—

“(1) **IN GENERAL.**—Nothing in this section shall affect any contract that grants exclusive distribution rights to any person with respect to satellite cable programming and that was entered into on or before June 1, 1990, except that the provisions of subsection (c)(2)(C) shall apply for distribution to persons in areas not served by a cable operator.

“(2) **LIMITATION ON RENEWALS.**—A contract that was entered into on or before June 1, 1990, but that is renewed or extended after the date of enactment of this section shall not be exempt under paragraph (1).

“(i) **DEFINITIONS.**—As used in this section:

“(1) The term ‘satellite cable programming’ has the meaning provided under section 705 of this Act, except that such term does not include satellite broadcast programming.

“(2) The term ‘satellite cable programming vendor’ means a person engaged in the production, creation, or wholesale distribution for sale of satellite cable programming, but does not include a satellite broadcast programming vendor.

“(3) The term ‘satellite broadcast programming’ means broadcast video programming when such programming is retransmitted by satellite and the entity retransmitting such programming is not the broadcaster or an entity performing such retransmission on behalf of and with the specific consent of the broadcaster.

“(4) The term ‘satellite broadcast programming vendor’ means a fixed service satellite carrier that provides service pursuant to section 119 of title 17, United States Code, with respect to satellite broadcast programming.”.

SEC. 20. CUSTOMER PRIVACY RIGHTS.

(a) **DEFINITIONS.**—Section 631(a)(2) of the Communications Act of 1934 (47 U.S.C. 551(a)(2)) is amended to read as follows:

“(2) For purposes of this section, other than subsection (h)—

“(A) the term ‘personally identifiable information’ does not include any record of aggregate data which does not identify particular persons;

“(B) the term ‘other service’ includes any wire or radio communications service provided using any of the facilities of a cable operator that are used in the provision of cable service; and

“(C) the term ‘cable operator’ includes, in addition to persons within the definition of cable operator in section 602, any person who (i) is owned or controlled by, or under common ownership or control with, a cable operator, and (ii) provides any wire or radio communications service.”.

(b) **ADDITIONAL ACTIONS REQUIRED.**—Section 631(c)(1) of the Communications Act of 1934 (47 U.S.C. 551(c)(1)) is amended by inserting immediately before the period at the end the following:

"and shall take such actions as are necessary to prevent unauthorized access to such information by a person other than the subscriber or cable operator".

SEC. 21. THEFT OF CABLE SERVICE.

47 USC 553.

Section 633(b) of the Communications Act of 1934 (47 U.S.C. 533(b)) is amended—

(1) in paragraph (2)—

(A) by striking "\$25,000" and inserting "\$50,000";

(B) by striking "1 year" and inserting "2 years";

(C) by striking "\$50,000" and inserting "\$100,000"; and

(D) by striking "2 years" and inserting "5 years"; and

(2) by adding at the end thereof the following new para-

graph:

"(3) For purposes of all penalties and remedies established for violations of subsection (a)(1), the prohibited activity established herein as it applies to each such device shall be deemed a separate violation."

Minorities.

Women.

47 USC 554 note.

SEC. 22. EQUAL EMPLOYMENT OPPORTUNITY.

(a) FINDINGS.—The Congress finds and declares that—

(1) despite the existence of regulations governing equal employment opportunity, females and minorities are not employed in significant numbers in positions of management authority in the cable and broadcast television industries;

(2) increased numbers of females and minorities in positions of management authority in the cable and broadcast television industries advances the Nation's policy favoring diversity in the expression of views in the electronic media; and

(3) rigorous enforcement of equal employment opportunity rules and regulations is required in order to effectively deter racial and gender discrimination.

(b) STANDARDS.—Section 634(d)(1) of the Communications Act of 1934 (47 U.S.C. 554(d)(1)) is amended to read as follows:

Regulations.

"(d)(1) Not later than 270 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, and after notice and opportunity for hearing, the Commission shall prescribe revisions in the rules under this section in order to implement the amendments made to this section by such Act. Such revisions shall be designed to promote equality of employment opportunities for females and minorities in each of the job categories itemized in paragraph (3)."

(c) CONTENTS OF ANNUAL STATISTICAL REPORTS.—Section 634(d)(3) of the Communications Act of 1934 (47 U.S.C. 554(d)(3)) is amended to read as follows:

"(3)(A) Such rules also shall require an entity specified in subsection (a) with more than 5 full-time employees to file with the Commission an annual statistical report identifying by race, sex, and job title the number of employees in each of the following full-time and part-time job categories:

"(i) Corporate officers.

"(ii) General Manager.

"(iii) Chief Technician.

"(iv) Comptroller.

"(v) General Sales Manager.

"(vi) Production Manager.

"(vii) Managers.

"(viii) Professionals.

- “(ix) Technicians.
- “(x) Sales Personnel.
- “(xi) Office and Clerical Personnel.
- “(xii) Skilled Craftspersons.
- “(xiii) Semiskilled Operatives.
- “(xiv) Unskilled Laborers.
- “(xv) Service Workers.

“(B) The report required by subparagraph (A) shall be made on separate forms, provided by the Commission, for full-time and part-time employees. The Commission’s rules shall sufficiently define the job categories listed in clauses (i) through (vi) of such subparagraph so as to ensure that only employees who are principal decisionmakers and who have supervisory authority are reported for such categories. The Commission shall adopt rules that define the job categories listed in clauses (vii) through (xv) in a manner that is consistent with the Commission policies in effect on June 1, 1990. The Commission shall prescribe the method by which entities shall be required to compute and report the number of minorities and women in the job categories listed in clauses (i) through (x) and the number of minorities and women in the job categories listed in clauses (i) through (xv) in proportion to the total number of qualified minorities and women in the relevant labor market. The report shall include information on hiring, promotion, and recruitment practices necessary for the Commission to evaluate the efforts of entities to comply with the provisions of paragraph (2) of this subsection. The report shall be available for public inspection at the entity’s central location and at every location where 5 or more full-time employees are regularly assigned to work. Nothing in this subsection shall be construed as prohibiting the Commission from collecting or continuing to collect statistical or other employment information in a manner that it deems appropriate to carry out this section.”

(d) **PENALTIES.**—Section 634(f)(2) of such Act (47 U.S.C. 554(f)(2)) is amended by striking “\$200” and inserting “\$500”.

(e) **APPLICATION OF REQUIREMENTS.**—Section 634(h)(1) of such Act (47 U.S.C. 554(h)(1)) is amended by inserting before the period the following: “and any multichannel video programming distributor”.

(f) **BROADCASTING EQUAL EMPLOYMENT OPPORTUNITY.**—Part I of title III of the Communications Act of 1934 is amended by inserting after section 333 (47 U.S.C. 333) the following new section:

“SEC. 334. LIMITATION ON REVISION OF EQUAL EMPLOYMENT OPPORTUNITY REGULATIONS.

47 USC 334.

“(a) **LIMITATION.**—Except as specifically provided in this section, the Commission shall not revise—

“(1) the regulations concerning equal employment opportunity as in effect on September 1, 1992 (47 C.F.R. 73.2080) as such regulations apply to television broadcast station licensees and permittees; or

“(2) the forms used by such licensees and permittees to report pertinent employment data to the Commission.

“(b) **MIDTERM REVIEW.**—The Commission shall revise the regulations described in subsection (a) to require a midterm review of television broadcast station licensees’ employment practices and to require the Commission to inform such licensees of necessary

improvements in recruitment practices identified as a consequence of such review.

“(c) **AUTHORITY TO MAKE TECHNICAL REVISIONS.**—The Commission may revise the regulations described in subsection (a) to make nonsubstantive technical or clerical revisions in such regulations as necessary to reflect changes in technology, terminology, or Commission organization.”

47 USC 544 note.

(g) **STUDY AND REPORT REQUIRED.**—Not later than 2 years after the date of enactment of this Act, the Commission shall submit to the Congress a report pursuant to a proceeding to review and obtain public comment on the effect and operation of the amendments made by this section. In conducting such review, the Commission shall consider the effectiveness of its procedures, regulations, policies, standards, and guidelines in promoting equality of employment opportunity and promotion opportunity, and particularly the effectiveness of its procedures, regulations, policies, standards, and guidelines in promoting the congressional policy favoring increased employment opportunity for women and minorities in positions of management authority. The Commission shall forward to the Congress such legislative recommendations to improve equal employment opportunity in the broadcasting and cable industries as it deems necessary.

SEC. 23. JUDICIAL REVIEW.

Section 635 of the Communications Act of 1934 (47 U.S.C. 555) is amended by adding at the end the following new subsection:

“(c)(1) Notwithstanding any other provision of law, any civil action challenging the constitutionality of section 614 or 615 of this Act or any provision thereof shall be heard by a district court of three judges convened pursuant to the provisions of section 2284 of title 28, United States Code.

“(2) Notwithstanding any other provision of law, an interlocutory or final judgment, decree, or order of the court of three judges in an action under paragraph (1) holding section 614 or 615 of this Act or any provision thereof unconstitutional shall be reviewable as a matter of right by direct appeal to the Supreme Court. Any such appeal shall be filed not more than 20 days after entry of such judgment, decree, or order.”

SEC. 24. LIMITATION ON FRANCHISING AUTHORITY LIABILITY.

(a) **AMENDMENT.**—Part IV of title VI of the Communications Act of 1934 is amended by inserting after section 635 (47 U.S.C. 555) the following new section:

47 USC 555a.

“SEC. 635A. LIMITATION OF FRANCHISING AUTHORITY LIABILITY.

“(a) **SUITS FOR DAMAGES PROHIBITED.**—In any court proceeding pending on or initiated after the date of enactment of this section involving any claim against a franchising authority or other governmental entity, or any official, member, employee, or agent of such authority or entity, arising from the regulation of cable service or from a decision of approval or disapproval with respect to a grant, renewal, transfer, or amendment of a franchise, any relief, to the extent such relief is required by any other provision of Federal, State, or local law, shall be limited to injunctive relief and declaratory relief.

“(b) **EXCEPTION FOR COMPLETED CASES.**—The limitation contained in subsection (a) shall not apply to actions that, prior to such violation, have been determined by a final order of a court

of binding jurisdiction, no longer subject to appeal, to be in violation of a cable operator's rights.

"(c) **DISCRIMINATION CLAIMS PERMITTED.**—Nothing in this section shall be construed as limiting the relief authorized with respect to any claim against a franchising authority or other governmental entity, or any official, member, employee, or agent of such authority or entity, to the extent such claim involves discrimination on the basis of race, color, sex, age, religion, national origin, or handicap.

"(d) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed as creating or authorizing liability of any kind, under any law, for any action or failure to act relating to cable service or the granting of a franchise by any franchising authority or other governmental entity, or any official, member, employee, or agent of such authority or entity."

(b) **CONFORMING AMENDMENT.**—Section 635(b) of the Communications Act of 1934 (47 U.S.C. 555(b)) is amended by inserting "and with the provisions of subsection (a)" after "subsection (a)".

SEC. 25. DIRECT BROADCAST SATELLITE SERVICE OBLIGATIONS.

(a) **AMENDMENT.**—Part I of title III of the Communications Act of 1934 is further amended by inserting after section 334 (as added by section 22(f) of this Act) the following new section:

"SEC. 335. DIRECT BROADCAST SATELLITE SERVICE OBLIGATIONS.

47 USC 335.

"(a) **PROCEEDING REQUIRED TO REVIEW DBS RESPONSIBILITIES.**—The Commission shall, within 180 days after the date of enactment of this section, initiate a rulemaking proceeding to impose, on providers of direct broadcast satellite service, public interest or other requirements for providing video programming. Any regulations prescribed pursuant to such rulemaking shall, at a minimum, apply the access to broadcast time requirement of section 312(a)(7) and the use of facilities requirements of section 315 to providers of direct broadcast satellite service providing video programming. Such proceeding also shall examine the opportunities that the establishment of direct broadcast satellite service provides for the principle of localism under this Act, and the methods by which such principle may be served through technological and other developments in, or regulation of, such service.

"(b) **CARRIAGE OBLIGATIONS FOR NONCOMMERCIAL, EDUCATIONAL, AND INFORMATIONAL PROGRAMMING.**—

"(1) **CHANNEL CAPACITY REQUIRED.**—The Commission shall require, as a condition of any provision, initial authorization, or authorization renewal for a provider of direct broadcast satellite service providing video programming, that the provider of such service reserve a portion of its channel capacity, equal to not less than 4 percent nor more than 7 percent, exclusively for noncommercial programming of an educational or informational nature.

"(2) **USE OF UNUSED CHANNEL CAPACITY.**—A provider of such service may utilize for any purpose any unused channel capacity required to be reserved under this subsection pending the actual use of such channel capacity for noncommercial programming of an educational or informational nature.

"(3) **PRICES, TERMS, AND CONDITIONS; EDITORIAL CONTROL.**—A provider of direct broadcast satellite service shall meet the requirements of this subsection by making channel capacity available to national educational programming suppliers, upon reasonable prices, terms, and conditions, as determined by the

Commission under paragraph (4). The provider of direct broadcast satellite service shall not exercise any editorial control over any video programming provided pursuant to this subsection.

"(4) LIMITATIONS.—In determining reasonable prices under paragraph (3)—

"(A) the Commission shall take into account the non-profit character of the programming provider and any Federal funds used to support such programming;

"(B) the Commission shall not permit such prices to exceed, for any channel made available under this subsection, 50 percent of the total direct costs of making such channel available; and

"(C) in the calculation of total direct costs, the Commission shall exclude—

"(i) marketing costs, general administrative costs, and similar overhead costs of the provider of direct broadcast satellite service; and

"(ii) the revenue that such provider might have obtained by making such channel available to a commercial provider of video programming.

"(5) DEFINITIONS.—For purposes of this subsection—

"(A) The term 'provider of direct broadcast satellite service' means—

"(i) a licensee for a Ku-band satellite system under part 100 of title 47 of the Code of Federal Regulations; or

"(ii) any distributor who controls a minimum number of channels (as specified by Commission regulation) using a Ku-band fixed service satellite system for the provision of video programming directly to the home and licensed under part 25 of title 47 of the Code of Federal Regulations.

"(B) The term 'national educational programming supplier' includes any qualified noncommercial educational television station, other public telecommunications entities, and public or private educational institutions."

(b) TECHNICAL AMENDMENT.—Section 331 of such Act as added by Public Law 97-259 (47 U.S.C. 332) is redesignated as section 332.

47 USC 521 note. **SEC. 26. SPORTS PROGRAMMING MIGRATION STUDY AND REPORT.**

(a) STUDY REQUIRED.—The Federal Communications Commission shall conduct an ongoing study on the carriage of local, regional, and national sports programming by broadcast stations, cable programming networks, and pay-per-view services. The study shall investigate and analyze, on a sport-by-sport basis, trends in the migration of such programming from carriage by broadcast stations to carriage over cable programming networks and pay-per-view systems, including the economic causes and the economic and social consequences of such trends.

(b) REPORT ON STUDY.—The Federal Communications Commission shall, on or before July 1, 1993, and July 1, 1994, submit an interim and a final report, respectively, on the results of the study required by subsection (a) to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate. Such

reports shall include a statement of the results, on a sport-by-sport basis, of the analysis of the trends required by subsection (a) and such legislative or regulatory recommendations as the Commission considers appropriate.

(c) ANALYSIS OF PRECLUSIVE CONTRACTS REQUIRED.—

(1) ANALYSIS REQUIRED.—In conducting the study required by subsection (a), the Commission shall analyze the extent to which preclusive contracts between college athletic conferences and video programming vendors have artificially and unfairly restricted the supply of the sporting events of local colleges for broadcast on local television stations. In conducting such analysis, the Commission shall consult with the Attorney General to determine whether and to what extent such preclusive contracts are prohibited by existing statutes. The reports required by subsection (b) shall include separate statements of the results of the analysis required by this subsection, together with such recommendations for legislation as the Commission considers necessary and appropriate.

(2) DEFINITION.—For purposes of the subsection, the term “preclusive contract” includes any contract that prohibits—

(A) the live broadcast by a local television station of a sporting event of a local college team that is not carried, on a live basis, by any cable system within the local community served by such local television station; or

(B) the delayed broadcast by a local television station of a sporting event of a local college team that is not carried, on a live or delayed basis, by any cable system within the local community served by such local television station.

SEC. 27. APPLICABILITY OF ANTITRUST LAWS.

47 USC 521 note.

Nothing in this Act or the amendments made by this Act shall be construed to alter or restrict in any manner the applicability of any Federal or State antitrust law.

SEC. 28. EFFECTIVE DATE.

47 USC 325 note.

Except where otherwise expressly provided, the provisions of this Act and the amendments made thereby shall take effect 60 days after the date of enactment of this Act.

THOMAS S. FOLEY

Speaker of the House of Representatives.

ROBERT C. BYRD

President of the Senate pro tempore.

IN THE SENATE OF THE UNITED STATES,

October 5 (legislative day, September 30), 1992.

The Senate having proceeded to reconsider the bill (S. 12) entitled “An Act to amend the Communications Act of 1934 to provide increased consumer protection and to promote increased competition in the cable television and related markets, and for other purposes”, returned by the President of the United States with his objections, to the Senate, in which it originated, it was

Resolved, That the said bill pass, two-thirds of the Senators present having voted in the affirmative.

WALTER J. STEWART

Secretary.

I certify that this Act originated in the Senate.

WALTER J. STEWART
Secretary.

IN THE HOUSE OF REPRESENTATIVES, U.S.,

October 5, 1992.

The House of Representatives having proceeded to reconsider the bill (S. 12) entitled "An Act to amend the Communications Act of 1934 to provide increased consumer protection and to promote increased competition in the cable television and related markets, and for other purposes", returned by the President of the United States with his objections, to the Senate, in which it originated, it was

Resolved, That the said bill pass, two-thirds of the House of Representatives agreeing to pass the same.

DONNALD K. ANDERSON
Clerk.

LEGISLATIVE HISTORY—S. 12 (H.R. 4850):

HOUSE REPORTS: Nos. 102-628 accompanying H.R. 4850 (Comm. on Energy and Commerce) and 102-862 (Comm. of Conference).

SENATE REPORTS: No. 102-92 (Comm. on Commerce, Science, and Transportation).
CONGRESSIONAL RECORD, Vol. 138 (1992):

Jan. 27, 29-31, considered and passed Senate.

July 23, H.R. 4850 considered and passed House; S. 12, amended, passed in lieu.

Sept. 17, House agreed to conference report.

Sept. 21, 22, Senate considered and agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 28 (1992):

Oct. 3, Veto message.

CONGRESSIONAL RECORD, Vol. 138 (1992):

Oct. 5, Senate and House overrode veto.