

is solely to provide interactive on-demand services; (D) an open video system that complies with section 573 of this title; or (E)” for “; or (D)”, was executed by making the substitution for “; or (D)” to reflect the probable intent of Congress.

Pars. (12) to (20). Pub. L. 104-104, §302(b)(2)(B), (C), added par. (12) and redesignated former pars. (12) to (19) as (13) to (20), respectively.

1992—Pub. L. 102-385 added pars. (1), (12), and (18) and redesignated former pars. (1) to (10) as (2) to (11), respectively, former pars. (11) to (15) as (13) to (17), respectively, and former par. (16) as (19).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-385 effective 60 days after Oct. 5, 1992, see section 28 of Pub. L. 102-385, set out as a note under section 325 of this title.

EFFECTIVE DATE

Section effective 60 days after Oct. 30, 1984, except where otherwise expressly provided, see section 9(a) of Pub. L. 98-549, set out as a note under section 521 of this title.

PART II—USE OF CABLE CHANNELS AND CABLE OWNERSHIP RESTRICTIONS

§ 531. Cable channels for public, educational, or governmental use

(a) Authority to establish requirements with respect to designation or use of channel capacity

A franchising authority may establish requirements in a franchise with respect to the designation or use of channel capacity for public, educational, or governmental use only to the extent provided in this section.

(b) Authority to require designation for public, educational, or governmental use

A franchising authority may in its request for proposals require as part of a franchise, and may require as part of a cable operator's proposal for a franchise renewal, subject to section 546 of this title, that channel capacity be designated for public, educational, or governmental use, and channel capacity on institutional networks be designated for educational or governmental use, and may require rules and procedures for the use of the channel capacity designated pursuant to this section.

(c) Enforcement authority

A franchising authority may enforce any requirement in any franchise regarding the providing or use of such channel capacity. Such enforcement authority includes the authority to enforce any provisions of the franchise for services, facilities, or equipment proposed by the cable operator which relate to public, educational, or governmental use of channel capacity, whether or not required by the franchising authority pursuant to subsection (b).

(d) Promulgation of rules and procedures

In the case of any franchise under which channel capacity is designated under subsection (b), the franchising authority shall prescribe—

- (1) rules and procedures under which the cable operator is permitted to use such channel capacity for the provision of other services if such channel capacity is not being used for the purposes designated, and
- (2) rules and procedures under which such permitted use shall cease.

(e) Editorial control by cable operator

Subject to section 544(d) of this title, a cable operator shall not exercise any editorial control over any public, educational, or governmental use of channel capacity provided pursuant to this section, except a cable operator may refuse to transmit any public access program or portion of a public access program which contains obscenity, indecency, or nudity.

(f) “Institutional network” defined

For purposes of this section, the term “institutional network” means a communication network which is constructed or operated by the cable operator and which is generally available only to subscribers who are not residential subscribers.

(June 19, 1934, ch. 652, title VI, §611, as added Pub. L. 98-549, §2, Oct. 30, 1984, 98 Stat. 2782; Pub. L. 104-104, title V, §506(a), Feb. 8, 1996, 110 Stat. 136.)

AMENDMENTS

1996—Subsec. (e). Pub. L. 104-104 inserted before period at end “; except a cable operator may refuse to transmit any public access program or portion of a public access program which contains obscenity, indecency, or nudity”.

EFFECTIVE DATE

Section effective 60 days after Oct. 30, 1984, except where otherwise expressly provided, see section 9(a) of Pub. L. 98-549, set out as a note under section 521 of this title.

REGULATIONS

Pub. L. 102-385, §10(c), Oct. 5, 1992, 106 Stat. 1486, provided that: “Within 180 days following the date of the enactment of this Act [Oct. 5, 1992], 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.”

[For information regarding constitutionality of section 10(c) of Pub. L. 102-385, set out above, see Congressional Research Service, *The Constitution of the United States of America: Analysis and Interpretation*, Appendix 1, Acts of Congress Held Unconstitutional in Whole or in Part by the Supreme Court of the United States.]

§ 532. Cable channels for commercial use

(a) Purpose

The purpose of this section is to promote competition in the delivery of diverse sources of video programming and to assure that the widest possible diversity of information sources are made available to the public from cable systems in a manner consistent with growth and development of cable systems.

(b) Designation of channel capacity for commercial use

(1) A cable operator shall designate channel capacity for commercial use by persons unaffiliated with the operator in accordance with the following requirements:

- (A) An operator of any cable system with 36 or more (but not more than 54) activated chan-

nels shall designate 10 percent of such channels which are not otherwise required for use (or the use of which is not prohibited) by Federal law or regulation.

(B) An operator of any cable system with 55 or more (but not more than 100) activated channels shall designate 15 percent of such channels which are not otherwise required for use (or the use of which is not prohibited) by Federal law or regulation.

(C) An operator of any cable system with more than 100 activated channels shall designate 15 percent of all such channels.

(D) An operator of any cable system with fewer than 36 activated channels shall not be required to designate channel capacity for commercial use by persons unaffiliated with the operator, unless the cable system is required to provide such channel capacity under the terms of a franchise in effect on October 30, 1984.

(E) An operator of any cable system in operation on October 30, 1984, shall not be required to remove any service actually being provided on July 1, 1984, in order to comply with this section, but shall make channel capacity available for commercial use as such capacity becomes available until such time as the cable operator is in full compliance with this section.

(2) Any Federal agency, State, or franchising authority may not require any cable system to designate channel capacity for commercial use by unaffiliated persons in excess of the capacity specified in paragraph (1), except as otherwise provided in this section.

(3) A cable operator may not be required, as part of a request for proposals or as part of a proposal for renewal, subject to section 546 of this title, to designate channel capacity for any use (other than commercial use by unaffiliated persons under this section) except as provided in sections 531 and 557 of this title, but a cable operator may offer in a franchise, or proposal for renewal thereof, to provide, consistent with applicable law, such capacity for other than commercial use by such persons.

(4) A cable operator may use any unused channel capacity designated pursuant to this section until the use of such channel capacity is obtained, pursuant to a written agreement, by a person unaffiliated with the operator.

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

(6) Any channel capacity which has been designated for public, educational, or governmental use may not be considered as designated under this section for commercial use for purpose of this section.

(c) Use of channel capacity by unaffiliated persons; editorial control; restriction on service; rules on rates, terms, and conditions

(1) If a person unaffiliated with the cable operator seeks to use channel capacity designated pursuant to subsection (b) for commercial use, the cable operator shall establish, consistent with the purpose of this section and with rules prescribed by the Commission under paragraph (4), the price, terms, and conditions of such use

which are at least sufficient to assure that such use will not adversely affect the operation, financial condition, or market development of the cable system.

(2) A cable operator shall not exercise any editorial control over any video programming provided pursuant to this section, or in any other way consider the content of such programming, except that a cable operator may refuse to transmit any leased access program or portion of a leased access program which contains obscenity, indecency, or nudity and may consider such content to the minimum extent necessary to establish a reasonable price for the commercial use of designated channel capacity by an unaffiliated person.

(3) Any cable system channel designated in accordance with this section shall not be used to provide a cable service that is being provided over such system on October 30, 1984, if the provision of such programming is intended to avoid the purpose of this section.

(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.

(B) Within 180 days after October 5, 1992, 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).

(d) Right of action in district court; relief; factors not to be considered by court

Any person aggrieved by the failure or refusal of a cable operator to make channel capacity available for use pursuant to this section may bring an action in the district court of the United States for the judicial district in which the cable system is located to compel that such capacity be made available. If the court finds that the channel capacity sought by such person has not been made available in accordance with this section, or finds that the price, terms, or conditions established by the cable operator are unreasonable, the court may order such system to make available to such person the channel capacity sought, and further determine the appropriate price, terms, or conditions for such use consistent with subsection (c), and may award actual damages if it deems such relief appropriate. In any such action, the court shall not consider any price, term, or condition established between an operator and an affiliate for comparable services.

(e) Petition to Commission; relief

(1) Any person aggrieved by the failure or refusal of a cable operator to make channel capac-

ity available pursuant to this section may petition the Commission for relief under this subsection upon a showing of prior adjudicated violations of this section. Records of previous adjudications resulting in a court determination that the operator has violated this section shall be considered as sufficient for the showing necessary under this subsection. If the Commission finds that the channel capacity sought by such person has not been made available in accordance with this section, or that the price, terms, or conditions established by such system are unreasonable under subsection (c), the Commission shall, by rule or order, require such operator to make available such channel capacity under price, terms, and conditions consistent with subsection (c).

(2) In any case in which the Commission finds that the prior adjudicated violations of this section constitute a pattern or practice of violations by an operator, the Commission may also establish any further rule or order necessary to assure that the operator provides the diversity of information sources required by this section.

(3) In any case in which the Commission finds that the prior adjudicated violations of this section constitute a pattern or practice of violations by any person who is an operator of more than one cable system, the Commission may also establish any further rule or order necessary to assure that such person provides the diversity of information sources required by this section.

(f) Presumption of reasonableness and good faith

In any action brought under this section in any Federal district court or before the Commission, there shall be a presumption that the price, terms, and conditions for use of channel capacity designated pursuant to subsection (b) are reasonable and in good faith unless shown by clear and convincing evidence to the contrary.

(g) Promulgation of rules

Notwithstanding sections 541(c) and 543(a) of this title, at such time as cable systems with 36 or more activated channels are available to 70 percent of households within the United States and are subscribed to by 70 percent of the households to which such systems are available, the Commission may promulgate any additional rules necessary to provide diversity of information sources. Any rules promulgated by the Commission pursuant to this subsection shall not preempt authority expressly granted to franchising authorities under this subchapter.

(h) Cable service unprotected by Constitution

Any cable service offered pursuant to this section shall not be provided, or shall be provided subject to conditions, if such cable service in the judgment of the franchising authority or the cable operator is obscene, or is in conflict with community standards in that it is lewd, lascivious, filthy, or indecent or is otherwise unprotected by the Constitution of the United States. 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.

(i) Programming from qualified minority or educational programming sources

(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) of this title.

(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 non-commercial educational television stations as specified under section 535 of this title.

(j) Single channel access to indecent programming

(1) Within 120 days following October 5, 1992, 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).

(June 19, 1934, ch. 652, title VI, §612, as added Pub. L. 98-549, §2, Oct. 30, 1984, 98 Stat. 2782;

amended Pub. L. 102-385, §§9, 10(a), (b), Oct. 5, 1992, 106 Stat. 1484, 1486; Pub. L. 104-104, title V, §506(b), Feb. 8, 1996, 110 Stat. 137.)

CONSTITUTIONALITY

For information regarding constitutionality of certain provisions of section 612 of act June 19, 1934, as added by section 10(b) of Pub. L. 102-385, see Congressional Research Service, *The Constitution of the United States of America: Analysis and Interpretation*, Appendix 1, Acts of Congress Held Unconstitutional in Whole or in Part by the Supreme Court of the United States.

AMENDMENTS

1996—Subsec. (c)(2). Pub. L. 104-104 substituted “a cable operator may refuse to transmit any leased access program or portion of a leased access program which contains obscenity, indecency, or nudity and” for “an operator”.

1992—Subsec. (a). Pub. L. 102-385, §9(a), inserted “to promote competition in the delivery of diverse sources of video programming and” after “purpose of this section is”.

Subsec. (b)(5). Pub. L. 102-385, §9(d), amended par. (5) generally. Prior to amendment, par. (5) read as follows: “For the purposes of this section—

“(A) the term ‘activated channels’ means those channels engineered at the headend of the 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; and

“(B) the term ‘commercial use’ means the provision of video programming, whether or not for profit.”

Subsec. (c)(1). Pub. L. 102-385, §9(b)(1), inserted “and with rules prescribed by the Commission under paragraph (4)” after “purpose of this section”.

Subsec. (c)(4). Pub. L. 102-385, §9(b)(2), added par. (4).

Subsec. (h). Pub. L. 102-385, §10(a), inserted “or the cable operator” after “franchising authority” and inserted at end “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.”

Subsec. (i). Pub. L. 102-385, §9(c), added subsec. (i).

Subsec. (j). Pub. L. 102-385, §10(b), added subsec. (j).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-385 effective 60 days after Oct. 5, 1992, see section 28 of Pub. L. 102-385, set out as a note under section 325 of this title.

EFFECTIVE DATE

Section effective 60 days after Oct. 30, 1984, except where otherwise expressly provided, see section 9(a) of Pub. L. 98-549, set out as a note under section 521 of this title.

§ 533. Ownership restrictions

(a) Cable operator holding license for multichannel distribution or offering satellite service

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—

(1) 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 October 5, 1992;

(2) 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; and

(3) shall not apply the requirements of this subsection to any cable operator in any franchise area in which a cable operator is subject to effective competition as determined under section 543(l) of this title.

(b) Repealed. Pub. L. 104-104, title III, §302(b)(1), Feb. 8, 1996, 110 Stat. 124

(c) Promulgation of rules

The Commission may prescribe rules with respect to the ownership or control of cable systems by persons who own or control other media of mass communications which serve the same community served by a cable system.

(d) Regulation of ownership by States or franchising authorities

Any State or franchising authority may not prohibit the ownership or control of a cable system by any person because of such person's ownership or control of any other media of mass communications or other media interests. 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.

(e) Holding of ownership interests or exercise of editorial control by States or franchising authorities

(1) Subject to paragraph (2), a State or franchising authority may hold any ownership interest in any cable system.

(2) Any State or franchising authority shall not exercise any editorial control regarding the content of any cable service on a cable system in which such governmental entity holds ownership interest (other than programming on any channel designated for educational or governmental use), unless such control is exercised through an entity separate from the franchising authority.

(f) Enhancement of effective competition

(1) In order to enhance effective competition, the Commission shall, within one year after October 5, 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.

(g) Combination of interests under prior law

This section shall not apply to prohibit any combination of any interests held by any person on July 1, 1984, to the extent of the interests so held as of such date, if the holding of such interests was not inconsistent with any applicable Federal or State law or regulations in effect on that date.

(h) "Media of mass communications" defined

For purposes of this section, the term "media of mass communications" shall have the meaning given such term under section 309(i)(3)(C)(i) of this title.

(June 19, 1934, ch. 652, title VI, §613, as added Pub. L. 98-549, §2, Oct. 30, 1984, 98 Stat. 2785; amended Pub. L. 102-385, §11, Oct. 5, 1992, 106 Stat. 1486; Pub. L. 103-414, title III, §303(a)(22), Oct. 25, 1994, 108 Stat. 4295; Pub. L. 104-104, title II, §202(i), title III, §§302(b)(1), Feb. 8, 1996, 110 Stat. 112, 124.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-104, §202(i), redesignated par. (2) as subsec. (a) and subpars. (A) and (B) of par. (2) as pars. (1) and (2) of subsec. (a), respectively, added par. (3), and struck out former par. (1) which read as follows: "It shall be unlawful for any person to be a cable operator if such person, directly or through 1 or more affiliates, owns or controls, the licensee of a television broadcast station and the predicted grade B con-

tour of such station covers any portion of the community served by such operator's cable system."

Subsec. (b). Pub. L. 104-104, §302(b)(1), struck out subsec. (b), which related to common carriers, direct video programming, an exception for rural areas, and waiver.

1994—Subsec. (b)(2). Pub. L. 103-414 substituted "pole, line, conduit space" for "pole line conduit space".

1992—Subsec. (a). Pub. L. 102-385, §11(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (d). Pub. L. 102-385, §11(b), substituted "any other media" for "any media" and inserted at end "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."

Subsecs. (f) to (h). Pub. L. 102-385, §11(c), added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-385 effective 60 days after Oct. 5, 1992, see section 28 of Pub. L. 102-385, set out as a note under section 325 of this title.

EFFECTIVE DATE

Section effective 60 days after Oct. 30, 1984, except where otherwise expressly provided, see section 9(a) of Pub. L. 98-549, set out as a note under section 521 of this title.

§ 534. Carriage of local commercial television signals

(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) of this title.

(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 non-program-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 543(b)(3) of this title.

(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. 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 consider-

ation 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 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 531 of this title, 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 October 5, 1992, the Commission shall, following a rulemaking proceeding, issue regulations implementing the requirements imposed by this section. Such implementing regulations 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 chapter 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 October 5, 1992, the Commission, notwithstanding prior proceedings to determine whether broadcast television stations that are predominantly uti-

lized 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 535(l)(1) of this title, 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, 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 sta-

tion 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 by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns, except that, following a written request, the Commission may, with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station’s television market to better effectuate the purposes of this section. In considering such requests, the Commission may determine that particular communities are part of more than one television market.

(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 or on the satellite carrier or carriers serving such community;

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

(III) whether modifying the market of the television station would promote consumers’ access to television broadcast station signals that originate in their State of residence;

(IV) 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

(V) evidence of viewing patterns in households that subscribe and do not subscribe to the services offered by multi-channel video programming distributors within the areas served by such multi-channel video programming distributors 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) Within 120 days after the date on which a request is filed under this subparagraph (or 120 days after February 8, 1996, if later), the Commission shall grant or deny the request.

(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 October 5, 1992.

(June 19, 1934, ch. 652, title VI, § 614, as added Pub. L. 102-385, § 4, Oct. 5, 1992, 106 Stat. 1471; amended Pub. L. 104-104, title III, § 301(d)(1), Feb. 8, 1996, 110 Stat. 116; Pub. L. 113-200, title I, §§ 102(b), 105(a), Dec. 4, 2014, 128 Stat. 2061, 2063.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (g)(1), was in the original "this Act", meaning act June 19, 1934, ch. 652, 48 Stat. 1064, known as the Communications Act of 1934, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 609 of this title and Tables.

AMENDMENTS

2014—Subsec. (b)(9). Pub. L. 113-200, § 105(a), struck out "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." after "that station."

Subsec. (h)(1)(C)(ii)(I). Pub. L. 113-200, § 102(b)(1)(A), substituted "community or on the satellite carrier or carriers serving such community" for "community".

Subsec. (h)(1)(C)(ii)(III). Pub. L. 113-200, § 102(b)(1)(C), added subcl. (III). Former subcl. (III) redesignated (IV).

Subsec. (h)(1)(C)(ii)(IV). Pub. L. 113-200, § 102(b)(1)(B), redesignated subcl. (III) as (IV). Former subcl. (IV) redesignated (V).

Subsec. (h)(1)(C)(ii)(V). Pub. L. 113-200, § 102(b)(1)(D), amended subcl. (V) generally. Prior to amendment, subcl. (V) read as follows: "evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community."

Pub. L. 113-200, § 102(b)(1)(B), redesignated subcl. (IV) as (V).

Subsec. (h)(1)(C)(iv). Pub. L. 113-200, § 102(b)(2), realigned margins.

1996—Subsec. (h)(1)(C)(i). Pub. L. 104-104, § 301(d)(1)(A), substituted "by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns," for "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,".

Subsec. (h)(1)(C)(iv). Pub. L. 104-104, § 301(d)(1)(B), added cl. (iv) and struck out former cl. (iv) which read as follows: "In the rulemaking proceeding required by subsection (f) of this section, the Commission shall provide for expedited consideration of requests filed under this subparagraph."

EFFECTIVE DATE

Section effective 60 days after Oct. 5, 1992, see section 28 of Pub. L. 102-385, set out as an Effective Date of 1992 Amendment note under section 325 of this title.

REVISION OF RULES

Pub. L. 113-200, title I, § 105(b), Dec. 4, 2014, 128 Stat. 2063, provided that: "Not later than 90 days after the date of the enactment of this Act [Dec. 4, 2014], the [Federal Communications] Commission shall revise section 76.1601 of its rules (47 CFR 76.1601) and any note to such section by removing the prohibition against deletion or repositioning of a local commercial television station during a period in which major television ratings services measure the size of audiences of local television stations."

APPLICATION TO PENDING REQUESTS

Pub. L. 104-104, title III, § 301(d)(2), Feb. 8, 1996, 110 Stat. 116, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to—

"(A) any request pending under section 614(h)(1)(C) of the Communications Act of 1934 (47 U.S.C. 534(h)(1)(C)) on the date of enactment of this Act [Feb. 8, 1996]; and

"(B) any request filed under that section after that date."

§ 535. Carriage of noncommercial educational television

(a) Carriage obligations

In addition to the carriage requirements set forth in section 534 of this title, 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) Systems with 12 or fewer channels

(A) 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 carried 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 531 of this title, 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 car-

ried 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) of this title; or

(B) is owned and operated by a municipality and transmits predominantly non-

commercial 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.

(June 19, 1934, ch. 652, title VI, §615, as added Pub. L. 102-385, §5, Oct. 5, 1992, 106 Stat. 1477.)

EFFECTIVE DATE

Section effective 60 days after Oct. 5, 1992, see section 28 of Pub. L. 102-385, set out as an Effective Date of 1992 Amendment note under section 325 of this title.

§ 536. Regulation of carriage agreements

(a) Regulations

Within one year after October 5, 1992, 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) “Video programming vendor” defined

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.

(June 19, 1934, ch. 652, title VI, §616, as added Pub. L. 102-385, §12, Oct. 5, 1992, 106 Stat. 1488.)

EFFECTIVE DATE

Section effective 60 days after Oct. 5, 1992, see section 28 of Pub. L. 102-385, set out as an Effective Date of 1992 Amendment note under section 325 of this title.

§ 537. Sales of cable systems

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.

(June 19, 1934, ch. 652, title VI, §617, as added Pub. L. 102-385, §13, Oct. 5, 1992, 106 Stat. 1489; amended Pub. L. 104-104, title III, §301(i), Feb. 8, 1996, 110 Stat. 117.)

AMENDMENTS

1996—Pub. L. 104-104 redesignated subsec. (e) as entire section, substituted “A franchising authority” for “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”, and struck out subsecs. (a) to (d) which related to three-year holding period requirement, treatment of multiple transfers, exceptions to holding requirement, and waiver authority.

EFFECTIVE DATE

Section effective 60 days after Oct. 5, 1992, see section 28 of Pub. L. 102-385, set out as an Effective Date of 1992 Amendment note under section 325 of this title.

§ 537a. Carriage of certain programming

(a) Definitions

In this section—

(1) the term “local commercial television station” has the meaning given the term in section 534(h) of this title;

(2) the term “multichannel video programming distributor” has the meaning given the term in section 522 of this title;

(3) the term “qualified noncommercial educational television station” has the meaning given the term in section 535(l) of this title;

(4) the term “retransmission consent” means the authority granted to a multichannel video programming distributor under section 325(b) of this title to retransmit the signal of a television broadcast station; and

(5) the term “television broadcast station” has the meaning given the term in section 76.66(a) of title 47, Code of Federal Regulations.

(b) Carriage of certain content

Notwithstanding any other provision of law, a multichannel video programming distributor may not be directly or indirectly required, including as a condition of obtaining retransmission consent, to—

(1) carry non-incidental video content from a local commercial television station, qualified noncommercial educational television station, or television broadcast station to the extent that such content is owned, controlled, or financed (in whole or in part) by the Government of the Russian Federation; or

(2) lease, or otherwise make available, channel capacity to any person for the provision of video programming that is owned, controlled, or financed (in whole or in part) by the Government of the Russian Federation.

(c) Rule of construction

Nothing in this section may be construed as applying to the editorial use by a local commercial television station, qualified noncommercial educational television station, or television broadcast station of programming that is owned, controlled, or financed (in whole or in part) by the Government of the Russian Federation.

(Pub. L. 115–91, div. A, title X, §1093, Dec. 12, 2017, 131 Stat. 1611.)

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 2018, and not as part of the Communications Act of 1934 which comprises this chapter.

PART III—FRANCHISING AND REGULATION

§ 541. General franchise requirements

(a) Authority to award franchises; public rights-of-way and easements; equal access to service; time for provision of service; assurances

(1) A franchising authority may award, in accordance with the provisions of this subchapter, 1 or more franchises within its jurisdiction; 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 555 of this title for failure to comply with this subsection.

(2) Any franchise shall be construed to authorize the construction of a cable system over public rights-of-way, and through easements, which

is within the area to be served by the cable system and which have been dedicated for compatible uses, except that in using such easements the cable operator shall ensure—

(A) that the safety, functioning, and appearance of the property and the convenience and safety of other persons not be adversely affected by the installation or construction of facilities necessary for a cable system;

(B) that the cost of the installation, construction, operation, or removal of such facilities be borne by the cable operator or subscriber, or a combination of both; and

(C) that the owner of the property be justly compensated by the cable operator for any damages caused by the installation, construction, operation, or removal of such facilities by the cable operator.

(3) In awarding a franchise or franchises, a franchising authority shall assure that access to cable service is not denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides.

(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.

(b) No cable service without franchise; exception under prior law

(1) Except to the extent provided in paragraph (2) and subsection (f), a cable operator may not provide cable service without a franchise.

(2) Paragraph (1) shall not require any person lawfully providing cable service without a franchise on July 1, 1984, to obtain a franchise unless the franchising authority so requires.

(3)(A) If a cable operator or affiliate thereof is engaged in the provision of telecommunications services—

(i) such cable operator or affiliate shall not be required to obtain a franchise under this subchapter for the provision of telecommunications services; and

(ii) the provisions of this subchapter shall not apply to such cable operator or affiliate for the provision of telecommunications services.

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

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

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

(ii) to discontinue the operation of a cable system, to the extent such cable system is