

105TH CONGRESS
2D SESSION

H. R. 3559

To modify the application of the antitrust laws with respect to obtaining video programming for multichannel distribution, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 26, 1998

Mr. HYDE (himself, Mr. INGLIS of South Carolina, Mr. HUTCHINSON, Mr. PEASE, Mr. GRAHAM, Mr. CONYERS, Mr. BOUCHER, and Mr. DELAHUNT) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To modify the application of the antitrust laws with respect to obtaining video programming for multichannel distribution, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Antitrust Video Com-
5 petition Improvement Act of 1998”.

1 **SEC. 2. ANTICOMPETITIVE EXCLUSIVE CONTRACTS BY**
2 **MULTICHANNEL VIDEO PROGRAMMING DIS-**
3 **TRIBUTORS.**

4 In any civil action based on a claim arising under
5 section 1, 2, or 3 of the Sherman Act (15 U.S.C. 1, 2,
6 3), evidence that a multichannel video programming dis-
7 tributor that has market power in a particular market has
8 acted by means of a contract that is exclusive with respect
9 to that market, to prevent another multichannel video pro-
10 gramming distributor that competes, has a franchise to
11 compete, or is certified by the Federal Communications
12 Commission to compete, in that market from obtaining
13 particular video programming from any person shall be
14 sufficient to establish a presumption of a violation of such
15 section.

16 **SEC. 3. ANTICOMPETITIVE DIFFERENTIAL CONTRACTS BY**
17 **MULTICHANNEL VIDEO PROGRAMMING DIS-**
18 **TRIBUTORS.**

19 In any civil action based on a claim arising under
20 section 1, 2, or 3 of the Sherman Act (15 U.S.C. 1, 2,
21 3), evidence that a multichannel video programming dis-
22 tributor that has market power in a particular market has
23 obtained particular video programming from any person
24 on terms and conditions, other than terms justified by de-
25 monstrable cost differentials, that are more favorable than
26 those offered by such person to another multichannel video

1 programming distributor that competes, has a franchise
2 to compete, or is certified by the Federal Communications
3 Commission to compete, in that market shall be sufficient
4 to establish a presumption of a violation of such section.

5 **SEC. 4. DEFINITIONS.**

6 For the purposes of this Act:

7 (1) CABLE OPERATOR.—The term “cable opera-
8 tor” means any person that—

9 (A) provides cable service over a cable sys-
10 tem and directly, or through 1 or more affili-
11 ates, owns a significant interest in a cable sys-
12 tem, or

13 (B) otherwise controls or is responsible for,
14 through any arrangement, the management and
15 operation of such a cable system.

16 (2) CABLE SERVICE.—The term “cable service”
17 means—

18 (A) the 1-way transmission to subscribers
19 of video programming or other programming
20 service, and

21 (B) subscriber interaction, if any, that is
22 required for the selection or use of such video
23 programming or such programming service.

24 (3) CABLE SYSTEM.—The term “cable system”
25 means a facility, consisting of a set of closed trans-

mission paths and associated signal generation, reception, and control equipment, that is designed to provide cable service that includes video programming, and that is provided to multiple subscribers within a community, but excludes—

(A) a facility that serves only to retransmit the television signals of 1 or more television broadcast stations,

(B) a facility that serves subscribers without using any public right-of-way,

(C) a facility of a common carrier that is subject, in whole or in part, to the provisions of title II of the Communications Act of 1934 (47 U.S.C. 201–276), but such facility shall be considered to be a cable system (other than for purposes of section 621(c) of the Communications Act of 1934 (47 U.S.C. 541(c)) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services,

(D) an open video system that complies with section 653 of the Communications Act of 1934 (47 U.S.C. 573), or

1 (E) any facilities of any electric utility
2 used solely for operating its electric utility sys-
3 tems.

4 (4) FRANCHISE.—The term “franchise” means
5 an initial authorization, or renewal thereof (includ-
6 ing a renewal of an authorization which has been
7 granted subject to section 626 of the Communica-
8 tions Act of 1934 (47 U.S.C. 546)), issued by a
9 franchising authority, whether such authorization is
10 designated as a franchise, permit, license, resolution,
11 contract, certificate, agreement, or otherwise, which
12 authorizes the construction or operation of a cable
13 system.

14 (5) MULTICHANNEL VIDEO PROGRAMMING DIS-
15 TRIBUTOR.—The term “multichannel video program-
16 ming distributor” means a person, including a cable
17 operator, a multichannel multipoint distribution
18 service, a direct broadcast satellite service, an open
19 video system, a multichannel television broadcaster,
20 or a television receive-only satellite program distribu-
21 tor, that makes available for purchase, by subscrib-
22 ers or customers, multiple channels of video pro-
23 gramming.

24 (6) VIDEO PROGRAMMING.—The term “video
25 programming” means programming provided by, or

1 generally considered comparable to programming
2 provided by, a television broadcast station.

3 **SEC. 5. EFFECTIVE DATE AND APPLICABILITY.**

4 This Act shall take effect on the date of the enact-
5 ment of this Act, but shall not apply with respect to con-
6 duct occurring before such date.

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