

105TH CONGRESS  
2D SESSION

# H. R. 4352

To amend the Communications Act of 1934 to improve competition in the multichannel video programming distribution market, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 29, 1998

Mr. TAUZIN (for himself and Mr. MARKEY) introduced the following bill;  
which was referred to the Committee on Commerce

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## A BILL

To amend the Communications Act of 1934 to improve competition in the multichannel video programming distribution market, 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 “Video Competition and  
5       Consumer Choice Act of 1998”.

6       **SEC. 2. CABLE PROGRAMMING SERVICES REGULATION.**

7       Section 623(c)(4) of the Communications Act of  
8       1934 (47 U.S.C. 543(c)(4)) is amended to read as follows:

9               “(4) SUNSET OF UPPER TIER RATE REGULA-  
10       TION.—

1           “(A) PROGRAMMING CHOICE REQUIRED.—

2           The authority to regulate rates under this sub-  
3           section shall not apply to cable programming  
4           services provided after March 31, 1999, by a  
5           cable system unless the franchising authority  
6           for such cable system, after notice and oppor-  
7           tunity for a public hearing at which the opera-  
8           tor, subscribers, and other interested persons  
9           may appear and present evidence, certifies to  
10          the Commission that the cable operator of such  
11          system is not providing to subscribers an ac-  
12          ceptable range of programming choices to the  
13          extent technically feasible and economically rea-  
14          sonable.

15          “(B) BASIS FOR CERTIFICATION.—Any  
16          franchising authority making such a certifi-  
17          cation shall include with the statement the fac-  
18          tors upon which the franchising authority bases  
19          its determination. Such factors may include  
20          (but are not limited to) the factors described in  
21          paragraph (2) and any one or more of the fol-  
22          lowing:

23                 “(i) delivery of the packages is tech-  
24                 nically feasible based on the current and  
25                 expected capability of the system;

1 “(ii) delivery of the packages is eco-  
2 nomically reasonable based on the technical  
3 requirements for delivery of the packages;

4 “(iii) delivery of the packages can be  
5 performed without jeopardizing security of  
6 multichannel video programming and other  
7 services offered over the system, or imped-  
8 ing the legal rights of the system operator  
9 to prevent theft of service;

10 “(iv) any revenues received by the  
11 cable operator and cable programming pro-  
12 viders from advertising, including the eco-  
13 nomic effect of offering additional pro-  
14 gramming choices on advertising revenues  
15 and subscriber rates;

16 “(v) the packages permit subscribers  
17 to subscribe to significantly less than the  
18 majority of upper tier programming services  
19 available; and

20 “(vi) the packages are related to the  
21 program category interests of groups as  
22 demonstrated by polling, surveys,  
23 referenda, statistics, or other comparable  
24 means based on statistics from the fran-  
25 chising area.

“(C) COMMISSION REVIEW.—Upon receipt of a request for review from a cable operator, the Commission may review any certification submitted under subparagraph (A) and may rescind such certification if the Commission determines that the determination of the franchising authority is arbitrary and capricious.

“(D) DURATION.—A certification under subparagraph (A) is effective for one year, unless earlier withdrawn by the franchising authority or rescinded by the Commission.

“(E) NO EFFECT ON EFFECTIVE COMPETITION TEST.—Notwithstanding any certification under this paragraph, a cable system that is subject to effective competition, as determined under subsection (a)(2), shall not be subject to regulation under this subsection.”.

### **SEC. 3. PROGRAM ACCESS.**

(a) AMENDMENTS TO EXTEND AND REVISE PROGRAM ACCESS REQUIREMENTS.—Section 628 of the Communications Act of 1934 (47 U.S.C. 548) is amended—

(1) in subsection (a), by striking “satellite cable programming and satellite broadcast programming” and inserting “multichannel video programming”;

(2) in subsection (b)—

(A) by striking “cable operator, a satellite cable programming vendor in which a cable operator has an attributable interest, or a satellite broadcast programming vendor” and inserting “multichannel video programming distributor”; and

(B) by striking “satellite cable programming or satellite broadcast programming” and inserting multichannel video programming”;

(3) in subsection (c)—

(A) by striking “Within 180 days after the date of enactment of this section, the Commission” in paragraph (1) and inserting “The Commission”;

(B) by striking paragraph (2) and inserting the following:

“(2) MINIMUM CONTENTS OF REGULATIONS.—

The regulations to be promulgated under this section shall—

“(A) establish effective safeguards to prevent any multichannel video programming distributor from unduly or improperly influencing the decision of any multichannel video programming vendor to sell, or the prices, terms, and conditions of sale of, multichannel video pro-

1           gramming to any other multichannel video pro-  
2           gramming distributor;

3           “(B) prohibit discrimination by a multi-  
4           channel video programming vendor in the  
5           prices, terms, and conditions of sale or delivery  
6           of such programming among or between cable  
7           systems, cable operators, or other multichannel  
8           video programming distributors, or their agents  
9           or buying groups; except that a multichannel  
10          video programming vendor shall not be prohib-  
11          ited from—

12                 “(i) imposing reasonable requirements  
13                 for creditworthiness, offering of service,  
14                 and financial stability and standards re-  
15                 garding character and technical quality;

16                 “(ii) establishing different prices,  
17                 terms, and conditions to take into account  
18                 actual and reasonable differences in the  
19                 cost of creation, sale, delivery, or trans-  
20                 mission of multichannel video program-  
21                 ming;

22                 “(iii) establishing different prices,  
23                 terms, and conditions which take into ac-  
24                 count economies of scale, cost savings, or  
25                 other direct and legitimate economic bene-

1 fits reasonably attributable to the number  
2 of subscribers served by the distributor; or

3 “(iv) entering into an exclusive con-  
4 tract that is permitted under subparagraph  
5 (D);

6 “(C) prohibit practices, understandings,  
7 arrangements, and activities, including exclusive  
8 contracts for multichannel video programming  
9 between a multichannel video programming dis-  
10 tributor and a multichannel video programming  
11 vendor, that prevent any multichannel video  
12 programming distributor from obtaining such  
13 programming for distribution to persons in  
14 areas not served by a cable operator;

15 “(D) with respect to distribution to per-  
16 sons in areas served by a cable operator—

17 “(i) prohibit exclusive contracts for  
18 multichannel video programming between a  
19 cable operator and a multichannel video  
20 programming vendor in which a cable oper-  
21 ator has an attributable interest, unless  
22 the Commission determines (in accordance  
23 with paragraph (4)) that such contract is  
24 in the public interest;

1 “(ii) not prohibit exclusive contracts  
2 for multichannel video programming be-  
3 tween a multichannel video programming  
4 distributor, other than a cable operator,  
5 and a multichannel video programming  
6 vendor, other than a multichannel video  
7 programming vendor in which a cable oper-  
8 ator has an attributable interest, unless  
9 the Commission determines (in accordance  
10 with paragraph (4)) that such contract is  
11 contrary to the public interest.”; and

12 (C) in paragraph (5), by striking “enact-  
13 ment of this section” and inserting “enactment  
14 of the Video Competition and Consumer Choice  
15 Act of 1998”;

16 (4) in subsection (h), by adding at the end the  
17 following new paragraph:

18 “(3) OTHER CONTRACTS.—No contract to grant  
19 exclusive distribution rights to any person with re-  
20 spect to multichannel video programming may be en-  
21 tered into on or after the date of enactment of the  
22 Video Competition and Consumer Choice Act of  
23 1998, except as permitted under subsection  
24 (c)(2)(D). No contract entered into after June 1,  
25 1990, and before such date of enactment that grants



1 such rights may continue in effect after 120 days  
2 after the date of enactment of the Video Competition  
3 and Consumer Choice Act of 1998.”;

4 (5) in subsection (i), by adding at the end the  
5 following new paragraphs:

6 “(5) The term ‘multichannel video program-  
7 ming’ means video programming which is transmit-  
8 ted by any means and which is primarily intended  
9 for the direct receipt by multichannel video program-  
10 ming distributors for retransmission to their sub-  
11 scribers.

12 “(6) The term ‘multichannel video program-  
13 ming vendor’ means a person engaged in the produc-  
14 tion, creation, or wholesale distribution for sale of  
15 multichannel video programming.”.

16 (6) by striking subsection (j) and inserting the  
17 following:

18 “(j) COMMON CARRIERS.—Any provision that applies  
19 to a multichannel video programming distributor or multi-  
20 channel video programming vendor under this section shall  
21 apply to a common carrier or its affiliate that provides  
22 multichannel video programming.”.

23 (b) DEADLINES FOR REVISED REGULATIONS.—The  
24 Federal Communications Commission shall prescribe such  
25 revisions to its regulations as may be necessary to imple-

1 ment the amendments made by subsection (a) within 120  
2 days after the date of enactment of this Act.

3 **SEC. 4. LIFELINE CABLE SERVICE TIER.**

4 Section 623(b) of the Communications Act of 1934  
5 (47 U.S.C. 543(b)) is amended—

6 (1) in the subsection heading by inserting “AND  
7 LIFELINE” after “BASIC”; and

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

10 “(9) LIFELINE SERVICE TIER.—

11 “(A) CONTENTS.—Each cable operator of  
12 a cable system shall make available for sale to  
13 its subscribers a separately packaged lifeline  
14 service tier. Such lifeline service tier shall con-  
15 sist exclusively of the following:

16 “(i) All signals carried in fulfillment  
17 of the requirements of sections 614 and  
18 615.

19 “(ii) Any public, educational, and gov-  
20 ernmental access programming required by  
21 the franchise of the cable system to be pro-  
22 vided to subscribers.

23 “(iii) Any signal of a local television  
24 broadcast station that is provided by the  
25 cable operator to any subscriber, except

1           that a digital television service signal shall  
2           not be required to be carried as part of the  
3           lifeline service tier pursuant to this clause  
4           (iii) unless such carriage is required by  
5           regulations prescribed by the Commission.

6           “(B) PROHIBITION ON ADDITIONS.—A  
7           cable operator may not add additional video  
8           programming signals or services to the lifeline  
9           service tier.

10          “(C) RATE REGULATION.—The Commis-  
11          sion shall prescribe regulations concerning the  
12          rates for the lifeline service tier. Such regula-  
13          tions shall be designed to achieve the goals of—

14               “(i) ensuring that rates for the lifeline  
15               service tier are reasonable; and

16               “(ii) promoting multichannel video  
17               programming distribution competition.”.

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