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TELECOMMUNICATIONS COMPETITION AND DEREGULATION ACT OF 1995

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 652

March 30 (legislative day, March 27), 1995.—Ordered to be printed

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Mr. PRESSLER, from the Committee on Commerce, Science, and Transportation, submitted the following original bill; which was read twice and placed on the calendar

REPORT

together with

ADDITIONAL AND MINORITY VIEWS

[To accompany S. 652]

The Committee on Commerce, Science, and Transportation reports favorably an original bill to provide for a pro-competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and service to all Americans by opening all telecommunications markets to competition, and for other purposes, and recommends that the bill do pass.

The Committee on Commerce, Science, and Transportation, to foster the further development of the Nation's telecommunications infrastructure through competition and deregulation, and for other purposes, considered an original bill, the Telecommunications Competition and Deregulation Act of 1995, reports favorably thereon and recommends that the bill as amended do pass.

PURPOSE OF THE BILL

The purposes of the bill are to revise the Communications Act of 1934 (the 1934 Act) to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition, and for other purposes.

Among the major issues addressed by the bill are: (1) long distance entry by the Bell Operating Companies (BOCs); (2) telephone company entry into cable; (3) competition for local telephone service; (4) entry of registered electric utilities into telecommunications; (5) broadcasters' rights to provide additional services; (6) protection and advancement of universal telephone service; and many other issues.

Background and Needs

A. HISTORICAL BACKGROUND

1. The Communication Act of 1934

At the time Congress passed the 1934 Act, AT&T held a virtual monopoly over telephone service. AT&T was the sole provider of long distance service, was the primary manufacturer of communications equipment, and owned the Bell Operating Companies, which provided most of the local telephone service in the country. At the same time, AM radio was just beginning to develop a mass audience. Yet the amount of available spectrum for radio stations was limited, and radio stations frequently interfered with each other's signals. Legislation was necessary for two reasons: for telephone service, legislation was necessary to prevent AT&T from abusing its monopoly and for spectrum-based services, legislation was necessary to prevent interference among competing users of the spectrum and to prevent a few large entities from acquiring all spectrum rights.

To address these needs, the Congress passed the 1934 Act, modeled after the Interstate Commerce Act. Title I of the 1934 Act creates the FCC, title II establishes the regulations for all "common carriers" (providers of telephone services), and title III establishes the rules for broadcast services using the radio spectrum. Titles IV and V deal with judicial review and enforcement.

2. Changes in the telephone services market

Changes in technology and consumer preferences have made the 1934 Act a historical anachronism. For instance, the 1934 Act presumes that telephone service is provided by monopoly carriers and imposes strict regulatory requirements on all common carriers whether they are monopolies or not. Since the 1970s, when competition first began to emerge in the markets for telephone equipment, information services, and long distance services, the FCC has struggled to adopt rules that recognize a need to reduce regulatory burdens, especially on new entrants.

3. Changes in the broadcast and cable markets

The broadcast markets have undergone similar changes. While the 1934 Act successfully permitted the FCC to establish regulations for the introduction of over-the-air television, the Act was not prepared to handle the growth of cable television. Cable television, first known as community antenna television, or CATV, was not a common carrier (title II) or a broadcaster (title III). Congress responded by passing the Cable Communications Policy Act of 1984 (the 1984 Cable Act), which created a new title VI of the 1934 Act and established the FCC's regulatory authority over cable operators.

The 1984 Cable Act prohibited telephone companies from providing video programming directly to subscribers in the same region where they provide telephone service (the so-called cable-telco prohibition), thereby preventing telephone companies from competing with cable operators. As the cable industry prospered through the late 1980s, it began to spend greater resources on developing its own programming. Rather than simply retransmitting broadcasting signals, the cable industry now competes with broadcasters for audience shares and advertising.

The growth of cable programming has raised questions about the rules that govern broadcasters and telephone companies. Although broadcasters provide their services for free to consumers, they are currently restricted to providing one channel of programming over their spectrum, while a cable system can provide several channels. Broadcasters are seeking the right to obtain additional revenue streams through the provision of additional services over their spectrum.

Other changes raise questions about the cross-ownership restrictions. Telephone companies are seeking the right to provide cable service in competition with the cable companies. Similarly, cable companies are seeking the right to provide telephone service. Federal district courts have found that the 1984 cable-telco cross-ownership ban is unconstitutional under the First Amendment.

4. Changes in global communications market

Section 310(b) of the 1934 Act establishes limits on the grant of U.S. telecommunications licenses to foreign entities.

With an exploding worldwide demand for telecommunications equipment and services, this limitation inhibits the ability of U.S. firms to compete in a global market. Foreign countries point to section 310(b) as a reason to deny U.S. companies entry into their markets.

The bill creates a system of reciprocity for common carriers.The FCC may grant a common carrier license to an alien, or foreign corporation if the FCC finds that there are equivalent market opportunities for U.S. companies in the foreign country where the alien is a citizen or a corporation is organized.

5. The Modification of Final Judgment (MFJ)

In 1982, the Department of Justice (DOJ) settled an antitrust case against AT&T. Under the agreement, AT&T agreed to spin off its local telephone companies in exchange for maintaining its equipment and long distance businesses. AT&T and DOJ agreed that the 22 Bell Operating Companies (BOCs) would be combined into 7 Regional Bell Operating Companies. (RBOCs). The decree took effect on January 1, 1984.

The MFJ also provided that the BOCs would be barred from providing long distance (the ''interLATA'' restriction) or information services and from manufacturing communications equipment. These restrictions were imposed out of concern that the BOCs would use their monopoly over local telephone service to harm consumers and gain an unfair advantage over competitors in the long distance, manufacturing, and information services markets.

The "line-of-business" restrictions on the BOCs were not intended to be permanent. In 1991, the District Court removed the information services restriction entirely, but the restrictions on manufacturing and long distance continue to apply.

6. The Public Utility Holding Company Act of 1935

Unlike most electric utility companies, the Public Utility Holding Company Act of 1935 (PUHCA) restricts the 10 registered electric utility holding companies[1] and their operating subsidiaries from making investments outside of the utility business. Specifically, section 11 of PUHCA restricts registered companies to businesses that are "reasonably incidental, or economically necessary or appropriate" to the operations of an integrated utility system and that are "necessary or appropriate in the public interest." As administered by the Securities and Exchange Commission (SEC), these requirements mean that registered holding companies are generally limited to investments that primarily involve their core electric utility business. Thus, for example, while a registered holding company is generally able to own an internal telecommunications system necessary for control of power plants and other utility uses, it and its subsidiaries are limited in their ability to sell excess telecommunications capacity to other parties.

PUHCA restricts registered holding companies from investing in telecommunications infrastructure, specifically the construction of fiber optic links and other facilities for general service to the public. In addition, many end-use applications that could provide the incentive for investment in infrastructure construction may also exceed core utility functions and thus impede the ability of a registered holding company to invest. As a result, registered holding companies may be precluded from competing in telecommunications and information markets, thus potentially limiting consumer choice and resulting in higher prices, unless current PUHCA restrictions are loosened with respect to investment in telecommunications infrastructure and applications. Entry by utilities could significantly promote and accelerate competition in telecommunications services and deployment of advanced networks.

B. NEED FOR THE LEGISLATION

1. Universal service and local competition

The need to protect and advance universal service is one of the fundamental concerns of the Committee in approving the Telecommunications Competition and Deregulation Act of 1995. The bill addresses the universal service concerns in several ways.

First, it makes explicit the FCC's current implicit authority to require common carriers to provide universal service. Second, the leg-

[1] Under PUHCA, registered holding companies are generally those that operate multistate systems. The 10 registered electric utility holding companies are: Central and South West Corp., the Southern Co., Entergy Corp., American Electric Power Co., Inc., New England Electric System, Allegheny Power System, Inc., General Public Utilities Corp., Eastern Utilities Associates, Unitil Corp., and Northeast Utilities. In addition, there are three gas registered holding companies: Columbia Gas System, Consolidated Natural Gas Co., and National Fuel Gas Co. The changes made by section 302(b) of the bill apply equally to all registered companies.

islation provides a mechanism to achieve greater consistency between Federal and State actions to protect universal service.

The bill sets forth a Federal responsibility for establishing universal service policies, but recognizes the primary importance of the States in developing policies to define, protect and advance universal service. It creates a Federal-State Joint Board through which the FCC can obtain the States' views with regard to appropriate universal service mechanisms. The Joint Board after receiving the States' recommendations may propose modifications of amendments to the definition of and the adequacy of support for universal service.

The bill directs the FCC and the Joint Board to base their policies on several principles. Among others, these include: providing quality services at just, reasonable, and affordable rates; providing access to advanced telecommunications and information services in all regions of the nation; and, providing consumers in rural and high cost areas access to services comparable to those provided in urban areas.

The legislation reforms the regulatory process to allow competition for local telephone service by cable, wireless, long distance, and satellite companies, and electric utilities, as well as other entities.

The bill preempts almost all State and local barriers to competing with the telephone companies upon enactment of the bill. In addition, the measure requires telecommunications carriers with market power over telephone exchange or exchange access service to open and unbundle network features and functions to allow any customer or carrier to interconnect with the carrier's facilities. Several States (such as New York, California, and Illinois) have taken steps to open the local networks of telephone companies.

The bill gives the FCC greater regulatory flexibility by permitting the FCC to forbear from regulating carriers when it is in the public interest. This provision will allow the FCC to reduce the regulatory burdens on new entrants. It will also permit the FCC to reduce the regulatory burdens on the telephone company when competition develops or when the FCC determines that relaxed regulation is in the public interest.

2. Long distance relief for the BOCs

The bill establishes a process under which the BOCs may apply to enter the interLATA market. It reasserts Congressional authority over this issue.

Section 255 of the bill establishes a checklist of specific actions BOCs must meet in order to fully open local telephone service to competitors. The checklist requires the BOCs to make specific facilities and services available on an unbundled basis to other providers. Among other specific requirements, the BOCs must provide access to poles, ducts and conduits; offer emergency and directory assistance; and provide transmission and switching services unbundled from other communications services so other carriers can purchase these services on an as-needed basis. By opening up local telephone service and long distance to competition, the Committee anticipates consumers will have a greater choice of services and providers.

Upon an FCC finding that a BOC has complied with the checklist and other measures, the BOC will be permitted to offer long distance services.

3. Manufacturing authority for the BOCs

Section 222 of the bill removes BOC manufacturing restrictions by tying entry into manufacturing to the competitive checklist in new section 255(b) of the 1934 Act.

The bill provides certain authority immediately. At enactment, BOCs may engage in research or design activities related to the manufacture of telecommunications equipment or customer premises equipment. Further, BOCs would be permitted to enter into royalty agreements with other manufacturers.

BOCs are permitted to enter immediately into arrangements with an unaffiliated manufacturer in developing a product (either with funding or technical assistance) and would receive royalties upon the manufacturer's sale of the product to third parties.

When BOCs have been found by the FCC to be permitted into long distance, they may also enter manufacturing. In conducting their manufacturing activities, the BOCs must comply with the following safeguards:

No Joint Manufacturing—To prevent collusion, the BOCs cannot manufacture in conjunction with one another. The bill requires that, if the BOCs decide to manufacture, they will create independent manufacturing entities that will compete with each other as well as with existing manufacturers.

Separate Affiliates—The BOCs must conduct all their manufacturing activities through separate affiliates. The affiliate must keep books of account for its manufacturing activities separate from the telephone company and must file this information publicly.

No Self-dealing—(1) The BOC must make procurement decisions and award all supply contracts using open, competitive bidding procedures, must permit any person to participate in establishing standards and certifying equipment used in the network, may not restrict sales or equipment to other local exchange carriers, and must protect proprietary information concerning standards and certification of equipment unless specifically authorized.

No Cross-subsidization—The BOC is prohibited from subsidizing its manufacturing operations with revenues from its telephone services.

Protections for Small Telephone Companies—A BOC manufacturing affiliate must make its equipment available to other telephone companies without discrimination or self-preference as to price delivery, terms, or conditions.

Close Collaboration—Any BOC may engage in close collaboration with any unaffiliated manufacturer.

4. Telephone company entry into cable

The bill permits telephone companies to enter cable and cable to offer telephone services immediately upon enactment.

The bill does not require telephone companies to obtain a local franchise as long as they employ a video dial-tone system that is operated on a common carrier basis open to all programmers. If a telephone company provides service over a "cable system" (that is, a system that is not open to all other programmers), the telephone company will be treated as a cable operator under title VI of the 1934 Act. Video providers are required under section 214 of the 1934 Act to seek a certificate from the FCC to construct facilities to provide these services. The bill lifts this section 214 requirement effective one year after enactment.

5. Entry by the registered electric utilities into communications

Allowing registered holding companies to become vigorous competitors in the telecommunications industry is in the public interest. Consumers are likely to benefit when more well-capitalized and experienced providers of telecommunications services actively compete. Competition to offer the same services may result in lower prices for consumers. Moreover, numerous competitors may offer consumers a wider choice of services and options.

Under current law, holding companies that are not registered may already compete to provide telecommunication services to consumers. There does not appear to be sufficient justification to preclude registered holding companies from providing this same competition. Rather, there are compelling reasons for allowing registered holding companies to compete in the telecommunications market.

First, electric utilities in general have extensive experience in telecommunications operations. Utilities operate one of the Nation's largest telecommunications systems—much of it using fiber optics. The existence of this system is an outgrowth of the need for real time control, operation and monitoring of electric generation, transmission and distribution facilities for reliability purposes. Within the utility world, registered holding companies are some of the more prominent owners and operators of telecommunications facilities. For example, one registered holding company, the Southern Co., has approximately 1,700 miles of fiber optics cables in use, with several hundred more miles planned.

Second, electric utilities are likely to provide economically significant, near-term applications such as automatic meter reading, remote turn on/turn off of lighting, improved power distribution control, and most importantly, conservation achieved through real-time pricing.

With real-time pricing, electric customers would be able to reprogram major electricity consuming appliances in their homes (such as refrigerators and dishwashers) to operate according to price signals sent by the local utility over fiber optic connections. Electricity costs the most during peak demand periods. Since consumers tend to avoid higher than normal prices, the result of real-time pricing would be significant "peak shaving" reduction in peak needs for electric generation. Because electric generation is highly capital intensive, reductions in demand can become a driving force for basic infrastructure investment in local fiber optic connections. Registered holding companies are leaders in the development of real-time pricing technology.

Third, registered holding companies have sufficient size and capital to be effective competitors. Collectively, registered companies serve approximately 16 million customers—nearly one in five customers served by investor-owned utilities. Three registered companies who have been active in the telecommunications field, Central and South West, Entergy, and Southern Co., have contiguous service territories that stretch from west Texas to South Carolina.

To ensure that PUHCA amendments which allow registered holding companies to invest in telecommunications and related businesses are in the public interest, section 102(h) and section 206 of the reported bill contain consumer protection provisions. The bill requires any registered holding company that provides telecommunications services to provide that service through a separate subsidiary. It shall conduct all transactions with its subsidiary on an arm's length basis and shall not discriminate in the provision or procurement of goods, services, facilities and information between its subsidiary and any other entity. The bill also prohibits cross-subsidization and provides State commissions and the Federal Energy Regulatory Commission (FERC) access to books and records of communications entities associated with registered holding companies. It allows independent audits by State commissions of affiliate transactions.

6. Alarm services

The U.S. alarm industry today protects the life, safety, and property of more than 17 million homes and businesses. The industry is a full and vigorous competitive market with more than 13,000 alarm companies employing approximately 130,000 workers.

The Committee believes the legitimate concerns of the alarm industry have been addressed in sections 251 and 252 of the bill. The interconnection requirements will open the local exchange monopoly to competitors, thus providing the alarm industry with alternative service providers. Further, section 252 ensures that any BOC entering the alarm industry will create a separate subsidiary for the alarm entity, and the BOC is prohibited from cross-subsidizing its alarm business.

The Committee bill allows the BOCs into the alarm business after they have received approval to provide long distance. When BOCs are permitted to provide these services, the bill establishes an expedited complaint proceeding at the FCC in the event of perceived anticompetitive practices by a BOC.

7. Spectrum flexibility for broadcasters

The bill permits broadcasters to use their spectrum for new services so long as they continue to provide broadcast programming that meets their public interest obligations.

As technology becomes more advanced, local broadcasters have had to experiment with and inaugurate new services. The conversions from black-and-white to color and from monaural to stereo sound, and the increase in electronic remote news-gathering, have all brought changes to the future viability of local broadcasting. Other changes have come from the desire to provide new services to underserved populations, e.g., closed captioning for the hearing impaired and second language channels. Some services, such as teletext, have failed. But in every instance, technical advances have facilitated the provision of new services that have been introduced by the broadcast industry in its existing broadcast spectrum. While the Government has played an important facilitating role, setting broad technical and service standards, the ultimate success of each innovation has been determined by the public and the marketplace.

The bill acknowledges that the public has been well served by this process. Despite the introduction of numerous costly improvements in service, local broadcast service remains universally available, reaching 98 percent of American homes, a degree of coverage which exceeds even the percentage of homes receiving telephone service. As a consequence, the leadership of the local television broadcasting system in introducing new services and technologies has benefited all citizens, not just those who can afford subscription services and live in areas where those services are available.

Advanced television, digital compression, and other technological service innovations hold the potential to bring a variety of new services to consumers. Broadcasters seek to pursue these opportunities within existing broadcast radio spectrum, without governmental financial support, in a manner which will assure the continued availability of top quality broadcast service to all Americans. Broadcasters who use the spectrum for commercial services are required to pay fees for the use of this spectrum.

8. Obscenity and other wrongful uses of telecommunications

During consideration of the bill in Executive Session, an amendment was offered to address an increasing number of published reports of inappropriate uses of telecommunications technologies to transmit pornography, engage children in inappropriate adult contact, terrorize computer network users through "electronic stalking," and seize personal information.

The amendment, which was adopted by voice vote, modernizes the protections in the 1934 Act against obscene, lewd, indecent, and harassing use of a telephone. These protections are brought into the digital age. The provisions increase the penalties for obscene, harassing, and wrongful utilization of telecommunications facilities; protect privacy; protect families from uninvited cable programming which is unsuitable for children; and give cable operators authority to refuse to transmit programs or portions of programs on public or leased access channels which contain obscenity, indecency, or nudity. The measure specifically excludes from liability telecommunications and information service providers and system operators who are not themselves knowing participants in the making or otherwise responsible for the content of the prohibited communications.

9. Conclusion

There are several reasons for this legislation. The 1934 Act has not been rewritten since its original passage. Its provisions are no longer adequate in a world of competition for telephone services and increasing diversity of media. Further, much of current communications policy is being set by a single Federal district court enforcing the MFJ. Reducing regulation of the telecommunications industry will spur the development of new technologies and increase investment in these industries, which will create jobs and greater choices for consumers. The United States telecommunications industry is competitive worldwide. By reducing regulation and barriers to competition, the bill will help ensure the future growth of these industries domestically and internationally.

LEGISLATIVE HISTORY

During the 104th Congress, several legislative proposals were introduced to address the need for telecommunications reform. One of these bills, S. 1822, was introduced in February 1994 by Senator Hollings and Senator Danforth, Chairman and Ranking Republican Member, respectively, of the Committee on Commerce, Science and Transportation, among others. Altogether, the Committee heard 31 hours of testimony from 86 witnesses during 11 days of hearings. In open executive session on August 11, 1994, the Committee reported a substitute to S. 1822, the Communications Act of 1994, by a vote of 18–2. The measure was not considered by the full Senate before the end of the Congress.

At the beginning of the 105th Congress, on January 31, 1995, a Republican draft entitled "The Telecommunications Competition and Deregulation Act of 1995" was circulated by Senator Pressler, Chairman of the Committee on Commerce, Science and Transportation. A Democratic response entitled "The Universal Service Telecommunications Act of 1995" followed from Senator Hollings, Ranking Democratic Member of the Committee on Commerce, Science and Transportation, on February 14, 1994.

The full Committee on Commerce, Science and Transportation held 3 days of hearings.

JANUARY 9, 1995 HEARING

The first full committee hearing was on January 9, 1995 and dealt with telecommunications legislation in the 104th Congress.

Witnesses were the Hon. Bob Dole (R-KS), Senate Majority Leader Hon. Thomas Bliley (R-VA), Chairman, House Commerce Committee Hon. Jack Fields (R-TX), Chairman, House Commerce Committee Subcommittee on Telecommunications and Finance.

Senator Dole advocated quick passage of telecommunications legislation. He noted that rural Americans are concerned about telecommunications legislation, as it offers tremendous opportunities for economic growth. He testified that legislation should underscore competition and deregulation, not reregulation.

Chairman Bliley stated that the goals of telecommunications legislation should be to: (1) encourage a competitive marketplace; (2) not grant special government privileges; (3) return telecommunications policy to Congress; (4) create incentives for telecommunications infrastructure investment, including open competition for consumer hardware; and (5) remove regulatory barriers to competition.

Chairman Fields stated that telecommunications reform is a key component of the legislative agenda of the 104th Congress. He chastised those who speculated that Congress will be unable to pass telecommunications legislation this year. He asserted that the telecommunications industry is in a critical stage of development, and that Congress must provide guidance.

MARCH 2, 1995 HEARING

The committee again held a hearing on March 2, 1995 dealing with telecommunications policy reform.

WITNESSES

Panel I

Hon. Anne K. Bingaman, Assistant Attorney General for Antitrust, U.S. Department of Justice
Hon. Larry Irving, Assistant Secretary for Communications and Information, National Telecommunications and Information Administration
Hon. Kenneth Gordon, Chairman, Massachusetts Department of Public Utilities, testifying on behalf of NARUC

Panel II

Peter Huber, Senior Fellow, Manhattan Institute
George Gilder, Senior Fellow, The Discovery Institute
Clay Whitehead, President, Clay Whitehead Associates
Henry Geller, Communications Fellow, Markle Foundation
John Mayo, Professor of Economics, University of Tennessee
Lee Selwyn, President, Economics and Technology, Inc.

PANEL I

Anne Bingaman testified that the Administration favors legislation that is comprehensive and national in scope, opens the BOC local monopoly, and provides for interconnection at all points. She claims that local loop competition will bring consumers the same benefits that long distance competition brought consumers when the Justice Department broke up AT&T.

Larry Irving agreed that opening telecommunications markets will promote competition, lower prices, and increase consumer choice. He stated that the government must maintain its commitment to universal service. He stated the Administration's concern that private negotiations may not be the best way to open the local loop to competition. He also asserted that a date certain for elimination of the MFJ restrictions will hurt efforts to negotiate interconnection agreements with BOCs.

Kenneth Gordon stated that State regulators, including those in Massachusetts, were once a barrier to competition, but are now at the forefront of promoting competition. He said that states must also retain control of universal service. He advocated using the states as laboratories for determining how best to regulate common carriers. States are moving away from cost-based regulation, but do not yet know which form of incentive-based regulation works best. He said that the bill should not mandate price regulation.

PANEL II

Peter Huber noted that a date certain for entry is necessary because the FCC and the Department of Justice are very slow to act. He advocated swift enactment of legislation with a date certain for entry into restricted lines of business.

George Gilder also advocated swift Congressional action, and claimed that telecommunications deregulation could result in a $2 trillion increase in the net worth of U.S. companies. He said the U.S. needs an integrated broadband network with no distinction between long haul, short haul, and local service.

Clay Whitehead said that Congress should not try and chart the future of the telecommunications industry, but should try to enable it. He also advocated a time certain for entry into restricted lines of business.

Henry Geller agreed with the previous speakers that Congress should act soon. He said that a time certain approach will work for the "letting in" process (allowing competition in the local loop) as well as the "letting out" process (allowing BOCs to provide interLATA telecommunications). Geller advocated that the FCC should allow all users of spectrum the flexibility to provide any service, as long as it does not interfere with other licensees. He also contended that the FCC should expand auctions to include all commercial licenses, including broadcast licenses.

John Mayo testified that the spread of competition in other markets over the last decade supports opening the local loop. He said that interLATA telecommunications competition has been a success and Congress should follow the same model for local exchange competition. He testified against a date certain approach for BOC long distance entry.

Lee Selwyn asserted that there will be no true competition in the local loop unless all participants are required to take similar risks. Selwyn also testified that premature entry by the BOCs into long distance could delay the growth of competition for local service.

MARCH 21, 1995 HEARING

The Committee held a final hearing on March 21, 1995 dealing with telecommunications policy reform, specifically in the areas of cable rate deregulation, broadcast ownership, and foreign ownership.

WITNESSES

Panel I

Decker Anstrom, President & CEO, National Cable Association
Richard A. Cutler, President, Satellite Cable Services
Gerald L. Hassell, Senior Executive VP, The Bank of New York
Roy Neel, President & CEO, United States Telephone Association
Bradley C. Stillman, Telecommunications Policy Director, Consumer Federation of America

Panel II

U. Bertram Ellis, Jr., President & CEO, Ellis Communications, Inc.
Edward O. Fritts, President & CEO, National Association of Broadcasters
Preston R. Padden, President Network Distribution, Fox Broadcasting Company
Jim Waterbury, Chair, NBC Affiliates Association

Panel III

Scott Harris, Bureau Chief, International Bureau, Federal Communications Commission

Eli Noam, Director, Columbia Institute for Tele-Information

Decker Anstrom testified that NCTA supports telecommunications legislation because the cable industry is ready to compete, and legislation must include rate regulation relief for cable. He said that cable will be the competing wire to the telephone industry, and cable's coaxial cable carries 900 times more information than telephone's twisted copper pair. The problem, he said, is that cable does not have the capital or, in some states, the authority to compete with the local exchange carriers.

Roy Neel agreed with Anstrom that cable rate regulation repeal would allow for investment incentives. He also noted that price regulation for cable is much less burdensome than telephone company regulation, and stated that telecommunications deregulation must be addressed in the bill in order to create a level playing field.

Richard Cutler testified that the 1992 Cable Act has had a devastating effect on small cable operators. He said that small operators thought that they would be protected under the Act, but the FCC forgot about the needs of small cable systems (those with less than 1,000 subscribers). He said that small cable operators need fair pole attachment rates and non-discrimination in programming rates. He also said that the legislation should include the ability for joint ventures, mergers, and buy outs.

Bradley Stillman said that the 1992 Cable Act resulted in lower programming and equipment prices for consumers. He asserted that cable has actually increased its subscribership and revenues during this period of rate regulation, and he opposed any rate deregulation.

Gerald Hassell stated that true competition will only develop if both cable and telephone survive and flourish. He said that cable is the most likely source of competition to the telephone industry, but cable does not have the capital to rebuild its systems. Under rate regulation, he continued, there is no incentive to invest in infrastructure.

PANEL II

Bertram Ellis testified that the local ownership restrictions no longer serve the public interest. He said that allowing local multiple ownership will permit new stations to get on the air that would not otherwise be able to survive. He also stated that local marketing agreements—joint venture between broadcasters which allow for local economies of scale—are very helpful and should be allowed to continue.

Eddie Fritts stated that the radio ownership rules should be modified in light of the impending new digital satellite radio service. Digital satellite radio will create 60 new nationwide radio stations. He also said that broadcasters need spectrum flexibility to compete with other multichannel video providers. Finally, Fritts contended that telephone companies should have a separate subsidiary for providing video to the home.

Preston Padden advocated deregulation of the broadcast industry. He noted that the draft bill would allow seven very strong companies into the video marketplace, and that broadcasters will need deregulation to compete.

Jim Waterbury stated that Congress should retain some ownership rules, such as the cable/network cross ownership ban and the network ownership cap. He said that there must be checks and balances between the affiliates and networks. He believes that eliminating the ownership rules could harm localism.

PANEL III

Scott Harris, testifying on behalf of himself and not the FCC, stated that Section 310(b) is an impediment to U.S. competition overseas, and should be revised. He said that a revision of Section 310(b) should include: elimination of the difference between investment in a holding company and direct investment; a public interest test that includes analysis of the home market of the petitioning company; the ability for the FCC to take into account new developments in foreign regulations; and a modification of the ban on foreign government ownership of communications licenses to allow for satellite news gathering.

Eli Noam claimed that the Europeans are resistant to opening their telecommunications markets, but noted that the U.S. market is not fully open. He said that the U.S. can either open its market unilaterally, or open markets based on reciprocity. He also noted that the FCC already has some discretion, so Congress does not need to act to achieve the desired result. He continued, however, that from an international image perspective, it would benefit the U.S. to pass a law revising Section 310(b). Noam generally agreed with the provision in the draft bill, but suggested that the FCC, not USTR should make the open market analysis.

MARCH 23, 1995 EXECUTIVE SESSION

In an open executive session of March 21, 1995, the Committee reported "The Telecommunications Competition and Deregulation Act of 1995," by a vote of 17 to 2.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

The bill, as reported, contains FCC requirements and statutory modifications to the 1934 Act, to update the regulatory structure to reflect changes in the telecommunications marketplace. The bill requires FCC proceedings that are necessary to establish the rules for greater competition in the local exchange telephone markets that traditionally have been dominated by regulated monopolies. The procompetitive rules that will be established by these proceedings will reduce substantially the costs level of regulation. In addition, the bill amends the 1934 Act to allow the FCC to forbear from regulation under certain circumstances. Also, the FCC and States are required to give carriers pricing flexibility when they face competition. The States are prohibited from using rate of return regulation but are given maximum flexibility in providing alternative forms of regulation during the transition to competition.

The bill also requires a biennial review of regulations, beginning in 1997, that would require the FCC to determine and eliminate any regulation no longer necessary in a competitive marketplace. The Federal-State Joint Board shall review State laws and notify the Governors of any States' regulations determined to no longer be in the public interest.

Under this legislation, the FCC will establish the national minimum standards for opening local telephone networks and other competitive requirements. The States are then responsible for administering, implementing and resolving disputes as telecommunications carriers meet these obligations.

This legislation authorizes the BOCs to engage in the manufacture of telecommunications equipment and customer premises equipment, the provision of telecommunications equipment, and the provision of long distance service under certain conditions. The bill would replace the current antitrust prohibition with regulatory safeguards designed to prevent the BOCs from engaging in anticompetitive behavior. With respect to the provision of long distance services and manufacturing, the FCC is required to conduct proceedings to authorize such services by the BOCs.

In addition, the BOCs and all telephone companies are allowed to provide video programming services in their telephone service areas in an effort to promote greater choice and competition in the video marketplace. Once competition emerges in the video marketplace, current rate regulations imposed on the cable industry will become unnecessary and will sunset, removing the burden of rate regulation from the FCC and the industry. In addition, regulation of the upper tier cable service is removed, subject to a bad actor standard, further reducing FCC regulatory responsibilities.

The legislation requires the FCC to take actions regarding universal service, public access, and public rights-of-way, infrastructure sharing and network planning, State oversight of rural markets, rates for pole attachments, and guidelines for carriers of last resort.

The legislation pays special attention to the needs of rural areas. The bill allows States to adopt regulations to require competitors to obtain State approval before being permitted to compete in areas served by rural telephone companies and impose obligations on competitors to serve an entire service area. The FCC, on the other hand, must modify its rules on unbundling for rural telephone companies and may waive the requirements for carriers serving up to 2 percent of the Nation's access lines.

The bill also amends PUHCA to allow registered utilities to provide telecommunications services under safeguards to protect ratepayers and competitors from cross-subsidization and discriminatory conduct.

The measure allows the FCC to adopt regulations to allow broadcasters the right to use their broadcast spectrum for "ancillary and supplementary" services and the FCC may require fees for such services.

The rulemakings required by the legislation will have to be initiated and completed within a variety of timeframes. After the FCC adopts its rules, the States and industry participants must comply with them. The legislation is designed to remove as many regulatory burdens as possible to allow for the development of a fully competitive marketplace in all sectors of the telecommunications industry.

NUMBER OF PERSONS COVERED

The bill's regulatory provisions cover a variety of segments within the telecommunications industry. Most of the provisions involving the BOCs and other telephone companies affect activities which are already regulated by various State commissions and the FCC. Thus, the regulatory provisions concerning the telephone companies are unlikely to increase the number of persons affected by regulation, and provisions deregulating portions of cable service will reduce the number of persons affected.

ECONOMIC IMPACT

The bill is likely to stimulate tremendous economic growth and investment by the private sector. The potential to stimulate jobs, investment, and export opportunities for the American economy is immense. A competitive local telephone exchange is likely to produce increased economic activity and investment. In addition to boosting overall economic output and productivity, these activities are likely to generate significant tax revenues for local and State governments and the Federal Government. Most of the regulatory provisions impact companies that are already regulated and are unlikely to impose much of an economic burden.

PRIVACY

The bill will not have any adverse impact on the personal privacy of individuals affected and will give greater control over such information to the consumer.

PAPERWORK

The bill requires the FCC to adopt rules to implement the provisions of the bill. Reporting requirements on affected industry participants should not increase.

SECTION-BY-SECTION ANALYSIS

SEC. 1. Short Title

Section 1 provides that the bill may be cited as the "Telecommunications Competition and Deregulation Act of 1995."

Sec. 2. Table of Contents

Section 2 provides a table of contents for the bill.

Sec. 3. Purpose

Section 3 establishes that the purpose for the bill is to increase competition in all telecommunications markets and provide for an orderly transition from regulated markets to competitive and deregulated telecommunications markets consistent with the public interest, convenience, and necessity.

Sec. 4 Goals

Section 4 identifies the policy goals and objectives of the bill. The bill is intended to establish a national policy framework that will accelerate rapidly the private sector deployment of new and advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition.

Sec. 5. Findings

Section 5 includes the findings of Congress.

Sec. 6. Amendment of Communications Act of 1934

Section 6 provides that, except as noted, an amendment or repeal described in the bill is an amendment or repeal of a section or provision of the Communications Act of 1934 (47 U.S.C. 151 et seq.)

Sec. 7. Effect on other laws

Section 7(a) states that, except as provided in sections 7(b) and (c), nothing in the bill shall be construed to modify, impair, or supersede the applicability of any antitrust law. For example, the provisions of this bill shall not be construed to grant immunity from any future antitrust action against any entity referred to in the bill.

Section 7(b) states that the bill shall supersede the applicability of the MFJ to the extent that it is inconsistent with the bill. Provisions of the MFJ that are not directly inconsistent with the provisions of this bill are not superseded by this bill, except as provided by section 7(c).

Section 7(c) transfers administration of the GTE consent decree and any provision of the MFJ not overriden or superseded by the bill to the FCC and provides that the U.S. District Court for the District of Columbia shall have no further jurisdiction over any provision of the MFJ or the GTE consent decree.

Sec. 8. Definitions

Section 8(a) includes definitions of the MFJ, the GTE Consent Decree, and an "integrated telecommunications service provider." An "integrated telecommunications service provider" means a person engaged in the provision of multiple services, such as voice, data, image, graphics, and video services, which make common use of all or part of the same transmission facilities, switches, signaling, or control devices.

Section 8(b) adds several definitions to section 3 of the Communications Act of 1934 (47 U.S.C. 153) including definitions for "local exchange carrier," "telecommunications," "telecommunications service," "telecommunications carrier," "telecommunications number portability," "information service," "rural telephone company," and "service area."

New subsection (kk) defines "Local exchange carrier" to mean a provider of telephone exchange service or exchange access service. "Telephone exchange service" is already defined in section 3 of the 1934 Act.

"Telecommunications" is defined in new subsection (ll) to mean the transmission, between or among points specified by the user, of information of the user's choosing including voice, data, image, graphics, and video, without change in the form or content of the information, as sent and received, with or without benefit of any closed transmission medium. This definition excludes those services, such as interactive games or shopping services and other services involving interaction with stored information, that are defined as information services. The underlying transport and switching capabilities on which these interactive services are based, however, are included in the definition of "telecommunications services."

The term "telecommunications service" defined in new subsection (mm) of section 3 of the 1934 Act means the offering of telecommunications for a fee directly to the public or to such classes of users as to be effectively available to the public, regardless of the facilities used to transmit the telecommunications service. This definition is intended to include commercial mobile services, competitive access services, and alternative local telecommunications services to the extent they are offered to the public or to such classes of users as to be effectively available to the public.

"Telecommunications service" does not include information services, cable services, or "wireless" cable services, but does include the transmission, without change in the form or content, of such services.

Subsection (nn) defines "telecommunications carrier" to mean any provider of telecommunications service, except that the term does not include aggregators of telecommunications services as defined in section 226 of the 1934 Act. The definition amends the 1934 Act to explicitly provide that a "telecommunications carrier" shall be treated as a common carrier for purposes of the Act, but only to the extent that it is engaged in providing telecommunications services.

New subsection (oo) defines "telecommunications number portability" to mean the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another. Number portability allows consumers remaining at the same location to retain their existing telephone numbers when switching from one telecommunications carrier to another.

New subsection (pp) defines "information service" similar to the FCC definition of "enhanced services." The Committee intends that the FCC would have the continued flexibility to modify its definition and rules pertaining to enhanced services as technology changes.

Subsection (rr) adds a definition of "rural telephone company" that includes companies that (i) do not serve areas containing any part of an incorporated place of 10,000 or more inhabitants, or any incorporated or unincorporated territory in an urbanized area, or (ii) have fewer than 100,000 access lines in a State.

New subsection (ss) adds to the 1934 Act a definition of "service area." "Service area" means a geographic area established by the FCC and the States for the purpose of determining universal service obligations and support mechanisms. The service area of a rural telephone company means such company's study area until the

FCC and States, based on a recommendation of a Federal-State Joint Board, establish a different definition.

TITLE I—TRANSITION TO COMPETITION

Sec. 101. Interconnection requirements

Section 101 adds a new section 251 entitled "Interconnection" to the 1934 Act. Subsection 251(a) imposes a duty on local exchange carriers possessing market power in the provision of telephone exchange service or exchange access service in a particular local area to negotiate in good faith and to provide interconnection with other telecommunications carriers that have requested interconnection for the purpose of providing telephone exchange service or exchange access service. The obligations and procedures prescribed in this section do not apply to interconnection arrangements between local exchange carriers and telecommunications carriers under section 201 of the 1934 Act for the purpose of providing interexchange service, and nothing in this section is intended to affect the FCC's access charge rules. Local exchange carriers with market power are required to provide interconnection at reasonable and nondiscriminatory rates.

The FCC will determine which local exchange carriers have market power for purposes of this section. In determining market power, the relevant market shall include all providers of telephone exchange service or exchange access service in a local service area, regardless of the technology used to provide such service.

The obligation to negotiate interconnection shall apply to a local exchange carrier or a class of local exchange carriers that are determined by the Commission to have market power in providing exchange services. The references to a "class" of carriers are intended to relieve the Commission of the need to make a separate market power determination for each individual carrier. These references are not intended to require the local exchange carriers to engage in negotiations as a class, although subsection 251(a)(2) provides that multilateral negotiations are permitted. However, a local exchange carrier that chooses to participate in multilateral negotiations will be subject to an individual obligation to negotiate in good faith and will remain subject to the time limitations contained in this and other provisions of section 251.

The Committee intends to encourage private negotiation of interconnection agreements. At the same time, the Committee recognizes that minimum requirements for interconnection are necessary for opening the local exchange market to competition.

New Section 251 provides two alternative methods for reaching interconnection agreements. The Committee intends that the interconnection required under this section will be implemented in a manner that is transparent to customers of the local exchange carrier and the connecting telecommunications carrier.

New subsection 251(b) provides a list of minimum standards relating to types of interconnection the local exchange carrier must agree to provide, if sought by the telecommunications carrier requesting interconnection. The minimum standards include unbundled access to the network functions and services of the local exchange carrier's network, and unbundled access to the local exchange carrier's telecommunications facilities and information, including databases and signaling, that are necessary for transmission and routing and the interoperability of both carriers' networks. The negotiation process established by this section is intended to resolve questions of economic reasonableness with respect to the interconnection requirements. That is, either the parties resolve the issue or the State will impose conditions for interconnection consistent with section 251 and the FCC rules.

The minimum standards also require interconnection to the local exchange carrier's network that is at least equal in type, quality, and price to the interconnection the carrier provides to any other party, including itself or affiliated companies. At a minimum, the Committee intends that any technically feasible point would be any point at which the local exchange carrier provides access to any other party, including itself or any affiliated entry. Access to poles, ducts, conduits, and rights-of-way owned or controlled by the local exchange carrier is also a minimum standard.

Number portability and local dialing parity are included in the minimum standards of subsection 251(b). If requested, a local exchange carrier must take any action under its control to provide interim or final number portability as soon as it is technically feasible. Section 307 of the bill adds new section 261 of the Act which establishes a neutral telecommunications numbering administration and defines interim and final number portability. The FCC will determine when final number portability is technically feasible. A similar requirement applies to local dialing parity.

The minimum standards also cover resale or sharing of the local exchange carrier's unbundled telecommunications services and network functions. The carrier is not permitted to attach unreasonable conditions to the resale or sharing of those services or functions. Subsection 251(b) provides certain circumstances where it would not be unreasonable for a State to limit the resale of services included within the definition of universal service.

Additional minimum standards relate to reciprocal compensation arrangements, reasonable notice of changes in the information necessary for transmission and routing of services over the carrier's network, and schedules of itemized charges and conditions. The Committee intends that reciprocal compensation may include compensation arrangements, including in-kind exchange of traffic or traffic balance measures such as those included in the New York settlement agreement concerning Rochester Telephone.

Consistent with the Committee's intent that carriers be encouraged to negotiate and resolve interconnection issues, subsection 251(c) makes clear that a local exchange carrier may meet its section 251 interconnection obligations by negotiating and entering into a binding agreement that does not reflect the minimum standards listed in subsection 251(b). However, each such negotiated interconnection agreement must include a schedule of itemized charges for each service, facility, or function included in the agreement, and must be submitted to a State under subsection 251(e).

Subsection 251(d) provides procedures under which any party negotiating an interconnection agreement may ask the State to participate in the negotiations and to arbitrate any differences arising in the negotiations. A State may be asked to arbitrate at any point in the negotiations.

In addition to the possibility of arbitration by the State, subsection 251(d) provides a more formal remedy under which any party may petition the State to intervene in the negotiations. If issues remain unresolved more than 135 days after the date the local exchange carrier received the request to negotiate, any party to the negotiations may petition the State to intervene for the purpose of resolving any issues that remain open in the negotiation. Requests to the State to intervene must be made during the 25 day period that begins 135 days after the local exchange carrier received the negotiation request. The State is required to resolve any open issues and conduct its review of the agreement under subsection 251(e) not later than 10 months after the date on which the local exchange carrier received the request to negotiate. In resolving any open issues the solution imposed by a State must be consistent with the FCC's rules to implement this section, the minimum standards required under subsection 251(b) and the provisions of paragraph 251(d)(6) with respect to any charges imposed. Paragraph 251(d)(6) provides that any charge determined by the State through arbitration or intervention shall be based on the cost of that unbundled element and may include a reasonable profit. The bill specifically provides that the State may not use or require a rate of return or other rate based proceeding to determine the cost of an unbundled element.

Subsection 251(e) requires that any interconnection agreement under section 251 must be submitted to the State for approval. The State must approve or reject the agreement and make written findings as to any deficiencies in the agreement. An agreement successfully negotiated under subsection (c) by the parties without regard to the minimum standards set forth in subsection 251(b) may only be rejected if the State finds the agreement discriminates against a telecommunications carrier that is not a party to the agreement. However, approval of such an agreement does not relieve the parties of any obligations that may be applicable under other provisions of the 1934 Act.

The State may reject interconnection agreements negotiated under subsection (d) if the State finds the agreement does not meet the minimum standards set forth in subsection 251(b), or if the State finds that implementation of the agreement is not in the public interest. Subsection 251(e) also provides that no State court has jurisdiction to review the State's approval or rejection of an interconnection agreement.

New section 251(f) requires a State to make a copy of each agreement approved by the State under subsection 251(e) available for public inspection and copying within 10 days after the agreement is approved. Subsection 251(f) allows a State to charge a reasonable and nondiscriminatory fee to the parties to an agreement to cover the State's costs of approving and filing such an agreement.

New section 251(g) requires a local exchange carrier to make available any service, facility, or function provided under an interconnection agreement to which that local exchange carrier is a party to any other telecommunications carrier that requests such service, facility, or function on the same terms and conditions as are provided in that agreement. The Committee intends this requirement to help prevent discrimination among carriers and to make interconnection more efficient by making available to other carriers the individual elements of agreements that have been previously negotiated.

Subsection 251(i) requires the FCC to promulgate rules to implement section 251 within 6 months after enactment. If a State fails to carry out its responsibilities under section 251 in accordance with the rules promulgated by the FCC, the Committee intends that the FCC assume the responsibilities of the State in the applicable proceeding or matter.

Subsection 251(i) also requires the FCC or a State to waive or modify the requirements of the minimum standards of subsection 251(b) in the case of a rural telephone company, and allows the FCC or a State to waive or modify those requirements in the case of a local exchange carrier with fewer than two percent of the nation's subscriber lines installed in the aggregate nationwide. In order to waive or modify the requirements of subsection 251(b) for such companies or carriers, the FCC or a State must determine that the application of such requirements would result in unfair competition, impose a significant adverse economic impact on users of telecommunications services, be technically infeasible, or otherwise not be in the public interest. The Committee intends that the FCC or a State shall, consistent with the protection of consumers and allowing for competition, use this authority to provide a level playing field, particularly when a company or carrier to which this subsection applies faces competition from a telecommunications carrier that is a large global or nationwide entity that has financial or technological resources that are significantly greater than the resources of the company or carrier.

New subsection 251(j) provides that nothing in section 251 precludes a State from imposing requirements on telecommunications carriers with respect to intrastate services that the State determines are necessary to further competition in the provision of telephone exchange service or exchange access service, so long as any such requirements are not inconsistent with the FCC's rules to implement section 251.

New subsection 251(k) provides that nothing in section 251 is intended to change or modify the FCC's rules at 47 CFR 69 et seq. regarding the charges that an interexchange carrier pays to local exchange carriers for access to the local exchange carrier's network. The Committee also does not intend that section 251 should affect regulations implemented under section 201 with respect to interconnection between interexchange carriers and local exchange carriers.

Sec. 102. Separate subsidiary and safeguard requirements

Section 102 of the bill amends the 1934 Act to add a new section 252 to impose separate subsidiary and other safeguards on certain activities of the Bell companies. Section 102 requires that to the extent a regional Bell operating company engages in certain businesses, it must do so through an entity that is separate from any entities that provide telephone exchange service. Subsection 252(b) spells out the structural and transactional requirements that apply to the separate subsidiary, subsection 252(c) details the non-discrimination safeguards, subsection 252(d) iimposes restrictions on joint marketing, and subsection 252(e) sets forth additional requirements with respect to the provision of interLATA services. Where consistent with the requirements of this section, the activities required to be carried out through a separate subsidiary under this section may be conducted through a single entity that is separate and distinct from the entity providing telephone exchange service.

The activities that must be separated from the entity providing telephone exchange service include telecommunications equipment manufacturing and interLATA telecommunications services, except out-of-region and incidental services (not including information services) and interLATA services that have been authorized by the MFJ court. A Bell company also would have to provide alarm monitoring services and certain information services through a separate subsidiary, including cable services and information services which the company was not permitted to offer before July 24, 1991. In a related provision, section 203 of the bill provides that a Bell company need not use a separate affiliate to provide video programming services over a common carrier video platform if it complies with certain obligations.

The Committee believes that the ability to bundle telecommunications, information, and cable services into a single package to create "one-stop-shopping" will be a significant competitive marketing tool. As a result, and to provide for parity among competing industry sectors, the Committee has included restrictions on joint marketing certain services both in section 252(d) and in new section 255(b)(3). Under subsection 252(d) of this section the Bell operating company entity that provides telephone exchange service may not jointly market the services required to be provided through a separate subsidiary with telephone exchange service in an area until that company is authorized to provide interLATA service under new section 255. In addition, a separate subsidiary required under this section may not jointly market its services with the telephone exchange service provided by its affiliated Bell operating company entity unless such entity allows other unaffiliated entities that offer the same or similar services to those that are offered by the separate subsidiary to also market its telephone exchange services. In section 255(b)(3) telecommunications carriers are not permitted to jointly market interexchange service with local exchange service purchased from the Bell operating company in any area in which that company is not authorized to provide interLATA services.

Additional requirements for the provision of interLATA services are included in new section 252(e). These provisions are intended to reduce litigation by establishing in advance the standard to which a Bell operating company entity that provides telephone exchange service or exchange access service must comply in providing interconnection to an unaffiliated entity.

Subsection 252(f) of new section 252 establishes rules to ensure that the Bell companies protect the confidentiality of proprietary information they receive and to prohibit the sharing of such information in aggregate form with any subsidiary or affiliate unless that information is available to all other persons on the same terms and conditions. In general, a Bell company may not share with anyone customer-specific proprietary information without the consent of the person to whom it relates. Exceptions to this general rule permit disclosure in response to a court order or to initiate, render, bill and collect for telecommunications services.

New subsection 252(g) provides that the FCC may grant exceptions to the requirements of section 252 upon a showing that granting of such exception is necessary for the public interest, convenience, and necessity. The Committee intends this exception authority to be used whenever a requirement of this section is not necessary to protect consumers or to prevent anti-competitive behavior. However, the Committee does not intend that the FCC would grant an exception to the basic separate subsidiary requirements of this section for any service prior to authorizing the provision of interLATA service under section 255 by the Bell operating company seeking the exception to a requirement of this section.

Public utility holding companies that engage in the provision of telecommunications services are required to do so through a separate subsidiary under new section 252(h). In addition, a State may require a public utility company that provides telecommunications services to do so through a separate subsidiary. The separate subsidiary for public utility holding companies is required to meet some, but not all, of the structural separation and nondiscrimination safeguard provisions that are applicable to Bell operating company subsidiaries. New subsection 252(h) provides that a public utility holding company shall be treated as a Bell operating company for the purpose of those provisions of section 252 that subsection (h) applies to those holding companies.

New subsection 252(i) provides that a company that is a subsidiary of a holding company that also owns a Bell operating company shall be considered to meet the separate subsidiary requirements, so long as that subsidiary does not provide telephone exchange service. The Committee included this provision to allow for a subsidiary that is not a subsidiary of the Bell operating company that provides telephone exchange service to meet the requirements of section 252, so long as both entities are owned and controlled by the same holding company. However, this provision is not intended to lessen the structural or nondiscrimination safeguards required by new section 252.

Subsection (b) of section 102 requires the Commission to promulgate any regulations necessary to implement new section 252 of the 1934 Act within nine months of the date of enactment of this bill. The subsection also provides that any separate subsidiary established or designated by a Bell operating company for purposes of complying with new section 252(a) prior to the issuance of the regulations shall be required to comply with the regulations when they are issued.

Section 102(c) provides that the amendment to the 1934 Act made by this section takes effect on the date of enactment of this bill.

Sec. 103. Universal service

Section 103 of the bill establishes a Federal-State Joint Board to review existing universal service support mechanisms and make recommendations regarding steps necessary to preserve and advance this fundamental communications goal. Section 103 also establishes a new section 253 of the 1934 Act to clearly articulate the policy of Congress that universal service is a cornerstone of the Nation's communications system. This new section is intended to make explicit the current implicit authority of the FCC and the States to require common carriers to provide universal service. The clear statutory requirements for universal service in new section 253 are intended to provide continued consistency between Federal and State actions to advance universal service, and for greater certainty and competitive neutrality among competing telecommunications providers than the existing implicit mechanisms do today. As new section 253 explicitly provides, the Committee intends that States shall continue to have the primary role in implementing universal service for intrastate services, so long as the level of universal service provided by each State meets the minimum definition of universal service established under new section 253(b) and a State does not take any action inconsistent with the obligation for all telecommunications carriers to contribute to the preservation and advancement of universal service under new section 253(c).

Section 103(a) of the bill requires the FCC to institute a Federal-State Joint Board under section 410(c) of the 1934 Act to recommend within 9 months of the date of enactment new rules regarding implementation of universal service. Consistent with all Joint Boards established under section 410(c), the recommendations of the Joint Board are advisory in nature, and the FCC is not required to adopt the recommendations. However, the Committee intends that the FCC shall give substantial weight to the Joint Board recommendations.

In making its initial recommendations to the FCC and the States, the Committee intends that the Joint Board will thoroughly review the existing universal service system, including any definitions used by the different States and in particular both Federal and State support mechanisms. The language of the bill does not presume that any particular existing mechanism for universal service support must be maintained or discontinued; however, the Committee intends that the universal service support mechanisms implemented under new section 253 shall be, to the extent possible consistent with the goal of ensuring universal service, transparent, explicit, equitable and nondiscriminatory to all telecommunications carriers. Because the existing universal service support system relies to a significant extent on nontransparent internal cost-shifting by monopoly providers, the Committee expects that the Joint Board will recommend appropriate transition mechanisms and time-frames for implementation of any new support mechanisms for universal service. Based on testimony presented to the Committee concerning the size and nature of existing implicit universal service support mechanisms, the Committee expects that the preservation and advancement of universal service, including the evolving definition of universal service, can be accomplished without any increase in the overall nationwide level of universal service support that occurs today.

In addition, the Committee expects that the Joint Board will make recommendations concerning all other matters related to universal service, including the appropriate division of responsibilities between the FCC and the States, the appropriate size of service areas, guidelines for designation and relinquishment of essential telecommunications carrier status, and how support payments, if any, should be allocated when an essential telecommunications carrier resells universal service using the facilities of another carrier.

Section 103(a) also provides that at least once every four years the FCC is required to institute a new Joint Board proceeding to review the implementation of new section 253 regarding universal service, and to make recommendations regarding any changes that are needed. The Committee expects that each Joint Board periodically instituted under this section shall review as necessary the extent of universal service, the definition of universal service, the adequacy of support mechanisms, if any, and whether and to what extent further steps should be taken to adjust any such mechanisms to meet the requirements of this section. The Committee expects that competition and new technologies will greatly reduce the actual cost of providing universal service over time, thus reducing or eliminating the need for universal service support mechanisms as actual costs drop to a level that is at or below the affordable rate for such service in an area; however, the Committee intends that any action to reduce or eliminate support mechanisms shall only be done in a manner consistent with the obligation to preserve and advance universal service for all Americans.

Section 103(b) of the bill requires the FCC to complete any proceeding to implement the recommendations of the initial Joint Board within one year of the date of enactment of the bill, and of any other Joint Board on universal service matters within one year of receiving such recommendations.

Section 103(c) of the bill simply clarifies that the amendments to the 1934 Act made by the bill do not necessarily affect the FCC's existing separations rules for local exchange or interexchange carriers. However, this subsection does not prohibit or restrict the FCC's ability to change those separations rules through an appropriate proceeding.

Section 103(d) establishes new section 253 in the 1934 Act. New section 253(a) establishes seven principles on which the Joint Board and the FCC shall base policies for the preservation and advancement of universal service. The Committee intends that the Joint Board and the FCC will take into account each of these principles in making recommendations and implementing new regulations to restructure the existing universal service system. The term "affordable" is made in reference to what consumers are able and willing to pay for a particular service included in the definition of universal service. The Committee intends that the States will have the primary role in determining what is an affordable rate for any particular area.

Subsection (b) of new section 253 provides that the FCC shall define universal service, based on recommendations from the public, Congress, and the Joint Board. The Committee intends that the

Joint Board and FCC will periodically update the list of telecommunications services included in the definition of universal service in order to ensure that all Americans share in the benefits of new telecommunications technologies. The Committee notes that universal service is defined in new section 253(b) as an "evolving level of intrastate and interstate telecommunications services. . . ." As defined under the 1934 Act (as amended by this bill), "telecommunications services" includes the transport of information or cable services, but not the offering of those services. This means that information or cable services are not included in the definition of universal service; what is included is that level of telecommunications services that the FCC determines should be provided at an affordable rate to allow all Americans *access* to information, cable, and advanced telecommunications services that are an increasing part of daily life in modern America.

Put another way, the Committee intends the definition of universal service to ensure that the conduit, whether it is a twisted pair wire, coaxial cable, fiber optic cable, wireless, or satellite system, has sufficient capacity and technological capability to enable consumers to use whatever consumer goods that they have purchased, such as a telephone, personal computer, video player, or television, to interconnect to services that are available over the telecommunications network. The Committee does not intend the definition of universal service to include the purchase of equipment, such as a computer or telephone, that is owned by the consumer and is not integral to the telecommunications service itself.

To ensure that the definition of universal service evolves over time to keep pace with modern life, the subsection requires the FCC to include, at a minimum, any telecommunications service that is subscribed to by a substantial majority of residential customers. By this the Committee intends that the definition of universal service should include that level of telecommunications service that is used by a substantial majority of residential consumers to access advanced telecommunications services, information services, and cable services. For example, touch tone telephone service is widely available today and is used by a substantial majority of residential customers to access services like voice mail, telephone banking, and mail order shopping services. These same services cannot be accessed using rotary party line services that are still used in some areas today. As a result, the Committee would not view rotary party line service as sufficient to meet the minimum definition of universal service. Similarly, in the year 2010, touch tone service might not satisfy the evolving definition of universal service if the substantial majority of residential consumers use two-way interactive full motion video service as the primary means of communicating.

Subsection (c) of new section 253 requires all telecommunications carriers, including competitive access providers and any other carrier that meets the definition of a telecommunications carrier, to contribute on an equitable and nondiscriminatory basis to the preservation and advancement of universal service. This requirement includes carriers that concentrate their marketing of services or network capacity to particular market segments, such as high volume business users. Requiring all telecommunications carriers to contribute to universal service will spread the cost over all customers for any telecommunications service and prevent distortion of competitive forces.

The FCC or a State may require any other telecommunications provider, such as private telecommunications providers, to contribute to the preservation and advancement of universal service, if the public interest so requires. The purpose of this provision is to allow the FCC or a State to require contributions, for instance, from those who bypass the public switched telephone network through their own or leased facilities. The Committee intends to preserve the FCC's authority over all telecommunications providers. In the event that the use of private telecommunications services or networks becomes a significant means of bypassing networks operated by telecommunications carriers, the bill retains the FCC's authority to preserve and advance universal service by requiring all telecommunications providers to contribute.

New section 253(c) does not require providers of information services to contribute to universal service. Information services providers do not "provide" telecommunications services; they are users of telecommunications services. The definition of telecommunications service specifically excludes the offering of information services (as opposed to the transmission of such services for a fee) precisely to avoid imposing common carrier obligations on information service providers.

The total of any contributions required under this subsection shall be no more than that reasonably necessary to preserve and advance universal service as defined under section 253(b). The requirement to contribute to universal service is based on the long history of the public interest, convenience, and necessity that is inherent in the privilege granted by the government to use public rights of way or spectrum to provide telecommunications services. In a monopoly environment this requirement took the form of an obligation to provide service throughout an entire area; in the competitive environment of the future it may not be necessary or desirable to meet the requirement to provide universal service by imposing on all telecommunications providers the obligation to provide service throughout an entire area. Instead, the public interest may be better served by having carriers contribute to a fund or other support mechanisms which would be used to provide support payments to one or more telecommunications carriers that agree to undertake the service obligation that might otherwise be imposed on all providers.

Subsection (d) of new section 253 provides that the FCC and the States may impose or require various mechanisms to enforce any contribution that may be required under subsection (c) to preserve and advance universal service. Such mechanisms may include service obligations, financial contributions, discounted rates, or any other mechanisms that the FCC or a State finds is appropriate. The Committee expects that the FCC or a State will take into account the need to provide a transition from the existing system of support mechanisms to any new system that may be established. Any such new system shall, where appropriate, be based on transparent, external mechanisms which are applied to all telecommunications carriers in an equitable manner.

Subsection (e) of new section 253 provides that a State may adopt additional definitions, mechanisms, and standards to preserve and advance universal service within such State, provided that they are not inconsistent with the regulations of the FCC. The Committee intends that the States will continue to have a substantial role in the preservation and advancement of universal service under new section 253. This subsection simply clarifies that nothing in new section 253 is intended to prohibit a State from imposing or requiring universal service obligations that the State finds appropriate which are in addition to the requirements contained in the bill, so long as those requirements do not conflict with the measures contained in new section 253. To the extent that a State adopts requirements to preserve and advance universal service that are in addition to those contained in new section 253, the Committee intends that the State would be responsible for establishing additional contribution mechanisms to provide for such requirements.

Subsection (f) of new section 253 provides that only telecommunications carriers which are designated as essential telecommunications carriers under new section 214(d) shall be eligible to receive support payments, if any, established by the FCC or a State to preserve and advance universal service. Any such support payments must accurately reflect the amount reasonably necessary to preserve and advance universal service. In some areas of the country, particularly areas that are already subject to competition in the provision of services included in the definition of universal service, the Committee expects that support payments would not be needed in order to provide universal service at just, reasonable, and affordable rates. The Committee intends this requirement to provide the flexibility for the FCC to reduce or eliminate support payments to areas where they are no longer needed, while continuing or even increasing support payments to areas that do need such support. For example, some consumers in areas that do not require support payments in general may need individual assistance in order to procure universal services; in other areas the cost of providing service may be unaffordable for most consumers, so service throughout that area may require support payments to ensure that universal service is provided.

Subsection (f) is not intended to prohibit support mechanisms that directly help individuals afford universal service. For instance, nothing in this section is intended to limit or eliminate the Lifeline and Link-up America programs currently enforced by the Commission and States, and other similar programs.

Subsection (g) of new section 253 provides that the FCC and the States shall base the amount of support payments, if any, on the difference between the actual cost of providing universal service and the revenues a carrier may obtain from providing such service at an affordable rate. In determining the "actual cost" the Committee intends for the Commission to determine what costs are "reasonably necessary," as required by subsection (f). The Committee intends that the FCC and the States shall make any universal service support payments explicit and that the payments would be restricted to those areas that are in need of such support. To the extent that an essential telecommunications carrier receives support payments, those payments shall be used only for the maintenance and upgrading of facilities serving consumers in the area for which such support is provided.

Subsection (h) of new section 253 simply incorporates in the 1934 Act the existing practice of geographic rate averaging and rate integration for interexchange, or long distance, telecommunications rates to ensure that rural customers continue to receive such service at rates that are comparable to those charged to urban customers. This provision is not intended to alter existing geographic rate averaging policies as enforced by the FCC on the date of enactment, including the FCC's proceeding entitled "Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the United States Mainland and the Offshore Points of Hawaii, Alaska, and Puerto Rico/Virgin Islands" (61 FCC2d 380 (1976)). As is the case today, States shall continue to be responsible for enforcing this subsection with respect to intrastate interexchange services, so long as the State rules are not inconsistent with FCC rules and policies on rate averaging. Maintaining affordable long distance service in high cost remote areas as well as in lower cost metropolitan areas benefits society as a whole by fostering a nationwide economic marketplace. The Committee intends this provision to ensure that competition in telecommunications services does not come at the cost of higher rates for consumers in rural and remote areas.

In establishing competitively neutral universal service support mechanisms the Committee expects that, consistent with the requirement to preserve and advance universal service, the FCC and the Joint Board will consider mechanisms that make implicit subsidies more explicit from access charges.

Subsection (i) of new section 253 prohibits telecommunications carriers from subsidizing competitive services with revenues from non-competitive services. The FCC and the States are required to establish any necessary cost allocation rules, accounting safeguards, and other guidelines to ensure that universal service bears no more than a reasonable share (and may bear less than a reasonable share) of the joint and common costs of facilities used to provide both competitive and noncompetitive services. For instance, this provision, at a minimum, prevents any assignment of direct costs associated with the provision of competitive telecommunications services, information services, or video programming services to telephone exchange service or exchange access service, as long as such exchange or exchange access service remains noncompetitive.

In general, joint and common costs should be allocated based on the demand each service places on the network. The share allocated to competitive services should thus be more than the incremental costs that such services not included in universal service impose on any jointly used facilities. In fact, the Joint Board, the FCC and the States may decide that competitive services not included in universal service shall bear all of the fixed and nonincremental costs of facilities jointly used to provide noncompetitive universal service and competitive services, if such allocation is necessary as a mechanism to preserve and advance universal service. However, in implementing any such cost allocation mechanism, the FCC and the Joint Board shall seek to ensure that such allocation is explicit and applied in a competitively neutral manner.

Subsection (j) of new section 253 states that the subsections that provide that all telecommunications carriers shall contribute to universal service, preserve the States' authority to adopt their own definitions and mechanisms, establish eligibility for universal service support, and control the level of universal service support shall take effect one year after the date of enactment of this bill.

Sec. 104. Essential telecommunications carriers

Section 104 of the bill would amend section 214(d) of the 1934 Act by designating the existing text of section 214(d) as paragraph (1) and by adding seven new paragraphs regarding designation of essential telecommunications carriers. It is the intent of the Committee that the authority of the FCC and the States to designate essential telecommunications carriers parallels their traditional certification authority. These amendments are not intended to change the traditional jurisdictional division between Federal and State authority with respect to telecommunications. Thus the bill provides that the FCC shall designate essential telecommunications carriers for interstate services and the States shall designate such carriers for intrastate services, which the Committee intends should include intrastate interexchange services.

New paragraph (2) of section 214(d) makes explicit the implicit authority of the FCC or a State to require a common carrier to provide service to any community or portion of a community that requests such service. In the event that more than one common carrier provides service in an area, and none of the carriers will provide service to a community or portion thereof in that area which requests service, this paragraph gives the FCC or a State the authority to decide which common carrier is best suited to provide such service. If the FCC or a State orders a carrier to provide service to a community or portion thereof under this paragraph, it shall designate such carrier an essential telecommunications carrier.

Paragraph (3) of new section 214(d) provides that the FCC or a State may designate a common carrier as an essential telecommunications carrier for a particular service area, thus making that carrier eligible for support payments to preserve and advance universal service, if any such payments are established under new section 253 of the 1934 Act. Any carrier designated as an essential telecommunications carrier must provide universal service and any additional services specified by the FCC or a State throughout the service area for which the designation is made. In addition, these services must be offered throughout that service area at nondiscriminatory rates established by the FCC or a State, and the carrier must advertise those rates using media of general distribution.

The Committee intends that essential telecommunications carriers will only be designated in those areas where the actual cost of providing universal service is greater than the amount that the carrier providing those services may recover based on the affordable rate for those services established by the FCC or a State. For areas where carriers may provide universal service for costs (including a reasonable profit) that are at or below the affordable rate, no designation would be needed.

New paragraph (4) of section 214(d) allows the FCC or a State to designate more than one common carrier as an essential telecommunications carrier for a particular service area. The decision to make such an additional designation is at the discretion of the FCC or a State. In addition, the bill permits a State to require additional findings before designating more than one common carrier as an essential telecommunications carrier. The Committee intends that the same obligations and risks would apply to each essential telecommunications carrier designated for a particular service area.

To the extent that more than one common carrier is designated as an essential telecommunications carrier, each additional carrier so designated must meet the same requirements with respect to service throughout the same service area at nondiscriminatory rates established by the FCC or a State, as well as the advertisement of those rates.

New paragraph (5) of section 214(d) requires the FCC and the States to establish rules governing the use of resale by a carrier to meet the requirements for designation as an essential telecommunications carrier, as well as rules to permit a carrier that has been designated as an essential telecommunications carrier to relinquish that designation so long as at least one other carrier has also been designated as an essential telecommunications carrier for that area. The Committee expects that these rules will be based on recommendations from the Joint Board required under section 103(a) of the bill, and will ensure that a carrier using resale has at least some facilities in the area being served and that the carrier has adequate financial resources to fulfill its commitment to provide universal service throughout that area. The Committee notes that such commitment may require a carrier to build or extend facilities in an area in order to provide service, particularly if the carrier whose services are being resold should choose to cease service in that area. To this end new paragraph (5) also requires the FCC and the States to provide appropriate rules to govern how quickly an essential telecommunications carrier whose services are being resold may cease service to an area, in order to provide other essential telecommunications carriers adequate notice to extend their facilities or to arrange for the purchase of replacement facilities or services.

New paragraph (6) of section 214(d) sets forth the penalties applicable to an essential telecommunications carrier which refuses an FCC or State order to provide universal service within a reasonable period of time. In determining what constitutes a reasonable period of time, the bill provides that the FCC or a State must consider the nature of the construction required to provide such service, the time interval that normally would attend such construction, and the time needed to obtain regulatory or financial approval.

New paragraph (7) of section 214(d) of the Act requires the FCC or a State to designate an essential telecommunications carrier for interexchange services for any unserved community or portion thereof that requests such service. An essential telecommunications carrier designated under this paragraph must provide service at nationwide geographically averaged rates, in the case of interstate services, and geographically averaged rates in the case of intrastate services. The Committee intends that the requirement to provide nationwide geographically averaged rates includes the rate integration provided for in the FCC's proceeding entitled ''Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the United States Mainland and the Offshore Points of Hawaii, Alaska, and Puerto Rico/Virgin Islands'' (61 FCC2d 380 (1976)). The FCC or a State may allow a carrier designated under this paragraph to receive support payments, if any, that may be provided under section 253. The Committee intends that a carrier designated under this paragraph would only be eligible for support payments if such payments were necessary to compensate a carrier for services to a community or portion thereof that such carrier was actually ordered by the FCC to serve because no other carrier would do so.

New paragraph (8) of section 214(d) grants the FCC authority to promulgate guidelines for the States to implement this section. The Committee intends that the FCC will use this authority to delegate to the States authority that has traditionally been exercised in this area by the States, and, if necessary, to establish guidelines to provide for consistency among the States in the implementation of these amendments.

Sec. 105. Foreign investment and ownership reform

Section 105 adds a new subsection (f) to section 310 of the 1934 Act. Existing section 310(b) of the 1934 Act provides in relevant part that an alien may not obtain a common carrier license, and that an alien may not own more than 25% of any corporation that directly or indirectly owns or controls any corporation to which a common carrier license is granted.

New subsection (f) creates a system of reciprocity for common carrier licenses. Paragraph (1) states that the FCC may grant to an alien, foreign corporation, or foreign government a common carrier license that would otherwise violate the restrictions in section 310(b), if the FCC finds that there are equivalent market opportunities for U.S. companies and citizens in the foreign country where the alien is a citizen, in which the foreign corporation is organized, or in which the foreign government is in control. This determination will be made on a market segment specific basis. The Committee believes that the FCC has the requisite expertise to make this market segment specific determination.

Foreign countries point to section 310(b) as a reason to deny U.S. companies entry into their markets. By applying a reciprocity rule, U.S. markets will be open to foreign investment from that country, to the same extent that the foreign markets are open to U.S. investment.

When the FCC makes its determination, the FCC may look beyond where the corporation is organized if the corporation is owned, in whole or in part, by individuals, corporations, or a foreign government whose home is not where the corporation is organized. This will prevent a foreign entity from organizing in a country with a more open policy toward U.S. investment than its home country, in order to circumvent the U.S. reciprocity restrictions.

Paragraph (2) allows the FCC to take into account changing circumstances through a "snapback" provision. If the FCC determines that a foreign country for which the FCC has already made a favorable determination under paragraph (1) changes its policies and no longer meets the reciprocity required for such a determination, the FCC will apply the restrictions of section 310(b) to aliens, corporations, and governments of that country, and shall withdraw licenses granted that could not otherwise be held under section 310(b). This will deter countries from imposing stringent restrictions on U.S. companies after entities from that country have been granted U.S. common carrier licenses.

The FCC must enforce the provision on a market segment by market segment basis. For instance, if a foreign company wishes to acquire a common carrier license, the openness of the foreign market to U.S. communications equipment manufacturers is not the relevant market to examine. If a foreign company wishes to acquire a common carrier license, the FCC should examine the openness of the foreign country's common carrier market to U.S. investment.

Sec. 106. Infrastructure sharing

Subsection (a) requires that within one year of the date of enactment, the FCC shall prescribe rules requiring local exchange carriers that were subject to Part 69 of the FCC's rules on the date of enactment to share network facilities, technology, and information with qualifying carriers. The qualifying carrier may request such sharing for the purpose of providing telecommunications services or access to information services in areas where the carrier is designated as an essential telecommunications carrier under new section 214(d). The bill does not grant immunity from the antitrust laws for activities undertaken pursuant to this section.

Subsection (b) establishes the terms and conditions of the FCC's regulations. Such regulations shall:

(1) not require a local exchange carrier to take any action that is economically unreasonable or contrary to public interest;

(2) permit, but not require, joint ownership of facilities among local exchange carriers and qualifying carriers;

(3) ensure that the local exchange carrier not be treated as a common carrier for hire with respect to technology, information or facilities shared with the qualifying carrier under this section;

(4) ensure that qualifying carriers benefit fully from sharing;

(5) establish conditions to promote cooperation;

(6) not require a local exchange carrier to share in areas where the local exchange carrier provides telephone exchange service or exchange access service; and

(7) require the local exchange carrier to file with the FCC or State, any tariffs, contract or other arrangement showing the rate, terms, and conditions under which such local exchange carrier is complying with the sharing requirements of this section.

Subsection (c) requires that local exchange carriers sharing infrastructure must provide information to sharing parties about deployment of services and equipment, including software.

Subsection (d) defines those carriers eligible to request infrastructure sharing under this section. Sharing is limited to qualifying carriers. A qualifying carrier is defined as a telecommunications carrier which lacks economies of scale and is a common carrier providing telephone exchange service or exchange access service, as well as any other service included within the definition of universal service to all consumers in the service area where the carrier has been designated as an essential telecommunications carrier under new section 214(d).

TITLE II—REMOVAL OF RESTRICTIONS TO COMPETITION

Subtitle A—Removal of Restrictions

Sec. 201. Removal of entry barriers

Section 201 is intended to remove barriers to competition in the provision of local telephone service. It adds a new section 254 entitled "Removal of Entry Barriers" to the 1934 Act.

Subsection (a) of new section 254 preempts any state and local statutes and regulations, or other state and local legal requirements, that may prohibit or have the effect of prohibiting any entity from providing interstate or intrastate telecommunications services.

Subsection (b) of section 254 preserves a State's authority to impose, on a competitively neutral basis and consistent with the universal service provisions of new section 253, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers. States may not exercise this authority in a way that has the effect of imposing entry barriers or other prohibitions preempted by new section 254(a).

Subsection (c) of new section 254 provides that nothing in new section 254 affects the authority of local governments to manage the public rights-of-way or to require, on a competitively neutral and nondiscriminatory basis, fair and reasonable compensation for the use of public rights-of-way, on a nondiscriminatory basis, provided any compensation required is publicly disclosed.

New section 254(d) requires the FCC, after notice and an opportunity for public comment, to preempt the enforcement of any state or local statutes, regulations or legal requirements that violate or are inconsistent with the prohibition on entry barriers contained in subsection (a) or the other provisions of section 254.

Subsection (e) of new section 254 simply clarifies that new section 254 does not affect the application of section 332(c)(3) of the 1934 Act to commercial mobile service providers.

Subsection 201(b) of the bill establishes the principles applicable to the provision of telecommunications by a cable operator. Paragraph (1) of this subsection adds a new paragraph 3(A) to section 621(b) of the 1934 Act, which sets forth the jurisdiction of and limitations on franchising authorities over cable operators engaged in the provision of telecommunications services. Specifically, a cable operator or affiliate engaged in the provision of telecommunications services is not required to obtain a franchise under Title VI of the 1934 Act, nor do the provisions of Title VI apply to a cable operator or affiliate to the extent they are engaged in the provision of telecommunications services. Franchising authorities are prohibited from ordering a cable operator or affiliate to discontinue the provision of telecommunications service, requiring cable operators to obtain a franchise to provide telecommunications services, or requiring a cable operator to provide telecommunications services or facilities as a condition of an initial grant of franchise, franchise renewal, or transfer of a franchise. However, the Committee intends that telecommunications services provided by a cable company shall be subject to the authority of a local government to manage its public rights of way in a non-discriminatory and competitively neutral manner and to charge fair and reasonable fees for its use. These changes do not affect existing federal or state authority with respect to telecommunications services.

Paragraph 2 of subsection 201(b) amends Section 622(b) of the 1934 Act by inserting the phrase "to provide cable services," in the franchise fee provision of the 1934 Act. This change is intended to make clear that the franchise fee provision is not intended to reach revenues that a cable operator derives for providing new telecommunications services over its system that are different from the cable-related revenues operators have traditionally derived from their systems.

Subsection (c) of section 201 of the reported bill clarifies that this bill, and the 1934 Act as amended by this bill, shall not be construed to modify, impair, or supersede, or authorize the modification, impairment, or supersession of any state or local law pertaining to taxation, provided such taxation is consistent with the requirements of the Constitution of the United States, this bill, the 1934 Act, or any other applicable federal law.

Sec. 202. Limitation on State and local taxation of direct-to-home satellite services

Section 202 of the reported bill authorizes States to impose on direct-to-home service providers the responsibility to collect and remit State and local sales taxes on direct-to-home services provided to customers in the State or local jurisdiction. In those States in which the local sales taxes are administered by the State, the direct-to-home service provider shall remit both State and local sales taxes to the State. In those States in which local sales taxes are not administered by the State, the direct-to-home service provider shall, in most circumstances, be required to remit local sales taxes directly to those local jurisdictions. The Committee included this provision without taking any position on the current law regarding constitutional standards for nexus.

Under Section 202, direct-to-home service providers are granted an exemption from any other local taxes or fees imposed on the provision of direct-to-home services if the service providers do no more than (1) broadcast programming and services via satellite to subscribers within the local jurisdiction and bill for the service from outside of the jurisdiction, and (2) solicit and place orders for the sale of direct-to-home services on the site of retail outlets and establishments that are unrelated to the direct-to-home service provider, including consumer electronics retail outlets and retailers of satellite antennas, which orders are filled and billed for from a point outside of the local taxing jurisdiction, regardless of where the subscriber makes an initial payment for an initial subscription to the direct-to-home service. The Committee intends this section to allow direct-to-home service providers an exemption from any other local taxes or fees imposed on direct-to-home services in any local jurisdiction in which the direct-to-home service provider engages only in the limited business activities that are specified in this section. If the direct-to-home service provider holds any interest in property or maintains an office in the local jurisdiction, or engages in any business activity in the local jurisdiction beyond those specifically mentioned, it will not be exempt from any local tax imposed on direct-to-home services.

Section 202 does not exempt direct-to-home service providers from any State tax imposed on direct-to-home services.

By establishing the conditions under which a State may impose State and local sales taxes on direct-to-home service, the Committee has clarified a potential area of contention between this nascent industry and the State and local governments. In addition, the Committee has preserved a source of revenue for local governments while reducing the regulatory burden on the service.

Sec. 203. Elimination of cable and telephone company cross-ownership restriction

Subsection 203(a) of the bill amends section 613(b) of the 1934 Act. In general, the existing provisions of 613(b) of the 1934 Act bar telephone companies from providing video programming directly to subscribers in their telephone service areas, except in rural areas. However, several federal courts recently have found this provision to be unconstitutional. New subsection 203(a) repeals the existing telephone/cable cross-ownership ban and permits local exchange carriers to provide video programming directly to subscribers under certain conditions.

Subsection 203(a) provides that, to the extent that the carrier provides programming through a common carrier video platform, neither it, nor any video programming provider making use of such platform shall be deemed to be a cable operator providing cable service. Under current law, a programmer who uses a video dialtone network to deliver programming to subscribers is not a cable operator.

To the extent that a carrier or its affiliate provides video programming directly to subscribers through a cable system, the carrier or its affiliate shall be deemed to be a cable operator providing cable service and shall be subject to the provisions of Title VI of the 1934 Act. This provision promotes parity by ensuring that telephone companies are regulated the same way as other service providers.

As amended by subsection 203(a), new subsection 613(b) of the 1934 Act contains requirements for common carrier video platforms and special provisions relating to Bell company activities. Section 613(b) does not impose a separate subsidiary requirement on a Bell company in connection with programming provided over a common carrier video platform (imposed by section 102 of the bill) if the company satisfies certain requirements. Section 613(b) also reiterates the separate subsidiary obligation for providing programming as a cable operator under new section 252. Notwithstanding a carrier's nondiscrimination obligations, subsection 613(b)(4) establishes that local broadcast stations and public educational and governmental entities may use common carrier video platforms at the incremental cost-based rate. These provisions recognize that local broadcast stations and local public, educational and governmental (PEG) entities provide unique services to the local community. Such access furthers the Government's compelling interests in education, in facilitating widespread public discourse among all citizens and in improving democratic self-governance. The provision of lower rates for broadcast stations and PEG entities is consistent with the provisions of the 1984 Cable Act and the 1992 Cable Act, which ensured that broadcast stations and PEG entities receive access to cable systems.

In addition, a provider of video platform services must provide local broadcast stations with access to the video platform for transmission of television broadcast programming, on the first tier of programming, and at rates no higher than incremental-cost. Each of these new provisions relating to video dialtone programming takes effect upon enactment.

Subsection 203(b) of the bill adds subsection 214(e) to the 1934 Act, effective one year after enactment. Subsection 214(e) removes the requirement for a certificate under section 214 to construct facilities to provide video programming services.

Subsection 203(c) of the bill requires the FCC to prescribe regulations within one year of enactment of the Act that:

(1) require a telecommunications carrier that provides video programming directly to subscribers to ensure that they are offered the means to obtain access to the signals of broadcast television stations as readily as they are today;

(2) require such a carrier to display clearly and prominently at the beginning of any program guide or menu the identity of any signal of any television broadcast station it carries;

(3) require such a carrier to ensure that viewers are able to access the signal of any television broadcast station it carries without first having to view advertising or promotional material, or a navigational device, guide, or menu that omits broadcasting services as an available option;

(4) except as required by paragraphs (1) through (3), prohibit such carrier and a multichannel video programming distributor using the facilities of such carrier from discriminating among video programming providers with respect to material or information provided by the carrier to subscribers for the purposes of selecting programming, or in the way such material or information is presented to subscribers;

(5) require such carrier and a multichannel video programming distributor using the facilities of such carrier to ensure that video programming providers and/or copyright holders are able suitably and uniquely to identify their programming services to subscribers;

(6) if such identification is transmitted as part of the programming signal, require a telecommunications carrier that provides video programming directly to subscribers and a multichannel video programming distributor using the facilities of

such carrier to transmit such identification without change or alteration;

(7) consistent with other provisions of Title VI of the Communications Act of 1934 (47 U.S.C. 521 et seq.) prohibit such carrier from discriminating among video programming providers with regard to carriage and ensure that the rates, terms, and conditions for such carriage are just, reasonable, and nondiscriminatory;

(8) extend to such carriers and multichannel video programming distributors using the facilities of such carrier the FCC's regulations concerning network nonduplication and syndicated exclusivity; and

(9) extend to such carriers and multichannel video programming distributors using the facilities of such carrier the protections afforded to local broadcast signals in sections 614(b)(3), 614(b)(4)(A), and 615(g)(1) and (2) of the 1934 Act.

Subsection 203(d) provides that any disputes must be resolved by the FCC within 180 days after notice of the dispute is submitted to the FCC. The FCC is authorized at that time, or in a separate proceeding, to award damages or require carriage to any person denied carriage, or award damages for any other violation of this section. An aggrieved party may also seek other remedy available at law.

Sec. 204. Cable Act Reform

Subsection (a) of section 204 of the bill limits the rate regulation currently imposed by the Cable Television Consumer Protection and Competition Act of 1992, Public Law 102-385. Under existing section 623 of the 1934 Act, rates for the basic (broadcast) tier of service, as well as the expanded (cable programming services) tier of service have been regulated by the FCC.

Rate regulation for the basic tier is justified where the cable operator retains its monopoly because, for many consumers, the basic cable tier is their best, and sometimes, only access to over-the-air broadcast stations. The Committee feels strongly that this tier should remain affordable for all those consumers who need to use cable television as an antenna service to receive broadcast signals.

Cable operators argue that rate regulation for the expanded tier, however, does not fall under the same principle. While the expanded tier of service does provide a variety of satellite-delivered programming, some maintain that it is not a consumer necessity. Therefore, rates should only be regulated for those operators that take advantage of their monopoly position to raise rates beyond acceptable levels.

Cable operators argue that cable rate regulation, as implemented by the FCC, has hurt cable's access to capital and the financial markets. Cable is the most logical competitor to telephone companies for residential services. Without access to capital, cable operators believe that they will not be able to spend the necessary funds to rebuild and upgrade their systems to compete with telephone companies for telephone customers, and thus, give consumers greater choices.

On the other hand, consumer groups allege that the cable rate regulations are essential to protecting consumers from unjustified rate increases. Consumer groups note that cable operators borrowed more money in 1994 than they borrowed in 1993, and they note that the major cable companies recently spent millions of dollars in the auctions for new Personal Communications Services (PCS). Consumers also point out that the vast majority of consumers subscribe to expanded tiers of cable service in addition to the basic tier.

The bill adopted by the Committee adopts a compromise on cable rate regulation. Paragraph (1) amends the rate regulation provisions of section 623 of the 1934 Act for the expanded tier. First, it eliminates the ability of a single subscriber to initiate a rate complaint proceeding at the FCC. Franchising authorities and other relevant State and local government entities still retain the ability to initiate a rate proceeding. Second, rates for cable programming services will only be considered unreasonable, and subject to regulation, if the rates substantially exceed the national average rates for comparable cable programming services. This means that the "bad actors" will be rate-regulated, while the "good actors" will not be subject to Commission-imposed rates.

Paragraph (2) amends section 623(l)(1). Section 623(l)(1) provides cable operators subject to effective competition are not subject to rate regulation, including regulation of the basic tier. The amendment to the definition of effective competition contained in the bill allows the provision of video services by a local exchange carrier, either through a common carrier video platform, or as a cable operator, in an unaffiliated cable operator's franchise area to satisfy the effective competition test. In other words, under the bill, if a telephone company offers video services in a cable operator's franchise area, the cable operator's basic and expanded tiers of service will not be regulated.

Subsection (b) of section 204 of the bill amends section 628(c)(2)(B)(iii) of the 1934 Act by eliminating "other direct legitimate economic benefit" from the permissible reasons for discrimination in the price charged for the distribution of video programming to cable operators and other multichannel video carriers.

Subsection (c) of section 204 provides that the provisions of this section take effect on the date of enactment.

Sec. 205. Pole attachments

Section 205 of the reported bill amends section 224 of the 1934 Act, the pole attachment provisions. Section 224., which was added to the 1934 Act in 1978, requires the FCC to ensure that the rates, terms, and conditions for attachments by cable television systems to poles, ducts, conduits, and rights-of-way owned or controlled by utilities, including telephone companies, are just and reasonable.

Section 205 modifies section 224 of the 1934 Act to require that access to utility poles be granted to cable operators, whether the attachment is used to provide cable services or telecommunications services.

Section 205 requires the FCC to prescribe regulations, within 1 year of the date of enactment, to ensure that utilities charge just, reasonable, and nondiscriminatory rates for attachments used to provide telecommunication services, including attachments used to provide cable services.

Sec. 206. Entry by utility companies

This section explicitly permits electric, gas, water and steam utilities (other than a public utility holding company which is an associate company of a registered holding company) to provide telecommunications services, information services, any other services subject to the jurisdiction of the FCC, and any products or service incidental to those services. Subsection (a) preempts any other laws to the contrary, including the Public Utility Holding Company Act of 1935 (PUHCA). The Securities and Exchange Commission is also specifically excluded from enforcing PUHCA with respect to these telecommunications activities, and may not review any such activity.

Subsection (b) permits the Federal Energy Regulatory Commission and State commissions to prohibit cross-subsidization of any kind by a public utility holding company which is an associate company of a registered holding company.

Subsection (c) requires any subsidiary company, affiliate, or associate company that is an associated company of a registered holding company to maintain separate books, records and accounts, and provide access to such records, books, and accounts to State commissions and the Federal Energy Regulatory Commission.

Subsection (d) specifically allows States to request an annual, independent audit of a public utility company that is an associated company of a registered holding company and is providing telecommunications services, to review transactions between the public utility company, and the subsidiary, affiliate, or associate company engaged in such activity. The company must bear the costs of the audit, and the auditor's report must be sent to the State commission within 6 months of the request for such an audit.

Subsection (e) defines all terms in this section defined under PUHCA as having the same meaning. Subsection (f) states that this section is effective upon enactment.

Sec. 207. Broadcast reform

If the FCC, by rule, permits a licensee to provide advanced television services, subsection (a) of section 207 of the bill requires the FCC to adopt rules to permit broadcasters flexibility to use the advanced television spectrum for ancillary or supplementary services. The broadcaster must provide at least one free, over-the-air advanced television broadcast service on that spectrum. Similar rules for current broadcast spectrum must also be adopted.

Paragraph (2) requires that if the licensee offers ancillary or supplementary service for which payment of a subscription fee is required, or is compensated for transmitting material furnished by a third party, then the FCC will collect an annual fee from the licensee. The fee shall be based, in part, on the licensee's total amount of spectrum, and the amount of spectrum used and the amount of time the spectrum is used for those ancillary and supplementary services. The fee, however, cannot exceed the amount, on an annualized basis, paid by licensees providing competing services on spectrum subject to auction.

Paragraph (3) states that licensees are not relieved of their public interest requirements. Paragraph (4) defines "advanced television services" as a television service using digital or other advanced technology to enhance audio quality and visual resolution. The paragraph also defines “existing” spectrum as that spectrum used for television broadcast purposes as of the date of enactment.

Subsection (b) requires the FCC to change its rules regarding the amount of national audience a single broadcast licensee may reach. The current cap is 25% of the nation’s television households. The amendment will raise that to 35%. The FCC is also required to review its ownership rules biennially, as part of its overall regulatory review required by new section 259 of the 1934 Act. This provision is effective upon enactment.

Subsection (c) amends section 307(c) of the 1934 Act to increase the term of license renewal for television licenses from five to ten years and for radio licenses from seven to ten years.

Subsection (d) amends the broadcast license renewal procedures. Under current law, at the time a broadcast license is up for renewal, anyone can file a competing application for the broadcaster’s license. This subsection amends section 309 of the 1934 Act by adding a new subsection (k) which gives the incumbent broadcaster the ability to apply for its license renewal without competing applications. A broadcaster would apply for its renewal, and the FCC would grant such a renewal, if, during the preceding term of its license the station has served the public interest, convenience, and necessity, has not made any serious violations of the 1934 Act or of the FCC’s rules, and has not, through other violations, shown a pattern of abuse.

The FCC may not consider whether the granting of a license to a person other than the renewal applicant might serve the public interest, convenience, and necessity prior to its decision to approve or deny the renewal application. Under this section, the FCC has discretion to consider what is a serious violation of the 1934 Act. If a licensee does not meet those criteria, the FCC may either deny the renewal, or impose conditions on the renewal. Once the FCC, after conducting a hearing on the record, denies an application for renewal, it is then able to accept applications for a construction permit for the channel or facilities of the former licensee.

Subtitle B—Termination of Modification of Final Judgment

Sec. 221. Removal of long distance restrictions

Section 221(a) of the bill adds a new section 255 to the 1934 Act entitled “Interexchange Telecommunications Services.” This section establishes the criteria that will be used by the Commission to determine when a Bell operating company may provide interLATA services in the region in which it is the dominant provider of wireline telephone exchange service or exchange access service. In addition, this section allows a Bell operating company to immediately provide interLATA services outside the region in which that company is the dominant provider of wireline telephone exchange service or exchange access service, as well as interLATA services within that region which are incidental to the provision of specific services, subject to certain requirements.

Subsection (a) of new section 255 establishes the general requirements for the three different categories of service: in region interLATA; out of region interLATA; and incidental services. Each of these categories is addressed in more detail in the following subsections of section 255.

New section 255(b) establishes specific interLATA interconnection requirements that must be fully implemented in order for the FCC to provide authorization for a Bell operating company to provide in region interLATA services. The FCC is specifically prohibited from limiting or extending the terms of the "competitive checklist" contained in subsection (b)(2). The Committee does not intend the competitive checklist to be a limitation on the interconnection requirements contained in section 251. Rather, the Committee intends the competitive checklist to set forth what must, at a minimum, be provided by a Bell operating company in any interconnection agreement approved under section 251 to which that company is a party (assuming the other party or parties to that agreement have requested the items included in the checklist) before the FCC may authorize the Bell operating company to provide in region interLATA services.

Finally, section 255(b) includes a restriction on the ability of telecommunications carriers to jointly market local exchange service purchased from a Bell operating company and interexchange service offered by the telecommunications carrier until such time as the Bell operating company is authorized to provide interLATA services in that telephone exchange area. This restriction is similar to one imposed on the Bell operating companies in new section 252, and the Committee intends it to provide parity between the Bell operating companies and other telecommunications carriers in their ability to offer "one stop shopping" for telecommunications services.

New subsection 255(c) provides the process for application by a Bell operating company to provide in region interLATA services, as well as the process for approval or rejection of that application by the FCC and for review by the courts. The application by the Bell operating company must state with particularity the nature and scope of the activity and each product market or service market, as well as the geographic market for which in region interLATA authorization is sought. Within 90 days of receiving an application, the FCC must issue a written determination, after notice and opportunity for a hearing on the record, granting or denying the application in whole or in part. The FCC is required to consult with the Attorney General regarding the application during that 90 day period. The Attorney General may analyze a Bell operating company application under any legal standard (including the Clayton Act, Sherman Act, other antitrust laws, section VIII(c) of the MFJ, Robinson-Patman Act or any other standard).

The FCC may only grant an application, or any part of an application, if the FCC finds that the petitioning Bell operating company has fully implemented the competitive checklist in new section 255(b)(2), that the interLATA services will be provided through a separate subsidiary that meets the requirements of new section 252, and that the provision of the requested interLATA services is consistent with the public interest, convenience, and necessity. As noted earlier the FCC is specifically prohibited from limiting or extending the terms used in the competitive checklist, and the Committee intends that the determination of whether the checklist has been fully implemented should be a straightforward analysis based on ascertainable facts. Likewise, the Committee believes that the FCC should be able to readily determine if the requested services will or will not be provided through a separate subsidiary that meets all of the requirements of section 252. Finally, the Committee notes that the FCC's determination of whether the provision of the requested interLATA services is consistent with the public interest, convenience, and necessity must be based on substantial evidence on the record as a whole.

The Committee believes that the application of heightened judicial scrutiny of the substantial evidence standard to the public interest determination, as opposed to the lesser arbitrary and capricious standard, promotes competition and prevents anti-competitive behavior. The public interest, convenience, and necessity standard is the bedrock of the 1934 Act, and the Committee does not change that underlying premise through the amendments contained in this bill. However, in order to prevent abuse of that standard, the Committee has required the application of greater scrutiny to the FCC's decision to invoke that standard as a basis for approving or denying an application by a Bell operating company to provide interLATA services. In addition, the Committee believes that the use of the substantial evidence standard is in the best interests of the parties and the public, in that it should reduce litigation and intervention by the courts by requiring the FCC to clearly articulate the evidence underlying any decision to grant or deny an application.

Subsection (c) also requires a Bell operating company which is authorized to provide interLATA services under this subsection to provide intraLATA toll dialing parity throughout the market in which that company is authorized to provide interLATA service. In the event that the FCC finds that the Bell operating company has not provided the required intraLATA toll dialing parity, or fails to continue to provide that parity (except for inadvertent interruptions that are beyond the control of the Bell operating company), then the FCC shall suspend the authorization to provide interLATA services in that market until that company provides or restores the required intraLATA toll dialing parity. Lastly, subsection (c) provides that a State may not order a Bell operating company to provide intraLATA toll dialing parity before the company is authorized to provide interLATA services in that area.

Bell operating companies (including any subsidiary or affiliate) are permitted under new section 255(d) to provide interLATA telecommunications services immediately upon the date of enactment of the bill if those services originate in any area in which that Bell operating company is not the dominant provider of wireline telephone exchange service or exchange access service.

New subsection 255(e) establishes the rules for the provision by a Bell operating company of in region interLATA services that are incidental to the provision of specific services listed in paragraph (1) of subsection (e). This list of specific services is intended to be narrowly construed by the FCC. A Bell operating company must first obtain authorization under new section 255(c) before it may provide any in region interLATA services not listed in subsection (e)(1). In addition, the Bell operating company may only provide the services specified in subparagraphs (C) and (D) of subsection (e)(1), which in general are commercial mobile services and information storage and retrieval services, through the use of telecommunications facilities that are leased from an unaffiliated provider of those services until the Bell operating company receives authority to provide interLATA services under subsection (c). Finally, subsection (e) requires that the provision of incidental services by the Bell operating company shall not adversely affect telephone exchange ratepayers or competition in any telecommunications market. The Committee intends that the FCC will ensure that these requirements are met.

The terms "interLATA", "audio programming services", "video programming services", and "other programming services" are defined in new section 255(f).

Subsection (b) of section 221 of the bill removes the equal access requirements imposed by the MFJ on the provision of commercial mobile services by Bell operating companies or their subsidiaries or affiliates. This section applies only to the restriction imposed by the MFJ, and is not intended to waive or modify any requirement imposed by the FCC under the 1934 Act. This subsection also prohibits a Bell operating company or any subsidiary or affiliate from blocking access by subscribers to the interexchange carrier of their choice through an access code.

Sec. 222. Removal of manufacturing restrictions

Section 222 of the bill adds a new section 256 to the 1934 Act entitled "Regulation of Manufacturing by Bell Operating Companies". Based in large part on S. 173, introduced by Senator Hollings and others in the 102d Congress and approved by the Senate on June 3, 1991, this new section removes the restrictions on manufacturing imposed by the MFJ on the Bell operating companies under certain conditions, and allows those companies to engage in manufacturing subject to certain safeguards.

New section 256(a) permits a Bell operating company, through a separate subsidiary that meets the requirements of new section 252, to engage in the manufacture and provision of telecommunications equipment and the manufacture of customer premises equipment (CPE) as soon as that company receives authorization to provide in region interLATA services under new section 255(c). This linkage promotes competition and economic efficiency by providing incentives for the Bell operating company to meet the requirements of section 255 while providing greater certainty to the Bell company with respect to when it can enter the restricted lines of business.

Subsection (b) of new section 256 requires that a Bell operating company engaged in manufacturing may only do so through a separate subsidiary that meets the requirements of new section 252.

New section 256(c) is intended to ensure that a Bell operating company continues to make available to local exchange carriers telecommunications equipment and any software integral to that equipment that is manufactured by the Bell operating company's subsidiary as long as there is demand for that equipment. In addition, subsection (c) prohibits a Bell operating company from discriminating among local exchange carriers with respect to bids for services or equipment, establishing standards or certifying equipment, or the sale of telecommunications equipment and software. A Bell operating company and any entity that the company owns or controls also is required to protect any proprietary information submitted to it with contract bids or with respect to establishing standards or certifying equipment, and may not release that information to anyone unless specifically authorized to do so by the owner of the proprietary information.

The Committee intends that the manufacturing subsidiary's obligation to sell telecommunications equipment to an unaffiliated local telephone exchange carrier is a reciprocal one. This obligation may only be enforced on the manufacturing subsidiary if the local telephone company either does not manufacture equipment (by itself or through an affiliated entity), or it agrees to make available to the Bell operating company any telecommunications equipment (including software integral to such equipment) that the local telephone company manufactures (by itself or through an affiliated entity) without discrimination or self-preference as to price, delivery, terms, or conditions.

New section 256(d) permits a Bell operating company or its subsidiaries or affiliates to engage in close collaboration with any manufacturer of customer premises equipment or telecommunications equipment not affiliated with the Bell operating company during the design and development of hardware, software, or combinations thereof related to customer premises equipment or telecommunications equipment. This section is not intended to provide a waiver of applicable antitrust laws; rather it is intended to make clear that such close collaboration is necessary to permit the interconnection of networks and the interoperability of equipment, and should not in and of itself be considered an anticompetitive activity.

Subsection (e) of new section 256 simply authorizes the FCC to prescribe such additional rules and regulations as the FCC determines necessary to carry out the provisions and purposes of section 256.

Administration and enforcement of new section 256 are provided for in subsection (f) of that section. Paragraph (1) of new subsection 256(f) makes clear that the FCC has the same authority, power, and functions with respect to the Bell operating company as it has with respect to enforcement or administration of title II for any other common carrier subject to the 1934 Act. Paragraph (2) allows any local exchange carrier injured by an act or omission of the Bell operating company or its manufacturing subsidiary which violates the requirements of new section 256 to bring a civil action in any U.S. District Court to recover the full amount of any damages and to obtain any appropriate court order to remedy the violation. In the alternative, the local exchange carrier may seek relief from the FCC pursuant to sections 206 through 209 of the 1934 Act.

New section 256(g) makes clear that nothing in new section 256 is intended to change the status of Bell Communications Research (Bellcore). Bellcore was created by the MFJ and is owned jointly and equally by the seven Regional Bell operating companies. It provides a centralized organization for the provision of engineering, administrative, and other services. One such service is providing a single point of contact for coordination of the Bell operating companies to meet national security and emergency preparedness requirements. The Committee does not intend to disrupt Bellcore's current activities.

New section 256 also does not authorize Bellcore to do anything more than it is authorized to do today. Subsection (g) specifically states that nothing in this section permits Bellcore or any successor entity that is jointly owned by any of the Bell operating companies, to manufacture or provide telecommunications equipment or manufacture CPE. Accordingly, the Committee intends that Bellcore will continue to be barred from engaging in any activities which fall within the scope of the MFJ manufacturing prohibition, as it has been construed by the courts (i.e. product design and development, as well as the fabrication of telecommunications equipment and CPE).

Finally, subsection (h) of new section 256 provides definitions of "customer premises equipment", "manufacturing", and "telecommunications equipment".

Subsection (b) of section 222 of the bill permits the Bell operating companies to continue to engage in activities in which they were authorized to engage prior to the date of enactment of the bill. The District Court has granted waivers permitting the Bell operating companies and their affiliates to manufacture and provide telecommunications equipment and CPE outside the United States. Neither section 222 of the bill nor new section 256 of the 1934 Act is intended to alter or void such authority.

Sec. 223. Existing activities

Section 223 provides that nothing in this bill is intended to prohibit a Bell company from engaging in any activity authorized by an order pursuant to section VII or VIII(c) of the MFJ entered on or before the date of enactment.

Sec. 224. Enforcement

Section 224 of the bill adds new section 257 to the 1934 Act. New section 257 provides specific penalties for violations of new sections 251, 252, and 255. These penalties are in addition to any other penalties that may be applicable under the 1934 Act or other law.

Subsection (a) of new section 257 establishes civil penalty of up to $1 million dollars per day for a telecommunications carrier that fails to implement any applicable requirements of new sections 251 or 255. This penalty is also applicable to any failure by a telecommunications carrier to comply with the terms of an interconnection agreement approved under section 251. The Committee expects that the FCC or a State will consider the gravity of the offense and the size of the telecommunications carrier involved in establishing the appropriate penalty; however, the Committee expects carriers to faithfully execute their obligations under these sections in order to promote competition, and intends that intentional violations should be severely punished.

New section 257(b) establishes two additional penalties that are applicable only to a Bell operating company that repeatedly, knowingly, and without cause fails to (i) implement an interconnection agreement approved under section 251, (ii) comply with the requirements of that agreement, (iii) comply any applicable separate subsidiary requirements, or (iv) meet its obligations under section 255 for the provision of interLATA services. For repeated intentional violations of the interconnection or separate subsidiary requirements a Bell operating company may be fined up to $500,000,000 by a United States district court of competent jurisdiction. In the case of repeated intentional failure to meet the obligations imposed under section 255 for the provision of interLATA services by a Bell operating company, the FCC may suspend the authorization to provide those services. The Committee intends that these penalties should be used to correct serious anticompetitive behavior by a Bell operating company. The standard of repeatedly, knowingly, and without reasonable cause is not intended to be or to invoke a criminal standard; however, it is intended to be a standard that requires a pattern of action that could not have occurred by mistake or unintentional omission.

New section 257(c) establishes a private right of action in United States district court for any person who is injured in its business or property by violations of this section. The court is permitted to award simple interest on the amount of actual damages from the date that an injured party files its claim with the court.

Subsection (b) of section 224 of the bill amends existing law to permit radio and television advertisements by gambling institutions in any state in which such advertisements or the activity of gambling is not otherwise prohibited.

Sec. 225. Alarm monitoring services

Section 225 amends Part II of Title II of the Communications Act of 1934 (47 U.S.C. 251 et seq.) by adding Section 258 entitled "Regulation of Entry Into Alarm Monitoring," which authorizes a Bell operating company to provide alarm monitoring services three years after the date of enactment if the Bell operating company has been authorized by the FCC to provide in-region interLATA service and requires the FCC to establish rules governing the provision of alarm services by a Bell operating company.

The one exception to this general rule is contained in subsection 258(f). It provides that the limitations of subsections (a) and (b) do not apply to any alarm monitoring services provided by a Bell company that was in that business as of December 31, 1994, as long as certain conditions specified in that subsection are met.

TITLE III—AN END TO REGULATION

Sec. 301. Transition to competitive pricing

Subsection (a) sets forth provisions relating to price flexibility, the elimination of rate-of-return regulation and consumer protection. Paragraph 301(a)(1) directs the FCC and States to provide telecommunications carriers with pricing flexibility for their rates within a year of enactment. It permits the FCC or the States to establish rates for services included in the definition of universal service and the contribution, if any, all carriers must make to the preservation and advancement of universal service.

Subparagraph 301(a)(2) requires the FCC and States to ensure that residential rates remain just, reasonable, and affordable as competition in the provision of telephone exchange service and exchange access service grows. If there is only one carrier providing a service in a market, this section permits the FCC or a State to set the rate for such service if that is required to protect consumers. Under this subsection, a regulation must cease when it is no longer needed to protect consumers. The subsection also requires the FCC to establish cost allocation guidelines for essential telecommunications carriers for the allocation of costs of such carriers' facilities where they are used for universal services and for video programming services, if such allocations are needed to protect consumers.

Subparagraph 301(a)(3) directs the FCC and the States to adopt alternative forms of regulation for Tier 1 companies as part of a plan that includes measures to protect consumers. It specifically directs that such new forms shall not include regulation of the rate of return of those carriers. The new forms of regulation must promote any or all of a specific list of goals. The FCC or the States may apply such alternative forms of regulation to any other telecommunications carrier subject to the 1934 Act. Any such alternative form of regulation must be consistent with preserving and advancing the goals of universal service and other purposes.

Subsection 301(b) provides that any rules adopted by the FCC or a State for the distribution of universal support payments must include a plan for the orderly transition from the system in existence on the date of enactment to the one adopted under this bill. The transition plan must phase in pricing flexibility for essential telecommunications carriers which are also rural telephone companies and require the FCC and States, where permitted by law, to modify any regulatory requirements (including repayments of loans and depreciation of assets) applicable to essential telecommunications carriers to more accurately reflect conditions in a competitive market.

Subsection 301(c) defines the term "subscriber list information" and requires local exchange carriers to provide subscriber list information on a timely and unbundled basis and at nondiscriminatory and reasonable rates, terms and conditions to anyone upon request.

Sec. 302. Biennial review of regulations

This provision adds a new section 259 entitled "Regulatory Reform", to the 1934 Act.

New subsection 259(a) requires the FCC, with respect to its regulations under the 1934 Act, and a Federal-State Joint Board for State regulations, to review in odd-numbered years beginning with 1997 all regulations issued under the 1934 Act or State laws applicable to telecommunications services. It directs further that they shall determine whether competition has made those regulations unnecessary to protect the public interest. Subsection 259(b) requires the FCC to repeal any regulations under the 1934 Act that are found to be no longer in the public interest and directs the Federal-State Joint Board to notify the governor of any State of State regulations it determines are not needed.

Sec. 303. Regulatory forbearance

This section amends the 1934 Act by inserting after section 259 a new section 260 entitled "Competition in Provision of Telecommunications Service.".

New section 260(a) empowers the FCC to forbear from applying any regulations or provision of the 1934 Act to a telecommunications carrier or service, or to a class of carriers or services in any or some geographic areas if the FCC makes certain determinations. They include determinations that: (1) enforcement is not needed to ensure the charges, practices, classifications or regulations of the carrier or carriers are just and reasonable and not unjustly or unreasonably discriminatory; (2) enforcement is not needed to protect consumers; and (3) forbearance is in the public interest.

New section 260(b) directs the FCC, in making its determinations under subsection 260(a), to consider whether forbearance will promote competitive market conditions—including the extent it will enhance competition among providers of telecommunications services. If the FCC determines that forbearance will promote competition among carriers, that finding may form the basis of a finding that forbearance is in the public interest.

Subsection (c) of new section 260 provides that the FCC may not waive the requirements of new section 251(b) or 255(b)(2) until after it determines that those requirements have been fully implemented.

Sec. 304. Advanced telecommunications incentives

Section 304 of the bill is intended to ensure that one of the primary objectives of the bill—to accelerate deployment of advanced telecommunications capability—is achieved. Section 4 of the bill states clearly that this bill is intended to establish a national policy framework designed to accelerate rapidly the private sector deployment of advanced telecommunications. More specifically, the bill's goal is "to promote and encourage advanced telecommunications networks, capable of enabling users to originate and receive affordable, high-quality voice, data, image, graphics, and video telecommunications services."

Section 304 ensures that advanced telecommunications capability is promptly deployed by requiring the FCC to initiate and complete regular inquiries, at least every few years (beginning two years after the date of enactment), to determine whether advanced telecommunications capability (particularly to schools and classrooms) is being deployed in a "reasonable and timely fashion." Such determinations shall include an assessment by the FCC of the availability, at reasonable cost, of equipment needed to deliver advanced broadband capability. If the FCC makes a negative determination, it is required to take immediate action to accelerate deployment. Measures to be used include: price cap regulation, regulatory forbearance, and other methods that remove barriers and provide the proper incentives for infrastructure investment. The FCC may preempt State commissions if they fail to act to ensure reasonable and timely access.

The Committee recognizes that advanced telecommunications capability and networking in the classroom currently is not available to the vast majority of American elementary and secondary school students. For example, a recent study by the U.S. Department of Education indicates that only three percent of U.S. classrooms have Internet access. Section 304 of the bill encourages States and the FCC to utilize regulatory incentives—and in particular, alternative regulation proceedings—as a means to promote the deployment of broadband capability to elementary and secondary schools.

The Committee believes that this provision is a necessary fail-safe to ensure that the bill achieves its intended infrastructure objective. The goal is to accelerate deployment of an advanced capability that will enable subscribers in all parts of the United States to send and receive information in all its forms—voice, data, graphics, and video—over a high-speed switched, interactive, broadband, transmission capability.

Sec. 305. Regulatory parity

This provision sets forth several requirements for the FCC to perform within 3 years of enactment and periodically thereafter. Subsection 305(1) directs the FCC to modify or terminate regulations under Titles II, III or VI of the 1934 Act necessary to implement the changes contemplated by this bill.

Subsection 305(2) similarly directs the FCC, for integrated telecommunications service providers, to take into account any disparate and unique histories and relative market power of such providers in making modifications and adjustments in regulations as appropriate to enhance competition between such providers. In subsection 305(3), the FCC is directed to periodically reconsider any modifications or terminations it has made in order to move to a time when the same set of regulations will apply to the services provided by integrated telecommunications service providers.

Sec. 306. Automated ship distress and safety systems

Section 306 provides that notwithstanding any other provision of the 1934 Act, any ship documented under the laws of the United States operating in accordance with the Global Maritime Distress and Safety System provisions of the Safety of Life at Sea Convention is not required to be equipped with a radio telegraphy station operated by one or more radio officers or operators.

Sec. 307. Telecommunications numbering administration

Section 307 adds a new section 261 to the 1934 Act. New section 261 requires local exchange carriers to provide for number portability and also requires the neutral administration of a nationwide telephone numbering system.

Subsection 261(a) requires that, as of the date of enactment, interconnection agreements reached under section 251 must, if requested, provide for interim number portability.

Interim number portability may require that calls to or from the subscriber be routed through the local exchange carrier's switch. Some method of call forwarding or similar arrangement could be used to satisfy this requirement. The method of providing interim number portability and the amount of compensation, if any, for providing such service is subject to the negotiated interconnection agreement, pursuant to section 251.

Subsection 261(b) provides that final number portability shall be made available, upon request, when the FCC determines that final telecommunications portability is technically feasible. Subsection 261(d) states that the cost of such number portability shall be borne by all providers on a competitively neutral basis.

Congress believes that the implementation of final number portability is an important element in the introduction of local competition. It will require that local exchange carriers, parties seeking interconnection, and manufacturers cooperate in seeking a solution.

Subsection 261(c) of new section 261 requires that all providers of telephone exchange service or exchange access service comply with the guidelines, rules, or plans, of the entity or entities responsible for administering a nationwide neutral number system. This provision is not intended to affect the Commission's ongoing proceeding on numbering administration.

Subsection 261(c)(2) requires that all telecommunications carriers which provide local exchange or exchange access service in the same telephone service area be assigned the same numbering plan area code. This effectively eliminates an overlay of one area code on top of another. This requirement will ensure competitive neutrality so that new entrants in the market will not have to require their subscribers to dial more digits than dialed by subscribers of the incumbent carrier.

Sec. 308. Access by persons with disabilities

Section 308(a) adds a new section 262 to the 1934 Act entitled "Access by Persons with Disabilities." Section 262 requires that manufacturers of telecommunications equipment and customer premises equipment ensure that equipment is designed, developed, and fabricated to be accessible and usable by individuals with disabilities, if readily achievable.

Similarly, providers of telecommunications services must ensure that telecommunications services are accessible to and usable by individuals with disabilities, if readily achievable. In addition, the Commission is required to undertake a study of closed captioning and to promulgate rules to implement section 262. Section 308(b) adds a FCC study of video description.

The Committee recognizes the importance of access to communications for all Americans. The Committee hopes that this requirement will foster the design, development, and inclusion of new features in communications technologies that permit more ready accessibility of communications technology by individuals with disabilities. The Committee also regards this new section as preparation for the future given that a growing number of Americans have disabilities.

Section 262(a) of this new section defines the terms "disability" and "readily achievable." Both definitions are taken from the Americans with Disabilities Act of 1990 ("ADA") (P.L. 101–336). The Committee intends the definition of disability to principally cover individuals with functional limitations of hearing, vision, movement, manipulation, speech, or interpretation of information. The term "readily achievable" means "easily accomplishable and able to be carried out without much difficulty or expense."

New section 262(b) requires manufacturers of telecommunications and customer premises equipment to ensure that such equipment is designed, developed, and fabricated to be accessible to and usable by individuals with disabilities, if readily achievable. The Committee intends this requirement to apply prospectively to such new equipment manufactured after the date for promulgation of regulations by the Commission.

New section 262(c) requires providers of telecommunications service to ensure that such service be accessible to and usable by individuals with disabilities, if readily achievable. The Committee intends this requirement to apply prospectively to such new services provided after the date for promulgation of regulations by the Commission.

New section 262(d) requires that whenever the provisions of subsections (b) and (c) are not readily achievable, the manufacturer of telecommunications and customer premises equipment, or the provider of telecommunications service, shall ensure that such equipment or service is compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, if readily achievable.

New section 262(e) requires the Architectural and Transportation Barriers Compliance Board ("Board") to develop guidelines for accessibility of telecommunications and customer premises equipment and telecommunication service, as lead agency in consultation with the National Telecommunications and Information Administration and the National Institute of Standards and Technology, within 1 year of enactment of this Act. The Board shall periodically review and update such guidelines. The Committee expects that manufacturers of equipment and providers of service will be fully included in this process. The Committee has elsewhere assigned responsibility for promulgating regulations for this new section to the Commission. The Committee envisions that the guidelines developed by the Board will serve as the starting point for regulatory action by the Commission, much as, for example, the Board prepares minimum guidelines on accessibility under section 504 of ADA that serve as the basis for rulemaking by the U.S. Department of Justice.

New section 262(f) requires the Commission to ensure that video programming is accessible through closed captions and that video programming providers or owners maximize the accessibility of video programming previously published or exhibited through the provision of closed captions. This subsection further provides the Commission with authority to exempt various program and providers of video programs from this requirement. In addition, a provider of video programming or program owner may petition the Commission for an exemption from the requirements of this subsection.

This subsection also requires the Commission to undertake a study of the current extent of closed captioning of video programming and of previously published video programming; providers of video programming; the cost and market for closed captioning; strategies to improve competition and innovation in the provision of closed captioning; and such other matters as the Commission considers relevant.

New section 262(g) requires the Commission to prescribe regulations to implement all provisions of this new section, not later than eighteen (18) months after the date of enactment of this Act. As noted above, such regulations shall be consistent with the standards developed by the Board in accordance with section 262(e) of this new section.

New section 262(h) authorizes the Commission to enforce this new section. The Commission shall resolve, by final order, a complaint alleging a violation of this section within 180 days after the date such complaint is filed.

Subsection (b) of section 308 requires that the Commission undertake within 6 months of enactment of this Act a study of the feasibility of requiring the use of video descriptions on video programming in order to ensure the accessibility of video programming to individuals with visual impairments. "Video description" is defined as the insertion of audio narrative descriptions of a television program's key visual elements into natural pauses between the program's dialogue.

Sec. 309. Rural markets

Section 309 adds to the 1934 Act a new section 263 entitled "Rural Markets."

Subsection (a) of section 263 provides that except as provided in new section 251(i)(3) a State may not waive or modify the interconnection requirements of new section 251 of the 1934 Act. A State may adopt statutes or regulations that are no more restrictive than:

(1) to require a commitment by each competing carrier to offer universal service comparable to that available from the rural telephone company for that area and to make service available to all consumers in the area within 24 months of approval, either using the applicant's facilities or through its facilities and resale of another carrier's facilities, and subject to the same terms and conditions and rate structure applicable to the rural telephone company currently providing universal service;

(2) to require approval of an application by a competing telecommunications carrier based on sufficient written public findings and conditions that demonstrate that the approval is in the public interest and will not have a significant adverse impact on users of telecommunications services or on the provision of universal service;

(3) to encourage development and deployment of advanced telecommunications and information infrastructure and services in rural areas; or

(4) to protect the public safety and welfare, ensure the continued quality of telecommunications and information services, or safeguard the rights of consumers.

New section 263(b) of the 1934 Act authorizes the FCC to preempt any State statute or regulation that is inconsistent with the FCC's regulations implementing this section, or that arbitrarily or unreasonably discriminates in the application of the statute or regulation. The FCC must act upon a petition filed for preemption within 180 days after receipt. Pending its decision, the FCC may suspend or modify the application of any applicable State statute or regulation.

Sec. 310. Telecommunications services for health care providers for rural areas, educational providers, and libraries

Section 310 of the bill amends the 1934 Act by adding a new section 264 entitled "Telecommunications Services for Certain Providers." This section is intended to ensure that health care providers for rural areas, elementary and secondary schools, and libraries are able effectively utilize modern telecommunications services in the provision of medical and educational services to all parts of the Nation.

New section 264(a) requires that a telecommunications carrier that is designated as an essential telecommunications carrier under new section 214(d) shall provide telecommunications services necessary for the provision of health care services to any health care provider serving persons who reside in rural areas at rates that are reasonably comparable to rates charged for such services in urban areas. Subsection (a) also requires that any telecommunications carrier shall provide those services included in the definition of universal service to elementary and secondary schools and libraries at rates that are affordable and not higher than the incremental cost to the carrier of such services. In most cases the Committee expects that the incremental cost of such services will be less than the affordable rate established for universal service in that area. However, in those cases in which the incremental rate is greater than the affordable rate for such services, then the Committee intends that support payments, if any, may be used to offset the costs to the carrier of providing such service.

Subsection (b) of new section 264 provides that, if the FCC adopts rules for the distribution of support payments for universal service, then the FCC shall include the amount of support payments reasonably necessary to provide universal service (including any costs related the provision of comparable rates under subsection (a)(1)) to public institutional telecommunications users in any support mechanisms the FCC may establish under new section 253. Public institutional telecommunications users are defined under subsection (d) of new section 264 to mean elementary and secondary schools, libraries, and health care providers (as those entities are defined under subsection (d)).

New section 264(c) requires the FCC to establish rules to enhance, to the extent technically feasible and economically reasonable, the availability of advanced telecommunications and information services to elementary and secondary schools, health care providers, and libraries. In addition, the FCC is required to establish rules to ensure that appropriate requirements and standards are established for telecommunications carriers that connect public institutional telecommunications users to the public switched network, and to determine under what circumstances a telecommunications carrier may be required to connect those users to that network.

Subsection (d) of new section 264 provides definitions of "elementary and secondary schools", "universal service", "health care provider", and "public institutional telecommunications user". The definition of universal service gives the FCC the authority to establish a separate definition of universal service under new section 253(b) for application only to public institutional telecommunications users.

Sec. 311. Provision of pay phone service and telemessaging service

Section 311 of the bill adds a new section 265 to the 1934 Act, to address certain practices of the Bell operating companies with regard to telemessaging and pay phone services. This section is designed to prohibit cross-subsidization between a Bell operating company's telephone exchange or exchange access services and its pay phone and telemessaging services. Existing joint-cost rules are not adequate to prevent such activities.

This section prohibits a Bell operating company from discriminating between affiliated and nonaffiliated pay phone and telemessaging services, under rules set forth by the FCC. These provisions are necessary to ensure the continued participation of small businesses in telemessaging services. The Committee is hopeful that these safeguards will preserve such a competitive environment. If, however, the FCC finds that these safeguards are insufficient, the FCC may require the Bell operating companies to provide telemessaging services through a separate subsidiary.

New section 265 directs the FCC to complete, within 18 months after the date of enactment of the bill, a rulemaking proceeding to prescribe regulations to carry out this new section. The FCC also is directed to determine whether, in order to enforce the requirements of section 265, it is appropriate to require the Bell operating companies to provide pay phone service or telemessaging services through a separate subsidiary that meets the requirements of new section 252, as added to the 1934 Act by section 102 of the bill.

The FCC's rules could include, for example, a prohibition on a Bell operating company's joint marketing of telemessaging and telephone exchange services, unless such a marketing opportunity were also made available to nonaffiliated telemessaging providers on equivalent terms. Prohibited discrimination could also include providing preferential access to customer proprietary network information or network technical information to its own pay phone or telemessaging subsidiary. The rules could also require a Bell operating company to provide the same opportunities for involvement in network planning, design, and implementation to affiliated and nonaffiliated telemessaging providers.

Pay phone services are defined to include the provision of telecommunications service through public or semipublic pay telephones, and includes the provision of inmate phone service in correctional institutions.

Public pay phones are a regulatory anomaly. Public pay phone competition did not emerge until after the AT&T divestiture. By then, the FCC had completed the broad outlines of the framework for regulating the Bell operating company's telecommunications offerings that are competitive with services offered by independent providers. As a result, the regulatory status of public pay phones has been inadequately addressed.

At divestiture, the Bell System public pay phones were assigned to the Bell operating companies. Public pay phones were simply treated as a part of local exchange service because only the local telephone companies provided this service. Similarly, at the time of the FCC's Computer II[2] decisions, Bell operating companies' public pay phones were technologically dependent on central office switch functionality for monitoring and control of all aspects of coin calling (a dependence which largely persists today, but primarily because of Bell operating company choice rather than technological imperative). Public pay phones were, therefore, treated as a "basic service" offering. The Bell operating companies were allowed to bundle both the network access line and the pay station terminal equipment; the Bell operating companies were not required to unbundle the pay station from the central office functionality and network support service, as was done with all other customer premises equipment. Similarly, unlike other customer premises equipment, pay telephone terminal equipment was not deregulated and was not removed from regulated accounts. See Tonka Tools, Inc., FCC 85–269, 58 RR2d 903 (1985).

Shortly after divestiture, technological constraints that had dictated the FCC's treatment of public pay phones in Computer II and the MFJ's assignment of pay phones to the Bell operating companies were overcome. Independent public pay phone providers developed the technology to use onboard microprocessors to replicate in the telephone terminal itself most of the control and supervision functions performed by the central office for Bell operating company public pay phones. The FCC recognized the right of independent public pay phone providers to interconnect these "instrument-implemented" devices to the interstate network. *Registration of Coin Operated Telephone*, FCC 84–270, 57 RR2d 133 (1984). The FCC left to the States the authority to regulate intrastate rates and other terms of interconnection. *Universal Pay Phone Company*, FCC 85–222, 58 RR2d 76 (1986). The States have regulated the rates charged to end users by independent public pay phones providers and the rates charged by Bell operating companies to independent public pay phones providers for the local exchange services the independent public pay phone providers use in offering service to the public.

Independent public pay phone providers have emerged to provide some competition to local exchange company public telephones. But neither Federal nor State legislators or regulators have gone back to reexamine the anomalous "dual regulatory" regime under which pay phone competition has grown. On the one hand, independent public pay phone providers offer their pay phones as deregulated customer premises equipment and purchase local exchange facilities from the telephone company on a tariffed, arm's-length basis. On the other hand, telephone companies offer their public pay phone services as a bundled offering of network services and premises equipment that are totally integrated into local exchange operations. There is thus the incentive and the potential for all the forms of discrimination, cross-subsidy, and leveraging of bottleneck

[2] Amendment of Section 64.702 of the Commission's Rules and Regulations, ("Second Computer Inquiry"), Final Decision, 77 FCC 2d 384 ("Computer II Final Decision"), recon., 84 FCC 2d 50 (1980) ("Computer II Reconsideration"), further recon., 88 FCC 2d 512 (1981), aff'd sub nom. Computer and Communications Indus. Ass'n v. FCC, 693 F.2d 198 (D.C. Cir. 1982), cert. denied, 461 U.S. 938 (1983), second further recon., FCC 84–190 (released May 4, 1984).

facilities that both the divestiture and the FCC's regulatory regime for competitive Bell operating company offerings are supposed to prevent.

Semipublic pay phones are also included within the definition of pay phone services. Although the cost of maintaining a semipublic pay phone is paid for by the location owner, whereas the cost of a public pay phone is borne by the pay phone provider, semipublic pay phones are similar to public pay phones in that both services are offered by the Bell operating companies on a bundled basis and are integrated into local exchange operations. Therefore, semipublic pay phones also are included in new section 265's definition of pay phone service. Section 265 also includes inmate phone systems within the definition of pay phone service.

New section 265 is intended to promote a more evenhanded competitive environment. In order to address the competitive imbalance, the Bell operating companies are prohibited from cross-subsidizing and from preferring or discriminating in favor of their own pay phone operations. The FCC should consider applying to pay phone services the same guidelines designed to prevent cross-subsidy and discrimination in the Bell operating company's offering of other customer premises equipment.[3] Bell operating companies should provide the same treatment to their own and competitors' pay phones with respect to rates, terms, and conditions of interconnection to network facilities and other carrier services on which pay phone operations depend. The FCC is directed to conduct rulemaking proceedings to implement new section 265.

Nothing in Section 265 is intended to limit the authority of the FCC to address these structural issues, or other pay phone related issues, under the existing provisions of the 1934 Act. The Committee believes the FCC already has authority to address these issues. Indeed, a petition requesting the FCC to address these issues has been pending for almost 7 years.[4] Section 265 is intended to ensure that these longstanding problems are addressed.

There may be special issues to be addressed regarding pay phone services. For instance, there may be situations where it is desirable to have public pay phones placed in certain areas where the volume of traffic would not otherwise justify a pay phone. Examples might include some public schools, certain sections of some cities, certain rural areas. Nothing in this section is intended to remove the current authority of the FCC or the States to address these issues, or to prevent the FCC or the States from regulating pay phone service, including the regulation of rates to end users charged by all public phone providers, both independent companies and the Bell operating companies.

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[3] See e.g., In the Matter of Separation of Costs of Regulated Telephone Service From Costs of Nonregulated Activities: Amendment of Part 31, the Uniform System of Accounts for Class A and Class B Telephone Companies, to Provide for Nonregulated Activities and to Provide for Transactions between Telephone Companies and their Affiliated, 104 FCC2d 59 (1986).

[4] In the Matter of the Public Telephone Council, Petition for Declaratory Ruling that Bell Operating Company Pay Telephones are Customer Premises Equipment for Regulatory Purposes, filed July 18, 1988.

TITLE IV—OBSCENE, HARASSING, AND WRONGFUL UTILIZATION OF TELECOMMUNICATIONS FACILITIES

Sec. 401. Short title

Section 401 provides that Title IV of the bill may be cited as the "Communications Decency Act of 1995."

The information superhighway should be safe for families and children. The Committee has been troubled by an increasing number of published reports of inappropriate uses of telecommunications technologies to transmit pornography, engage children in inappropriate adult contact, terrorize computer network users through "electronic stalking" and seize personal information.

Consistent with the Constitution, the provisions of the Communications Decency Act modernize the existing protections against obscene, lewd, indecent or harassing uses of a telephone. These protections are brought into the digital age. The decency provisions increase the penalties for obscene, indecent, harassing or other wrongful uses of telecommunications facilities; protect privacy; protect families from uninvited and unwanted cable programming which is unsuitable for children and give cable operators authority to refuse to transmit programs or portions of programs on public or leased access channels which contain obscenity, indecency, or nudity.

The Communications Decency Act applies to those who knowingly and intentionally create and send prohibited messages or use telecommunications devices to harass an individual. The provisions specifically exclude from liability telecommunications and information service providers and systems operators who are not themselves knowing participants in the making of or otherwise responsible for the content of the prohibited communications.

The provisions seek to encourage telecommunications and information service providers to deploy new technologies and policies which would allow users to control access to prohibited communications. The incorporation of such technology where reasonable and appropriate would be a defense against liability under section 223 for the provision of a telecommunications facility used for a prohibited activity. In addition, telecommunications and information service providers may not be sued for their good faith actions taken to prevent the use of their systems or services for prohibited purposes.

Sec. 402. Obscene or harassing use of telecommunications facilities under the Communications Act of 1934

Section 401 of the bill replaces "telephone" references in section 223 of the 1934 Act to "telecommunications device" and the term "communication" is added to current law references to "conversation." The terms "telecommunications device" and "communication" as well as other additions to section 223 are intended to be flexible enough to provide individuals and children protection against obscene, lewd, lascivious, filthy, indecent or harassing, uses of telecommunications devices. For the purposes of this amendment, the terms "obscene" and "indecent" are separate and distinct standards.

The revisions are intended to accommodate changing technologies. In addition, penalties for section 223 violations are increased from a maximum $50,000 fine and/or six months imprisonment to a maximum $100,000 fine and/or two years imprisonment.

By providing a new defense to liability under Sec. 223 (b), for those services for which a prohibited activity is not a predominant element, the revisions avoid liability to providers of computer services who do not expressly intend to disseminate or display prohibited communications. Nothing in this or other defenses to Sec. 223 are intended to narrow the application of the existing dial-a-porn law or to provide a defense for the person who created and sent the prohibited communication.

Sec. 403. Obscene programming on cable television

Section 403 of the bill amends section 639 of the 1934 Act to increase the maximum fine for transmitting obscene programming on cable television from $10,000 to $100,000.

Sec. 404. Broadcasting obscene language on radio

Section 404 amends existing law to increase the maximum fine for broadcasting obscene language on radio from $10,000 to $100,000.

Sec. 405. Interception and disclosure of electronic communications

Section 405 amends existing law to clarify that all communication including "digital" communication are protected from unauthorized interception. Nothing in this section limits the ability of law enforcement to execute properly authorized wire tap warrants.

Sec. 406. Additional prohibition on billing for toll-free telephone calls

Section 406 of the bill amends section 228(c)(6) of the 1934 Act to add protection against the use of toll free telephone numbers to connect an individual to a "pay-per-call" service. Published reports have indicated that toll free numbers have been used to defeat the blocking of "pay-per-call" numbers by connecting a caller to a "pay-per-call" service after a toll free connection has been made. Households, businesses and other institutions have been billed for "pay-per-call" charges even though "pay-per-call" blocking techniques were used. This provision is intended to stop that practice.

Sec. 407. Scrambling of cable channels for nonsubscribers

Section 407 of the bill adds a new section 640 to the 1934 Act entitled "Scrambling of Cable Channels for Nonsubscribers." This section requires cable television operators to fully scramble or otherwise block upon subscriber request and at no charge to the subscriber, the audio and video portions of programming unsuitable for children.

Sec. 408. Cable operator refusal to carry certain programs

Section 408 amends Title VI of the 1934 Act to give cable operators the authority to refuse to transmit any public access or leased access program or portion of a public access program which contains obscenity, indecency or nudity.

ADDITIONAL VIEWS OF SENATOR BURNS

INTRODUCTION

The bill as reported by the Committee represents an affirmative step forward. Congress plainly needs to quickly resolve the fundamental competitive and technology issues which are affecting the U.S. telecommunications field. This is a critical sector. Policy should not continue to be made by regulators and the Federal courts. It is our responsibility. Through sound legislation, we have the opportunity to foster substantial new investment and domestic jobs creation, while expanding the competitive choices available to all Americans, including rural and small town residents. I am pleased that Chairman Pressler has been willing to move forward with comprehensive telecommunications reform. I believe that this bill is a positive first step.

I do have several concerns with the bill as it now stands, however. First, I share many of the concerns raised by Senators Packwood and McCain, and other colleagues, that the procompetitive changes this bill mandates are too incremental, and too dependent upon subsequent administrative decisionmaking. When it comes to encouraging marketplace competition, greater investment and domestic jobs creation by the private sector, Congress could—and should—do more.

Second, I am concerned about the amendment proposed by Senators Snowe and Rockefeller and adopted by the Committee, which potentially creates a whole new class of preferential telecommunications service entitlements for a diversity of groups, ranging from migrant health centers to hospitals, to potentially, highly controversial community health service clinics. The Snowe/Rockefeller amendment also creates some ambiguity as to its treatment of private education facilities such as religious based schools as well as home schooling, which has grown in popularity in my home state of Montana.

Third, I am concerned about the Kerrey Amendment, which also was adopted by the Committee and endeavors to create special rates and privileges for certain select customers of video channel service.

Fourth, I am uncomfortable with the cable rate regulation language that was contained in the Chairman's mark. In 1992, at a time when we should have encouraged cable companies to enhance their networks and provide additional, new programming, Congress chose instead to tie cable's hands behind its back by rolling back rates and providing regulatory uncertainty. The actions of this Committee provided only limited rate relief for our larger cable operators and virtually no relief for small cable operators.

Fifth, if we are to truly open the telecommunications market to increased competition, we can no longer afford to hold back such participants as the broadcasters by continuing to impose ownership restrictions across the industry. In particular, I believe that we need to eliminate radio's national and local ownership restrictions.

COMPETITION NEEDED NOW

As Senators McCain and Packwood have noted, the bill conditions Bell company entry into long-distance and other competitive endeavors on those firms complying with a "competitive checklist" of nonstructural and other safeguards. I have no quarrel with the need for such safeguards. It is axiomatic that the strength conferred by protected local telephone service markets should not be available to gain unfair advantage in competitive endeavors.

But this bill, by its own terms, removes any protections from local telephone service markets. That having been done—within one year, under this measure—and Bell companies having satisfied the "competitive checklist," they should be allowed to compete then, not at some indefinite future time. Their ability to compete should also not be subject to an ill-defined "public interest" finding by the Federal Communications Commission (FCC). Some FCC approval may be warranted. But the scope of the agency's discretion needs to be limited in the bill or accompanying legislative history. Unless that is done, the opportunity will be created for Bell company rivals to game the regulatory system, in an effort to stave off indefinitely the arrival of genuine competition.

Allowing Bell Companies to compete soon is especially important to residents of rural, less well-populated, and small town America. In these markets, competitive options are few to begin with. The major firms, understandably, prefer to focus on large urban customers, not rural America. If rural America is to benefit from the same competitive options that are routinely available to urban subscribers, that competition will have to come in major part from the telecommunications companies which are already committed to serving these areas.

THE ROCKEFELLER AMENDMENT

Under this amendment, any communications company designated as an "essential carrier" would be obliged to provide "universal service"—presumably at preferential rates—to a number of specified health care institutions. These include medical schools, not-for-profit hospitals, and community health centers. Given the recent announcement by Planned Parenthood, the largest provider of birth control and abortion services in the country, that it would seek to establish a nationwide network of nonprofit neighborhood health facilities, with this one amendment I am afraid the Senate is being inadvertently drawn into an area of high controversy which I, for one, believe we should avoid.

In addition, I am troubled by the potential disparate treatment that this provision may impose on our educational system. I believe the mandate on businesses to provide universal service to schools either fails to consider those educated at private institutions or home schools, or, in the alternative, raises serious questions about the appropriate role of government in mandating such provisions.

I have no disagreement with my colleagues regarding the contribution which advanced telecommunications can make in society.

Where I do part company, however, is the proposal to establish, in effect, an off-budget entitlement program—a system that buries much of the cost of providing telecommunications service to our health and educational systems, in the telephone rates all Americans pay.

I believe that the concerns of my colleagues have been adequately addressed through language in the bill on advanced telecommunications incentives without imposing unnecessary and burdensome mandates on business. The marketplace is already moving in the right direction. Technological progress through competition and deregulation in the marketplace is the appropriate approach to ensuring that our health and education providers share in the National Information Infrastructure.

THE KERREY AMENDMENT

Additionally, I am concerned about the Kerrey amendment that was adopted during Committee consideration of this bill. As initially drafted, section 203 of the bill would have amended Sec. 613(b) of the 1984 Cable Act (47 U.S.C. Sec. 533(b)) to oblige telephone company-affiliate providers of "video platform services" to grant local broadcast stations system access "at rates no higher than the incremental-cost-based rates of providing such access." In effect, the bill would mandate minimal-cost "must carry" for local stations. Given the fact that local broadcast stations are licensed to serve all of their community, and the fact that cable television systems are already under a general "must carry" obligation, this is an appropriate requirement, in my judgment.

Under the Kerrey Amendment, however, entitlement to "incremental-cost-based rates" would be broadened, to include all educational, charitable, and government users. Telephone-affiliated cable systems, in other words, would be required to offer these three additional groups very low-cost channel access. Significantly, this access would not necessarily be conditioned on the programming which these favored groups choose to offer. There is nothing in the Amendment, nor in the underlying law, to prevent a charitable institution from obtaining cheap channels and then using those channels for expanded fund-raising, for example, or to distribute the services of a for-profit affiliate of the charity.

I appreciate the sentiment which motivated this amendment. But Congress simply must place some dietary curb on its continued appetite for free lunches. If cable channel capacity is offered at low rates to charities, schools, government agencies, etc., both direct and opportunity costs are incurred. That is, the cable system must expend some money to make the channel capacity available. And because channel capacity is used for such purposes, it obviously is not available to be used for others.

The cable television industry already is saddled with extensive—and expensive—"PEG-channel" obligations (public, educational, and government). But those obligations figured, of course, in the original franchise bids that cable companies submitted to local franchising authorities. PEG-channels, in short, were part of the winning cable company's initial business case. Here, however, we are simply imposing a similar obligation on telephone-affiliated video service providers—without regard to the demand for such special channels, much less the costs involved.

I do not dispute the possibility that some support, some subsidization of these presumably worthy undertakings might conceivably be warranted. We have no record sufficient to enable us to estimate the need for such support, however. Nor does the Committee hearing record from this year—or last's—provide us with any firm basis for estimating the total magnitude of the costs we are imposing, much less a firm understanding of the specific services we are ostensibly promoting.

Absent such information, I am reluctant to support this amendment which, in effect, nationalizes a fraction of privately capitalized video services facilities and dedicates them to a purpose which is not yet clear.

CABLE RATE DEREGULATION

I am no stranger to the debate on cable rate regulation. In 1992, I was a very vocal opponent of the rate regulation provisions in the Cable Act. I thought it was bad policy then and I think it's still bad policy today, perhaps even more so in the face of increased competition for telecommunications services.

I was pleased to see that the elimination of the cable rate regulation provisions of the 1992 Cable Act were included in the Chairman's discussion draft as late as 24 hours before the markup. I was obviously displeased to see that the provisions had been modified substantially when finally presented to the full Committee.

While still proceeding in the right direction by removing the rate regulation of the upper tier of services, the bill does not go far enough in removing the unnecessary regulations that will hinder cable from competing to its full extent in a much more competitive marketplace. In addition, the "bad actor" provision is just another opportunity for an additional and burdensome bureaucratic process.

Further, I am concerned about the continued rate regulation of the basic tier. Continued rate regulation of the basic tier does not afford the small cable operator relief from the heavy hand of government. In Montana, many of the small cable operators only provide a basic tier of services. As a result, without relief, Montana's small cable operators will not see any significant change.

SILENCING THE VOICE OF BROADCASTERS

In the broadcast marketplace, broadcasters are operating under archaic rules that better suited the 1950's than the 1990's. As we quickly approach the 21st century, it is time that we reevaluate regulations that so strictly govern the broadcast industry. Whether it be cable/television cross-ownership, national ownership limits for radio and TV or the newspaper/broadcast cross-ownership restrictions, yesterday's regulations may not be appropriate for tomorrow's broadcasting marketplace.

It is clear that the broadcast environment today is the most competitive it's ever been and every indication is that this trend will continue. Nothing could be truer than in the radio broadcast arena. Radio must be evaluated in its own light because its characteristics are different than television. Therefore, whatever agreement that may be reached on television should not automatically include the radio broadcast industry.

I firmly believe that we should eliminate radio's national and local ownership restrictions. These limitations hamper the ability of radio broadcasters to provide the best possible service to listeners.

In 1992, the FCC eased the ownership limits somewhat and the modest change has resulted in stronger, more valuable stations. The number of stations "going dark" appears to be leveling off.

In addition, with more than 11,000 radio stations across the country and an average of 25 different radio options to choose from in each market, the objective of increased competition and diversity has been achieved.

In the near future, new competitors will be competing with traditional radio in the audio marketplace. For example, digital satellite will beam 60 or more new audio signals into each market. Thirty audio channels are currently offered by cable programmers.

Radio operators are ready to go the next step and operate without stifling ownership rules. They need total deregulation to allow them to compete in the new digital marketplace.

Finally, I am concerned that the bill as now drafted erects all too many procedural and other obstacles to full and fair competition. In my judgment, once the "competitive checklist" established by this bill is satisfied, local exchange telephone companies should be fully free to compete in any and all fields. Holding the commencement of full competition hostage to administrative decision-making and an ill-defined "public interest" finding by the FCC has serious implications, and those problems need to be speedily resolved.

Companies which undertake to provide high-quality service on a universal access basis should not, in effect, be penalized by Congress in terms of the competitive market opportunities management is free to seek. If local exchange carriers are so penalized, they will have an incentive to abandon the field, to under-invest—in short, to engage in a variety of actions and decision-making that may not further the interest of local telephone subscribers. Congress should seek to foster, not discourage, domestic investment by Bell and other local exchange companies. I am not sure that the complicated, regulatory procedures which this bill contemplates are consistent with that.

Important to realize, moreover, is the fact that many residents in less well-populated parts of the country today have far fewer competitive alternatives. For several years following the Bell System breakup in 1984, for example, only one long-distance carrier (AT&T) chose to write business in the state of Montana. All carriers could terminate calls in the state. But the Montana resident interested in subscribing to MCI, for example, was out of luck.

Fortunately, the market has evolved. But a simple check of "Yellow Pages" listings will show that it has not fully evolved to the point where all Americans have the same broad range of competitive choices. The Washington "Yellow Pages" lists virtually dozens of competing equipment and service providers. Those listings for small town America typically indicate only one provider, the local telephone company. If that local phone company is unable to offer new services, the likelihood is small that other companies will rush to the market to satisfy demand.

Rural and small town Americans are just as entitled to the full benefits of competition in communications as anyone else. Providing them with those full benefits depends in large measure on our allowing the local telephone companies greater flexibility to compete. While this bill makes positive steps in some regards, by relaxing restrictions on cable television service competition in smaller communities, it could do more.

ADDITIONAL VIEWS OF SENATOR HOLLINGS

The bill that the Committee has approved achieves several important objectives. It ensures that universal telephone service is available and affordable, it promotes competition in telecommunications markets, and it restores regulatory authority over the communications industry to the Federal Communications Commission (FCC). The basic thrust of the bill is clear: competition is the best regulator of the marketplace, but until that competition exists, monopoly providers of services must not be able to exploit their monopoly power to the consumer's disadvantage. Competitors are ready and willing to enter new markets, as soon as they are opened.

Competition is spurred by the bill's provisions specifying the criteria for entry into various markets. For example, on a broad scale, cable companies soon will provide telephony, and telephone companies will offer video services; consumers will purchase local telephone service from several competitors, and vice versa; electric utility companies will offer telecommunications services; and the Regional Bell Operating Companies (RBOCs) will engage in manufacturing activities, all fostering competition to each other and creating jobs along the way. We should not attempt to micromanage the marketplace; rather, we must set the rules in a way that neutralizes any party's inherent market power, so that robust and fair competition can ensue. This is Congress' responsibility, and so the bill transfers jurisdiction over the Modified Final Judgment (MFJ) from the courts to the FCC.

UNIVERSAL SERVICE

The need to protect and advance universal service is addressed by the bill's requirements that all telecommunications carriers must contribute to a universal service fund. A Federal-State Joint Board will define universal service, and this definition will evolve over time as technologies change so that consumers have access to the best possible services. Special provisions in the legislation address universal service in rural areas, to guarantee that harm to universal service is avoided there. Universal service must be guaranteed; the world's best telephone system must continue to grow and develop, and we must attempt to ensure the widest availability of telephone service.

RBOC ENTRY INTO LONG DISTANCE

Earlier draft versions of the bill set a "date certain" for entry by the RBOCs into the long distance market. Under this nonsensical approach, the calendar rules. This does not take into account the competitive circumstances in the marketplace. The bill approved by the Committee specifies that the FCC may approve any application to provide long distance if it finds that (1) the RBOC has fully implemented the unbundling features specified in the competitive checklist found in new section 255 of the Communications Act of 1934; (2) the RBOC will provide long distance using a separate subsidiary; and (3) the application is consistent with the public interest, convenience and necessity. The public interest test is fundamental to my support for the legislation. In making its public interest evaluation, the FCC is instructed to consult with the Department of Justice (DOJ), which may furnish the FCC with advice on the application using whatever standard it finds appropriate (including antitrust analysis under the Clayton and Sherman Acts, or section VIII(C) of the MFJ).

This is a great leap from the "actual and demonstrable competition" test originally proposed in the last Congress. While I myself would have preferred a more active DOJ role and an explicit reference to the VIII(C) test, I can support this regime because the FCC will have the benefit of DOJ's views prior to making any decision. The DOJ may well decide to base its decision on whether there is a substantial possibility that the RBOC will impede competition through use of its monopoly power. In addition, the bill requires that an RBOC must provide long distance using a subsidiary separate from itself, to avoid any cross-subsidization between local and long distance rates. These and other safeguards in the bill should prevent against RBOC abuses.

CABLE RATE DEREGULATION

The Committee-approved bill includes some deregulation of rates for cable television; the Democratic proposal did not suggest any such deregulation. From 1986 until 1992, cable rates rose three times faster than the rate of inflation. In response to enormous numbers of consumer complaints about excessive rates and poor service, the Congress in 1992 imposed rate regulation and new service standards on cable operators. Since the 1992 Act was adopted, the cable industry has experienced significant growth: subscribership is up, stock values of cable operators have risen dramatically, and debt financing by the cable industry rose in 1994 by almost $4 billion over 1993 levels. Yet some in the industry maintain that cable regulation produces uncertainty in financial markets, and that cable operators face increased competition and will need to be able to respond to new competitors through additional revenues.

The bill approved by the Committee changes the standard of regulation for the upper tiers of cable programming and makes no change in the regulation of the basic tier. Under the bill, a rate for the upper tier cannot be found to be unreasonable unless it "substantially exceeds the national average rate for comparable" cable programming. This standard will allow cable operators greater regulatory flexibility for the upper tiers. The bill retains the FCC's authority to regulate the most egregious rates charged for the upper tiers.

In addition, the bill changes the definition of "effective competition" in the 1992 Act to allow cable rates to be deregulated as soon as a telephone company begins to offer competing cable service in a franchise area. Once consumers have a choice among cable offerors, the need for regulation diminishes.

BROADCAST ISSUES

Earlier drafts of the legislation suggested by the Chairman and other Republican members would have eliminated many FCC regulatory limits on the broadcast industry. By contrast, the Democratic proposal mandated that the FCC conduct a proceeding to review the desirability of changing these rules.

The bill as approved by the Committee increases the ability of any entity, including television networks, to own more broadcast stations. The FCC currently allows an entity to own broadcast stations that reach no more than 25 percent of the Nation's population; the bill would increase that level to 35 percent. In addition, the bill repeals the prohibition on cable broadcast cross-ownership. The legislation makes no change in the other broadcast cross-ownership rules (such as the duopoly rule and the one-to-a-market rule); rather, than FCC is instructed to review these rules every two years.

Any modification in the national ownership cap is important because of localism concerns. Local television stations provide vitally important services in our communities. Because local programming informs our citizens about natural disasters, brings news of local events, and provides other community-building benefits, we cannot afford to undermine this valuable local resource.

POLE ATTACHMENTS

The bill also makes significant changes in the laws affecting the rates charged for the use of telephone and utility poles. The current law sets the rates charged to cable companies for using these poles. The new language in the bill expands the scope of the provisions to include other providers of telecommunications services. The purpose of the provisions is to ensure that all users pay the same amount. The bill language also changes the formula for determining the amount of payment. The utilities and the telephone companies continue to express concern that the revised formula will not compensate them adequately for their costs of building and maintaining the poles. I understand and appreciate these concerns. It is my hope that the various parties interested in this provision are able to agree on some common language on this issue before the bill reaches the floor of the Senate.

CONCLUSION

This comprehensive bill strikes a balance between competition and regulation. New markets will be opened, competitors will begin to offer services, and consumers will be better served by having choices among providers of services. While I would go further in several areas covered by the legislation, I believe that this is an equitable approach to most of the major issues in the bill.

MINORITY VIEWS OF SENATORS PACKWOOD AND McCAIN

Congress has a golden opportunity to open the door to a proliferation of new and improved information technology and services. To open the door, Congress must create free and open markets. The proposed "Telecommunications Deregulation and Competition Act of 1995" heads in the right direction, but does not go far enough.

BENEFITS OF DEREGULATION

Deregulation has a clear and consistent track record. In virtually every case, consumers have benefited from lower prices, better services and increased choices. For example, deregulation of the airlines in 1978 has made air travel affordable for millions of Americans. Deregulation of the trucking industry in 1980 has saved consumers billions of dollars in freight costs. Deregulation saved the rail industry from bankruptcy in 1980.

Deregulation benefits big and small competitors alike. Experience shows that a deregulated market is not long dominated by a few giants, but rather that competitors come along and devise ways to run circles around the giants. The giants are forced to become quicker and more agile if they wish to survive.

TELECOMMUNICATIONS DEREGULATION AND COMPETITION ACT OF 1995

First, the bill adopted by the Committee will force the federal government to churn out more regulations and hire more bureaucrats. As the following chart shows, the bill mandates 87 new regulatory proceedings.

Second, the bill does not guarantee free and open markets. The goal of Congress should be to ensure that every segment of the communications industry, whether it be long distance, cable or local telephone, will be subject to competition in its own market and free to compete in other markets. Under this bill, the long distance and manufacturing markets will not be fully open until the Federal Communications Commission decides that it is in the "public interest, convenience and necessity" to allow the Regional Bell Operating Companies to provide long distance and manufacturing. This standard gives the Federal Communications Commission broad authority to keep a bell company out of the long distance and manufacturing markets even if the Bell company has complied with all of the other requirements contained in the bill (i.e. interconnection, unbundling, number portability and separate subsidiary).

We support a calendar deadline by which all markets must be open to any competitor. Without a "date certain" there is no guarantee markets will be opened. Anything less than a date certain will allow any competitor who benefits from artificial entry barriers to game the regulatory process. Whether or not open markets are in the "public interest, convenience and necessity" can be argued endlessly at the Federal Communications Commission and in the courts. Such a delay may benefit competitors, but not consumers.

Delay will hinder job creation. In fact, a recent study by WEFA Associates (formerly Wharton Econometric Forecasting Associates) predicts that if Congress were to pass legislation that simultaneously opened all communications markets to competition on January 1, 1996, we would create 2.1 million new jobs by the year 2000. The study also found that delaying full competition by three years could cost 1.5 million new jobs by the year 2000.

There was a time when Congress could create, through regulation, orderly and predictable markets in which all competitors succeeded. That time has passed. Today and in the future, rapidly changing technology will determine the relative strength and weakness of various competitors. As Peter Huber, Senior Fellow at the Manhattan Institute for Policy Research, recently testified before the Committee, we are entering a world where: "Sooner or later, consumers will dial up video on their telephones, place phone calls through their television, and be entertained by their computers." Such developments will provide endless opportunities for competitors. However, it won't be easy to predict winners and losers. George Gilder, Senior Fellow at the Discovery Institute, may have been right when he recently wrote: "All we know is that none of the existing rivals is likely to survive in recognizable form."

Third, the bill contains no guaranteed end to regulation. In fact, not a single provision in the bill would ever automatically "sunset." Instead, Section 303 of the bill would allow the Federal Communications Commission to eliminate regulation only if it chooses.

Regulators are not the best judge of when regulation is no longer needed. Congress has entrusted regulators before with the task of deregulating: Years ago Congress gave the Interstate Commerce Commission authority to eliminate regulation. So disappointing were the results that Congress was forced to intervene, as it will likely do again later this year.

Fourth, the bill gives the Federal Communications Commission virtually unlimited authority to mandate subsidies for telecommunication services. We support the goals of affordability and universality for necessary telecommunications services. However, it is unwise to grant any agency such an open-ended mandate.

Fifth, the bill fails to eliminate cable rate regulation. Section 204 of the bill would require the Federal Communications Commission to regulate cable rates which substantially exceed the national average. This is essentially an open invitation for the Federal Communications Commission to continue business as usual.

Congress made a terrible mistake in 1992 when it reregulated the cable industry. According to the Economics Resource Group, investments in cable companies have significantly declined as a result of reregulation. Investment from venture capital sources has declined from $712 million in 1992 to $89 million in 1994. Investment from stock offerings has declined from $640 million in 1992 to $163 million in 1994. Investment is critical if cable companies are to upgrade and improve the quality of programming. Cable companies could deliver 500 or more channels to each home if cable companies have the resources to invest in new technologies.

CONCLUSION

The proposed "Telecommunications Deregulation and Competition Act of 1995" is a positive first step. Congress can and should improve the bill. Specifically, Congress should: (1) reduce the number of new regulatory proceedings the bill will require, (2) establish a deadline for fully opening all communications markets, (3) guarantee an end to regulation, (4) establish guidelines for subsidized services, and (5) eliminate cable rate regulation.

NEW REGULATIONS IN THE PRESSLER TELECOMMUNICATIONS "REFORM" BILL—AT LEAST 135 RULEMAKING ACTIONS IN AS MANY AS 87 PROCEEDINGS

LOCAL COMPETITION

1. Minimum standards for interconnection: unbundle network functions, unbundle network facilities, interconnection at any point, equal access to interconnection, access to poles, conduits and rights of way, number portability, local dialing parity, resale of local service, and compensation arrangements.
2. Collocation requirements.
3. Cost allocation regulations.
4. Rules to implement interconnection requirements.
5. State process for approval of interconnection agreements.
6. State proceedings to consider petitions to intervene.
7. State requirements to further competition.
8. State regulatory action to settle unresolved interconnection issues.
9. ICC rules for State arbitration/intervention.
10. Institution of fines for willful failure to comply with interconnection requirements.
11. FCC/State consideration of waivers for small companies.
12. FCC preemption of states on: interconnection; rural regulation; removal of local barriers to entry.
13. State regulation in rural areas: common carrier obligation for new entrants; public interest determination for new competition.
14. FCC guidelines on neutral administration of numbering plans.
15. Rules on carriers providing subscriber lists to competitors.

SEPARATE SUBSIDIARY REQUIREMENTS AND OTHER SAFEGUARDS

16. Definition of covered services.
17. Structural and transactional requirements: separate officers, directors, employees, books, records, and accounts; nonrecourse credit; arms length affiliate transactions.
18. Nondiscrimination safeguards: procurement policies; terms and conditions of sales and contracts; accounting requirements.
19. Determine exceptions to separate subsidiary requirements.
20. Rules prohibiting joint marketing.
21. Rules on use of proprietary information.
22. Rules to implement separate subsidiary requirements.
23. States determine whether public utilities have to comply.
24. Special rules for BOC provision of pay phone and telemessaging services.

UNIVERSAL SERVICE

25. Joint Board proceeding to recommend rules for revising Universal Service (USvc) policies.

26. Review of USvc policies every four years.

27. FCC implements new USvc policies, definition of universal service, who contributes to USvc support, type of USvc contribution, and eligibility to receive USvc support.

28. Rules to ensure geographic toll rate averaging.

29 FCC/State rules to prevent cross-subsidization: cost allocation; accounting safeguards; joint and common cost assignments.

30. FCC/State proceedings to identify essential telecommunications carriers (ECs): service and rate requirements imposed on ECs; process for designating more than one EC per area; rules for customer switching ECs; rules for resale of USvc to ensure compensation; rules to permit ECs to relinquish responsibilities; penalties and fines for not providing timely USvc.

31. FCC identifies EC for interexchange service: geographically averaged toll rates; penalties and fines for not providing service.

32. FCC rules to guide State implementation.

33. State regulation to further universal service policies.

34. FCC/State transition plans for distribution of USvc support payments.

35. FCC inquiry into availability of advanced services.

36. Rules requiring provision of USvc to public and non-profit entities: elementary and secondary schools; post-secondary educational institutions; libraries; community health centers; local health departments or agencies; community mental health centers; non-profit hospitals; rural health clinics; and health consortia.

37. Rules to enhance availability of advanced services to public and non-profit entities: interoperability standards; requirements for carriers to connect to entities.

INFRASTRUCTURE SHARING

38. Rules for sharing infrastructure with qualifying carriers: terms and conditions of sharing arrangements; guidelines on reasonable availability of infrastructure; limitations on use of shared infrastructure; filing of sharing arrangements with FCC and state.

39. Rules for providing information on planned infrastructure deployment.

40. Certification of qualifying carriers.

PUBLIC ACCESS

41. Rules to ensure equipment and services are accessible to the disabled and compatible with special equipment for disabled use.

42. Standards for accessibility.

43. Requirement for closed captioning of video programming.

44. FCC study of availability of closed captioning.

45. Rules to implement public accessibility.

46. Enforcement procedures to resolve complaints.

47. FCC study on requiring use of audio descriptions on video programming.

48. FCC regulation to prohibit obscene, harassing, and wrongful utilization of telecommunications facilities.

CABLE/TELCO

49. Rules governing common carrier provision of video programming services and facilities.
50. Rules on terms of access and rates for local broadcasters, public, educational, and government entities on telco video platforms.
51. Safeguards for telco provision of video programming: ensure subscriber access to broadcast TV stations; nondiscrimination among video programming providers; copyright protection of programming; reasonable rates for carriage; extension of network nonduplication and syndicated exclusivity rules; and application of rules to cable broadband system.
52. Ensure nondiscriminatory access to poles, conduits, or rights of way controlled by utilities.
53. Ensure utilities charge just and reasonable rates for pole attachments.
54. FCC dispute resolution procedures for telco video programming.
55. Standards for unreasonable cable rates.
56. Rules on nondiscriminatory cable programming rates.

ELECTRIC UTILITY TELECOMMUNICATIONS

57. FERC and state regulation to prohibit cross-subsidization.
58. FERC and state rules to require separate books and accounting.
59. States request independent audits of utility communications affiliate transactions.

MANUFACTURING

60. Determination of what constitutes research and design activities.
61. Rules on engaging in R&D and participating in royalty agreements.
62. Regulations requiring BOC manufacturing entities to make equipment available to other LECs: nondiscrimination terms and conditions; reciprocal arrangements.
63. Rules to ensure that all BOC procurement and contract awards are made on open competitive basis.
64. Ensure nondiscriminatory standards setting.
65. Rules governing continued supply of equipment, including software and upgrades, to other LECs.
66. Ensure that BOCs protect all proprietary information revealed in bids or contracts.
67. Rules to implement BOC collaboration with other manufactures.
68. Other regulations necessary to govern BOC manufacturing.
69. FCC administration and enforcement of manufacturing regulations.
70. Proceeding to clarify Bellcore permitted activities.

INTERLATA LONG DISTANCE

71. Approval process for in-region relief based on interconnection agreement meeting 14-point competitive checklist: nondiscrim-

inatory, unbundled access; capability to exchange customers between carriers; access to poles, ducts, conduits, and rights-of-way; unbundled local loop transmission; unbundled local transport; unbundled local switching; access to emergency, directory assistance, and operator services; access to white page directory listings; access to telephone numbers for reassignment; access to databases and signing functions; number portability; local dialing parity; and unbanded network functions.

72. Regulations governing BOC provision of incidental interLATA services: commercial mobile; information services; audio programming; and video programming.

73. Ensure provision of incidental interLATA service does not adversely affect local ratepayers or competition in any telecom service market.

74. Regulations governing BOC provision of out-of-region long distance: determine areas in which BOC is not dominant provider.

75. Certification process to determine whether BOC has met interconnection requirements.

76. Develop process and criteria for making application for interLATA authority.

77. Develop process for reaching determination on BOC applications that allows for full public participation and makes findings on: public interest; interconnection requirements; separate subsidiary requirements.

78. Determine whether intraLATA toll dialing parity has been implemented by BOC:

monitor provision of intraLATA toll dialing parity; and
action taken if parity not maintained.

79. Regulations governing provision of BOC in-region interLATA services.

80. Rules for nondiscrimination in BOC provision of access services.

81. Rules for long distance access for commercial mobile services.

ALARM MONITORING

82. Determine permitted alarm monitoring services.

83. Determine whether BOC provision of alarm monitoring services is in public interest.

84. Requirements, limitations or conditions on providing alarm monitoring services.

85. Adopt procedures for receipt and expedited review of complaints.

86. Institute remedies to terminate and punish violations.

87. Regulations to enforce requirements on provision of alarm monitoring service.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1994, the Committee finds it impracticable to comply with the requirements of such paragraph in order to expedite the business of the Senate.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

ROLLCALL VOTES IN COMMITTEE

In accordance with paragraph 7(c) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following description of the record votes during its consideration of S. —:

Senator Snowe (for herself, Mr. Rockefeller, Mr. Exon, and Mr. Kerry) offered an amendment to provide universal service to certain healthcare providers, educational institutions, and libraries. By rollcall vote of 10 yeas and 8 nays as follows, the amendment was adopted:

YEAS—10	NAYS—8
Ms. Snowe	Mr. Pressler
Mr. Hollings	Mr. Stevens [1]
Mr. Inouye [1]	Mr. McCain [1]
Mr. Ford	Mr. Burns
Mr. Exon [1]	Mr. Gorton
Mr. Rockefeller	Mr. Lott
Mr. Kerry	Mrs. Hutchison
Mr. Breaux	Mr. Ashcroft
Mr. Bryan [1]	
Mr. Dorgan [1]	

[1] By proxy

At the close of debate on S.—, the Chairman announced a rollcall vote on the bill. On a rollcall vote of 17 yeas and 2 nays as follows, the bill was ordered reported:

YEAS—17	NAYS—2
Mr. Stevens	Mr. Packwood
Mr. Burns	Mr. McCain [1]
Mr. Gorton	
Mr. Lott	
Mrs. Hutchison	
Ms. Snowe	
Mr. Ashcroft	
Mr. Hollings	
Mr. Inouye	
Mr. Ford	
Mr. Exon [1]	
Mr. Rockefeller	
Mr. Kerry	
Mr. Breaux	
Mr. Bryan	
Mr. Dorgan	
Mr. Pressler	

[1] By proxy

Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934

TITLE I—GENERAL PROVISIONS

Part I—General Provisions

SEC. 2. APPLICATION OF ACT.

(a) The provisions of this act shall apply to all interstate and foreign communication by wire or radio and all interstate and foreign transmission of energy by radio, which originates and/or is received within the United States, and to all persons engaged within the United States in such communication or such transmission of energy by radio, and to the licensing and regulating of all radio stations as hereinafter provided; but it shall not apply to persons engaged in wire or radio communication or transmission in the Canal Zone, or to wire or radio communication or transmission wholly within the Canal Zone. The provisions of this Act shall apply with respect to cable service, to all persons engaged within the United States in providing such service, and to the facilities of cable operators which relate to such service, as provided in title VI.

(b) Except as provided in **[**sections 223 through 227, inclusive, and section 332,**]** *section 214(d), sections 223 through 227, part II of title II, and section 332,* and subject to the provisions of section 301 and title VI, nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier, or (2) any carrier engaged in interstate or foreign communication solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (3) any carrier engaged in interstate or foreign communication solely through connection by radio, or by wire and radio, with facilities, located in an adjoining State or in Canada or Mexico (where they adjoin the State in which the carrier is doing business), of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (4) any carrier to which clause (2) or clause (3) would be applicable except for furnishing interstate mobile radio communication service or radio communication service to mobile stations on land vehicles in Canada or Mexico; except that sections 201 through 205 of this Act, both inclusive, shall, except as otherwise provided therein, apply to carriers described in clauses (2), (3), and (4).

SEC. 3. DEFINITIONS.

For the purposes of this Act, unless the context otherwise requires—

(gg) "Modification of Final Judgment" means the decree entered on August 24, 1982, in United States v. Western Electric Civil Action No. 82-0192 (United States District Court, District of Columbia), and includes any judgment or order with respect to such action entered on or after August 24, 1982, and before the date of enactment of the Telecommunications Competition and Deregulation Act of 1995.

(hh) "Bell operating company" means those companies listed in appendix A of the Modification of Final Judgment, and includes any successor or assign of any such company, but does not include any affiliate of such company.

(ii) "Affiliate" means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or the equivalent thereof) of more than 10 percent.

(jj) "Telecommunications Act of 1995" means the Telecommunications Competition and Deregulation Act of 1995.

(kk) "Local exchange carrier" means a provider of telephone exchange service or exchange access service.

(ll) "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, including voice, data, image, graphics, and video, without change in the form or content of the information, as sent and received, with or without benefit of any closed transmission medium.

(mm) "Telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available to the public, regardless of the facilities used to transmit the telecommunications service. The term includes the transmission, without change in the form or content, of information services and cable services, but does not include the offering of those services.

(nn) "Telecommunications carrier" means any provider of telecommunications services, except that such term does not include hotels, motels, hospitals, and other aggregators of telecommunications services (as defined in section 226). A telecommunications carrier shall be treated as a common carrier under this Act to the extent that it is engaged in providing telecommunications services.

(oo) "Telecommunications number portability" means the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.

(pp) "Information service" means the offering of services that—

(1) employ computer processing applications that act on the format, content, code, protocol, or similar aspects of the subscriber's transmitted information;

(2) provide the subscriber additional, different, or restructured information; or

(3) involve subscriber interaction with stored information.

(qq) "Cable service" means cable service as defined in section 602.

(rr) "Rural telephone company" means a telecommunications carrier operating entity to the extent that such entity provides telephone exchange service, including access service subject to part 69 of the Commission's rules (47 C.F.R. 69.1 et seq.), to—

(1) any service area that does not include either—

(A) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recent population statistics of the Bureau of the Census; or

(B) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of January 1, 1995; or

(2) fewer than 100,000 access lines within a State.

(ss) "Service area" means a geographic area established by the Commission and the States for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.

SEC. 214. EXTENSION OF *[LINES.] LINES; ESSENTIAL TELECOMMUNICATIONS CARRIERS.*

(d) IN GENERAL.—The Commission may, after full opportunity for hearing, in a proceeding upon complaint or upon its own initiative without complaint, authorize or require by order any carrier, party to such proceeding, to provide itself with adequate facilities for the expeditious and efficient performance of its service as a common carrier and to extend its line or to establish a public office; but no such authorization or order shall be made unless the Commission finds, as to such provision of facilities, as to such establishment of public offices, or as to such extension, that it is reasonably required in the interest of public convenience and necessity, or as to such extension or facilities that the expense involved therein will not impair the ability of the carrier to perform its duty to the public. Any carrier which refuses or neglects to comply with any order of the Commission made in pursuance of this paragraph shall forfeit to the United States $1,200 for each day during which such refusal or neglect continues.

(2) DESIGNATION OF ESSENTIAL CARRIER.—If one or more common carriers provide telecommunications service to a geographic area, and no common carrier will provide universal service to an unserved community or any portion thereof that requests such service within such area, then the Commission, with respect to interstate services, or a State, with respect to intrastate services, shall determine which common carrier serving that area is best able to provide universal service to the requesting unserved community or portion thereof, and shall designate that common carrier as an essential telecommunications carrier for that unserved community or portion thereof.

(3) ESSENTIAL CARRIER OBLIGATIONS.—A common carrier may be designated by the Commission, or by a State, as appropriate, as an essential telecommunications carrier for a specific service area and become eligible to receive any universal support payments the Commission may allow under section 253. A carrier designated as an essential telecommunications carrier shall—

(A) provide through its own facilities or through a combination of its own facilities and resale of services using another carrier's facilities, universal service and any additional service (such as 911 service) required by the Commission or the State, to any community or portion thereof which requests such service;

(B) offer such services at nondiscriminatory rates established by the Commission, for interstate services, and the State, for intrastate services, throughout the service area; and

(C) advertise throughout the service area the availability of such services and the rates for such services using media of general distribution.

(4) MULTIPLE ESSENTIAL CARRIERS.—If the Commission, with respect to interstate services, or a State, with respect to intrastate services, designates more than one common carrier as an essential telecommunications carrier for a specific service area, such carrier shall meet the service, rate, and advertising requirements imposed by the Commission or State on any other essential telecommunications carrier for that service area. A State may require that, before designating an additional essential telecommunications carrier, the State agency authorized to make the designation shall find that—

(A) the designation of an additional essential telecommunications carrier is in the public interest and that there will not be a significant adverse impact on users of telecommunications services or on the provision of universal service;

(B) the designation encourages the development and deployment of advanced telecommunications infrastructure and services in rural areas; and

(C) the designation protects the public safety and welfare, ensures the continued quality of telecommunications services, or safeguards the rights of consumers.

(5) RESALE OF UNIVERSAL SERVICE.—The Commission, for interstate services, and the States, for intrastate services, shall establish rules to govern the resale of universal service to allocate any support received for the provision of such service in a manner that ensures that the carrier whose facilities are being resold is adequately compensated for their use, taking into account the impact of the resale on that carrier's ability to maintain and deploy its network as a whole. The Commission shall also establish, based on the recommendations of the Federal-State Joint Board instituted to implement this section, rules to permit a carrier designated as an essential telecommunications carrier to relinquish that designation for a specific service area if another telecommunications carrier is also designated as an essential telecommunications carrier for that area. The rules—

(A) shall ensure that all customers served by the relinquishing carrier continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facili-

ties by any remaining essential telecommunications carrier if such remaining carrier provided universal service through resale of the facilities of the relinquishing carrier; and

(B) shall establish criteria for determining when a carrier which intends to utilize resale to meet the requirements for designation under this subsection has adequate resources to purchase, construct, or otherwise obtain the facilities necessary to meet its obligation if the reselling carrier is no longer able or obligated to resell the service.

(6) ENFORCEMENT.—A common carrier designated by the Commission or a State as an essential telecommunications carrier that refuses to provide universal service within a reasonable period to an unserved community or portion thereof which requests such service shall forfeit to the United States, in the case of interstate services, or the State, in the case of intrastate services, a fine of up to $10,000 for each day that such carrier refuses to provide such service. In establishing a reasonable period the Commission or the State, as appropriate, shall consider the nature of any construction required to serve such requesting unserved community or portion thereof, as well as the construction intervals normally attending such construction, and shall allow adequate time for regulatory approvals and acquisition of necessary financing.

(7) INTEREXCHANGE SERVICES.—The Commission, for interstate services, or a State, for intrastate services, shall designate an essential telecommunications carrier for interexchange services for any unserved community or portion thereof requesting such services. Any common carrier designated as an essential telecommunications carrier for interexchange services under this paragraph shall provide interexchange services included in universal service to any unserved community or portion thereof which requests such service. The service shall be provided at nationwide geographically averaged rates for interstate interexchange services and at geographically averaged rates for intrastate interexchange services, and shall be just and reasonable and not unjustly or unreasonably discriminatory. A common carrier designated as an essential telecommunications carrier for interexchange services under this paragraph that refuses to provide interexchange service in accordance with this paragraph to an unserved community or portion thereof that requests such service within 180 days of such request shall forfeit to the United States a fine of $50,000 for each day that such carrier refuses to provide such service. The Commission, or a State, as appropriate, may extend the 180-day period for providing interexchange service upon a showing by the common carrier of good faith efforts to comply within such period.

(8) IMPLEMENTATION.—The Commission may, by regulation, establish guidelines by which States may implement the provisions of this section.

(e) SPECIAL RULE.—No certificate is required under this section for a carrier to construct facilities to provide video programming services.

[SEC. 223. OBSCENE OR HARASSING TELEPHONE CALLS IN THE DISTRICT OF COLUMBIA OR IN INTERSTATE OR FOREIGN COMMUNICATIONS.]

SEC. 223. OBSCENE OR HARASSING UTILIZATION OF TELECOMMUNICATIONS DEVICES AND FACILITIES IN THE DISTRICT OF COLUMBIA OR IN INTERSTATE OR FOREIGN COMMUNICATIONS.

(a) Whoever—

(1) in the District of Columbia or in interstate or foreign communications by means of **[**telephone—**]** *telecommunications device—*

[(A) makes any comment, request, suggestion or proposal which is obscene, lewd, lascivious, filthy, or indecent;**]**

[(B) makes a telephone call, whether or not conversation ensues, without disclosing his identity and with intent to annoy, abuse, threaten, or harass any person at the called number;**]**

(A) knowingly—

(i) makes, creates, or solicits, and

(ii) initiates the transmission of,

any comment, request, suggestion, proposal, image, or other communication which is obscene, lewd, lascivious, filthy, or indecent;

(B) makes a telephone call or utilizes a telecommunications device, whether or not conversation or communications ensues, without disclosing his identity and with intent to annoy, abuse, threaten, or harass any person at the called number or who receives the communication;

(C) makes or causes the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or

[(D) makes repeated telephone calls, during which conversation ensues, solely to harass any person at the called number; or**]**

(D) makes repeated telephone calls or repeatedly initiates communication with a telecommunications device, during which conversation or communication ensues, solely to harass any person at the called number or who receives the communication; or

(2) knowingly permits any **[**telephone**]** *telecommunications* facility under his control to be used for any purpose prohibited by this **[**section,**]** *subsection,*

shall be fined not more than $100,000 or imprisoned not more than 2 years, or both.

(b)(1) Whoever knowingly—

[(A) within the United States, by means of telephone, makes (directly or by recording device) any obscene communication for commercial purposes to any person, regardless of whether the maker of such communication placed the call; or**]**

(A) within the United States, by means of telecommunications device—

(i) makes, creates, or solicits, and

(ii) purposefully makes available,

any obscene communication for commercial purposes to any person, regardless of whether the maker of such communication placed the call or initiated the communication; or

(B) permits any [telephone facility] *telecommunications facility* under such person's control to be used for an activity prohibited by subparagraph (A),

shall be fined in accordance with title 18, United States Code, or imprisoned not more than two years, or both.

(2) Whoever knowingly—

[(A) within the United States, by means of telephone, makes (directly or by recording device) any indecent communication for commercial purposes which is available to any person under 18 years of age or to any other person without that person's consent, regardless of whether the maker of such communication placed the call; or]

(A) within the United States, by means of telephone or telecommunications device,

(i) makes, creates, or solicits, and

(ii) purposefully makes available (directly or by recording device),

any indecent communication for commercial purposes which is available to any person under 18 years of age or to any other person without that person's consent, regardless of whether the maker of such communication placed the call; or

(B) permits any [telephone facility] *telecommunications facility* under such person's control to be used for an activity prohibited by subparagraph (A), shall be fined not more than $100,000 or imprisoned not more than 2 years, or both.

(3) It is a defense to prosecution under paragraph (2) of this subsection that the defendant restricted access to the prohibited communication to persons 18 years of age or older in accordance with subsection (c) of this section and with such procedures as the Commission may prescribe by regulation.

(4) In addition to the penalties under paragraph (1), whoever, within the United States, intentionally violates paragraph (1) or (2) shall be subject to a fine of not more than $100,000 for each violation. For purposes of this paragraph, each day of violation shall constitute a separate violation.

(5)(A) In addition to the penalties under paragraphs (1), (2), and (5), whoever, within the United States, violates paragraph (1) or (2) shall be subject to a civil fine of not more than $100,000 for each violation. For purposes of this paragraph, each day of violation shall constitute a separate violation.

(B) A fine under this paragraph may be assessed either—

(i) by a court, pursuant to civil action by the Commission or any attorney employed by the Commission who is designated by the Commission for such purposes, or

(ii) by the Commission after appropriate administrative proceedings.

(6) The Attorney General may bring a suit in the appropriate district court of the United States to enjoin any act or practice which violates paragraph (1) or (2). An injunction may be granted in accordance with the Federal Rules of Civil Procedure.

(c)(1) A common carrier within the District of Columbia or within any State, or in interstate or foreign commerce, shall not, to the extent technically feasible, provide access to a communication specified in subsection (b) from the [telephone] *telecommunications device* of any subscriber who has not previously requested in writing the carrier to provide access to such communication if the carrier collects from subscribers an identifiable charge for such communication that the carrier remits, in whole or in part, to the provider of such communication.

(2) Except as provided in paragraph (3), no cause of action may be brought in any court or administrative agency against any common carrier, or any of its affiliates, including their officers, directors, employees, agents, or authorized representatives on account of—

(A) any action which the carrier demonstrates was taken in good faith to restrict access pursuant to paragraph (1) of this subsection; or

(B) any access permitted—

(i) in good faith reliance upon the lack of any representation by a provider of communciations that communications provided by that provider are communications specified in subsection (b), or

(ii) because a specific representation by the provider did not allow the carrier, acting in good faith, a sufficient period to restrict access to communications described in subsection (b).

(3) Notwithstanding paragraph (2) of this subsection, a provider of communications services to which subscribers are denied access pursuant to paragraph (1) of this subsection may bring an action for a declaratory judgment or similar action in a court. Any such action shall be limited to the question of whether the communications which the provider seeks to provide fall within the category of communications to which the carrier will provide access only to subscribers who have previously requested such access.

(d) ADDITIONAL DEFENSES; RESTRICTIONS ON ACCESS; JUDICIAL REMEDIES RESPECTING RESTRICTIONS.—

(1) No person shall be held to have violated this section with respect to any action by that person or a system under his control that is limited solely to the provision of access, including transmission, downloading, intermediate storage, navigational tools, and related capabilities not involving the creation or alteration of the content of the communications, for another person's communications to or from a service, facility, system, or network not under that person's control.

(2) It is a defense to prosecution under subsections (a)(2), (b)(1)(B), and (b)(2)(B) that a defendant lacked editorial control over the communication specified in this section.

(3) It is a defense to prosecution under subsections (a)(2), (b)(1)(B), and (b)(2)(B) that a defendant has taken good faith, reasonable steps, as appropriate—

(A) to provide users with the means to restrict access to communications described in this section;

(B) provide users with warnings concerning the potential for access to such communications;

(C) to respond to complaints from those who are subjected to such communications;

(D) to provide mechanisms to enforce a provider's terms of service governing such communications; or

(E) to implement such other measures as the Commission may prescribe to carry out the purposes of this paragraph. Nothing in this section in and of itself shall be construed to treat enhanced information services as common carriage.

(4) In addition to other defenses authorized under this section, it shall be a defense to prosecution under subsection (b) that a defendant is not engaged in a commercial activity that has as a predominant purpose an activity specified in that subsection.

(5) No cause of action may be brought in any court or administrative agency against any person on account of any action which the person has taken in good faith to implement a defense authorized under this section or otherwise to restrict or prevent the transmission of, or access to, a communication specified in this section. The preceding sentence shall not apply where the good faith defenses under subsection (c)(2) apply.

(6) No State or local government may impose any liability in connection with a violation described in subsection (a)(2), (b)(1)(B), (b)(2)(B) that is inconsistent with the treatment of those violations under this section provided, however, that nothing herein shall preclude any State or local government from enacting and enforcing complementary oversight, liability, and regulatory systems, procedures, and requirements, so long as such systems, procedures, and requirements govern only intrastate services and do not result in the imposition of inconsistent obligations on the provision of interstate services.

(e) KNOWINGLY DEFINED.—For purposes of subsections (a) and (b), the term "knowingly" means an intentional act with actual knowledge of the specific content of the communication specified in this section to another person.

SEC. 224. REGULATION OF POLE ATTACHMENTS.

(a) As used in this section:

(1) The term "utility" means any person whose rates or charges are regulated by the Federal Government or a State and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for wire communication. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.

(2) The term "Federal Government" means the Government of the United States or any agency or instrumentality thereof.

(3) The term "State" means any State, territory, or possession of the United States, the District of Columbia, or any political subdivision, agency, or instrumentality thereof.

(4) The term "pole attachment" means any attachment by a cable television system to a pole, duct, conduit, or right-of-way owned or controlled by a **[**utility**]** *utility, which attachment may be used by that cable television system to provide cable service or any other telecommunications service.*

(b)(1) A utility shall provide a cable television system with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.

(2) For purposes of paragraph (1), the Commission shall, not later than 1 year after the date of enactment of the Telecommunications Act of 1995, prescribe regulations for ensuring that utilities charge just, reasonable, and nondiscriminatory rates for pole attachments provided to all telecommunications carriers and cable operators, including such attachments used by cable television systems to provide telecommunications services. The regulations—

(A) shall recognize that the entire pole, duct, conduit, or right-of-way other than the usable space is of equal benefit to all attachments of entities that hold an ownership interest in the pole, duct, conduit, or right-of-way and therefore apportion the cost of the space other than the usable space equally among all such attachments; and

(B) shall recognize that an entity that obtains an attachment through a license or other similar arrangement benefits from the entire pole, duct, conduit, or right-of-way other than the usable space in the same proportion as it benefits from the usable space and therefore apportion to such entity a portion of the cost of the space other than the usable space in the same manner as the cost of usable space is apportioned to such entity.

[(b)(1)**]** *(c)(1)* Subject to the provisions of subsection **[**(c)**]** *(d)* of this section, the Commission shall regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable, and shall adopt procedures necessary and appropriate to hear and resolve complaints concerning such rates, terms, and conditions. For purposes of enforcing any determinations resulting from complaint procedures established pursuant to this subsection, the Commission shall take such action as it deems appropriate and necessary, including issuing cease and desist orders, as authorized by section 312(b) of title III of the Communications Act of 1934, as amended.

(2) The Commission shall prescribe by rule regulations to carry out the provisions of this section.

[(c)(1)**]** *(d)(1)* Nothing in this section shall be construed to apply to, or to give the Commission jurisdiction with respect to rates, terms, and conditions for pole attachments in any case where such matters are regulated by a State.

(2) Each State which regulates the rates, terms, and conditions for pole attachments shall certify to the Commission that—

(A) it regulates such rates, terms, and conditions; and

(B) in so regulating such rates, terms, and conditions, the State has the authority to consider and does consider the interests of the subscribers of cable television services, as well as the interests of the consumers of the utility services.

(3) For purposes of this subsection, a State shall not be considered to regulate the rates, terms, and conditions for pole attachments—

(A) unless the State has issued and made effective rules and regulations implementing the State's regulatory authority over pole attachments; and

(B) with respect to any individual matter, unless the State takes final action on a complaint regarding such matter—

(i) within 180 days after the complaint is filed with the State, or

(ii) within the applicable period prescribed for such final action in such rules and regulations of the State, if the prescribed period does not extend beyond 360 days after the filing of such complaint.

[(d)(1)**]** *(e)(1)* For purposes of subsection **[**(b)**]** *(c)* of this section, a rate is just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way.

(2) As used in this subsection, the term "usable space" means the space above the minimum grade level which can be used for the attachment of wires, cables, and associated equipment.

SEC. 228. REGULATION OF CARRIER OFFERING OF PAY-PER-CALL SERVICES.

(c) COMMON CARRIER OBLIGATIONS.—Within 270 days after the date of enactment of this section, the Commission shall, by regulation, establish the following requirements for common carriers:

(7) BILLING FOR 800 CALLS.—A common carrier shall prohibit by tariff or contract the use of any 800 telephone number, or other telephone number advertised or widely understood to be toll free, in a manner that would result in—

(A) the calling party being assessed, by virtue of completing the call, a charge for the call;

(B) the calling party being connected to a pay-per-call service;

(C) the calling party being charged for information conveyed during the call unless the calling party has a preexisting agreement to be charged for the information or discloses a credit or charge card number during the call; **[**or**]**

(D) the calling party being called back collect for the provision of audio information services or simultaneous voice conversation **[**services.**]** *services; or*

(E) the calling party being assessed, by virtue of being asked to connect or otherwise transfer to a pay-per-call service, a charge for the call.

Part II—Competition in Telecommunications

SEC. 251. INTERCONNECTION.

(a) DUTY TO PROVIDE INTERCONNECTION—

(1) IN GENERAL.—A local exchange carrier, or class of local exchange carriers, determined by the Commission to have market power in providing telephone exchange service or exchange access service has a duty under this Act, upon request—

(A) to enter into good faith negotiations with any telecommunications carrier requesting interconnection between

the facilities and equipment of the requesting telecommunications carrier and the carrier, or class of carriers, of which the request was made for the purpose of permitting the telecommunications carrier to provide telephone exchange or exchange access service; and

(B) to provide such interconnection, at rates that are reasonable and nondiscriminatory, according to the terms of the agreement and in accordance with the requirements of this section.

(2) INITIATION.—A local exchange carrier, or class of carriers, described in paragraph (1) shall commence good faith negotiations to conclude an agreement, whether through negotiation under subsection (c) or arbitration or intervention under subsection (d), within 15 days after receiving a request from any telecommunications carrier seeking to provide telephone exchange or exchange access service. Nothing in this Act shall prohibit multilateral negotiations between or among a local exchange carrier or class of carriers and a telecommunications carrier or class of carriers seeking interconnection under subsection (c) or subsection (d). At the request of any of the parties to a negotiation, a State may participate in the negotiation of any portion of an agreement under subsection (c).

(3) MARKET POWER.—For the purpose of determining whether a carrier has market power under paragraph (1), the relevant market shall include all providers of telephone exchange or exchange access services in a local area, regardless of the technology used by any such provider.

(b) MINIMUM STANDARDS.—An interconnection agreement entered into under this section shall, if requested by a telecommunications carrier requesting interconnection, provide for—

(1) nondiscriminatory access on an unbundled basis to the network functions and services of the local exchange carrier's telecommunications network (including switching software);

(2) nondiscriminatory access on an unbundled basis to any of the local exchange carrier's telecommunications facilities and information, including databases and signaling, necessary to the transmission and routing of any telephone exchange service or exchange access service and the interoperability of both carriers' networks;

(3) interconnection to the local exchange carrier's telecommunications facilities and services at any technically feasible point within the carrier's network;

(4) interconnection that is at least equal in type, quality, and price (on a per unit basis or otherwise) to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection;

(5) nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the local exchange carrier;

(6) the local exchange carrier to take whatever action under its control is necessary, as soon as is technically feasible, to provide telecommunications number portability and local dialing parity in a manner that—

(A) permits consumers to be able to dial the same number of digits when using any telecommunications carrier pro-

viding telephone exchange service or exchange access service in the market served by the local exchange carrier;

(B) permits all such carriers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing with no unreasonable dialing delays; and

(C) provides for a reasonable allocation of costs among the parties to the agreement;

(7) telecommunications services and network functions of the local exchange carrier to be available to the telecommunications carrier on an unbundled basis without any unreasonable conditions on the resale or sharing of those services or functions, including the origination, transport, and termination of such telecommunications services, other than reasonable conditions required by a State; and for purposes of this paragraph, it is not an unreasonable condition for a State to limit the resale—

(A) of services included in the definition of universal service to a telecommunications carrier who resells that service to a category of customers different from the category of customers being offered that universal service by such carrier if the State orders a carrier to provide the same service to different categories of customers at different prices necessary to promote universal service; or

(B) of subsidized universal service in a manner that allows companies to charge another carrier rates which reflect the actual cost of such services, exclusive of any universal service support received for providing such services;

(8) reciprocal compensation arrangements for the origination and termination of telecommunications;

(9) reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks; and

(10) a schedule of itemized charges and conditions for each service, facility, or function provided under the agreement.

(c) AGREEMENTS ARRIVED AT THROUGH NEGOTIATION.—Upon receiving a request for interconnection, a local exchange carrier may meet its interconnection obligations under this section by negotiating and entering into a binding agreement with the telecommunications carrier seeking interconnection without regard to the standards set forth in subsection (b). The agreement shall include a schedule of itemized charges for each service, facility, or function included in the agreement. The agreement, including any interconnection agreement negotiated before the date of enactment of the Telecommunications Act of 1995, shall be submitted to the State under subsection (e).

(d) AGREEMENTS ARRIVED AT THROUGH ARBITRATION OR INTERVENTION.—

(1) IN GENERAL.—Any party negotiating an interconnection agreement under this section may, at any point in the negotiation, ask a State to participate in the negotiation and to arbitrate any differences arising in the course of the negotiation. The refusal of any other party to the negotiation to participate

further in the negotiations, to cooperate with the State in carrying out its function as a arbitrator, or to continue to negotiate in good faith in the presence, or with the assistance, of the State shall be considered a failure to negotiate in good faith.

(2) INTERVENTION.—If any issues remain open in a negotiation commenced under this section more than 135 days after the date upon which the local exchange carrier received the request for such negotiation, then the carrier or any other party to the negotiation may petition a State to intervene in the negotiations for purposes of resolving any such remaining open issues. Any such request must be made during the 25-day period that begins 135 days after the carrier receives the request for such negotiation and ends 160 days after that date.

(3) DUTY OF PETITIONER.—

(A) A party that petitions a State under paragraph (2) shall, within 15 days after the State receives the petition, provide the State all relevant documentation concerning the negotiations necessary to understand—

(i) the unresolved issues;

(ii) the position of each of the parties with respect to those issues; and

(iii) any other issue discussed and resolved by the parties.

(B) A party petitioning a State under paragraph (2) shall notify the other party of its petition not later than the day on which the State receives the petition.

(4) OPPORTUNITY TO RESPOND.—A party to a negotiation under this section with respect to which the other party has petitioned a State under paragraph (2) may respond to the other party's petition and provide such additional information as it wishes within 25 days after the State receives the petition.

(5) ACTION BY STATE.—

(A) A State proceeding to consider a petition under this subsection shall be conducted in accordance with the rules promulgated by the Commission under subsection (i). The State shall limit its consideration of any petition under paragraph (2) (and any response thereto) to the issues set forth in the petition and in the response, if any, filed under paragraph (4).

(B) The State may require the petitioning party and the responding party to provide such information as may be necessary for the State to reach a decision on the unresolved issues. If either party refuses or fails unreasonably to respond on a timely basis to any reasonable request from the State, then the State may proceed on the basis of the best information available to it from whatever source derived.

(C) The State shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions upon the parties to the agreement, and shall conduct the review of the agreement (including the issues resolved by the State) not later than 10 months after the date on which the local exchange carrier received the request for interconnection under this section.

(D) In resolving any open issues and imposing conditions upon the parties to the agreement, a State shall ensure that the requirements of this section are met by the solution imposed by the State and are consistent with the Commission's rules defining minimum standards.

(6) CHARGES.—If the amount charged by a local exchange carrier, or class of local exchange carriers, for an unbundled element of the interconnection provided under subsection (b) is determined by arbitration or intervention under this subsection, then the charge—

(A) shall be

(i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the unbundled element,

(ii) nondiscriminatory, and

(iii) individually priced to the smallest element that is technically and economically reasonable to provide; and

(B) may include a reasonable profit.

(e) APPROVAL BY STATE.—Any interconnection agreement under this section shall be submitted for approval to the State. A State to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies. The State may only reject—

(1) an agreement under subsection (c) if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement; and

(2) an agreement under subsection (d) if it finds that—

(A) the agreement does not meet the standards set forth in subsection (b), or

(B) the implementation of the agreement is not in the public interest.

If the State does not act to approve or reject the agreement within 90 days after receiving the agreement, or 30 days in the case of an agreement negotiated under subsection (c), the agreement shall be deemed approved. No State court shall have jurisdiction to review the action of a State in approving or rejecting an agreement under this section.

(f) FILING REQUIRED.—A State shall make a copy of each agreement approved under subsection (e) available for public inspection and copying within 10 days after the agreement is approved. The State may charge a reasonable and nondiscriminatory fee to the parties to the agreement to cover the costs of approving and filing such agreement.

(g) AVAILABILITY TO OTHER TELECOMMUNICATIONS CARRIERS.—A local exchange carrier shall make available any service, facility, or function provided under an interconnection agreement to which it is a party to any other telecommunications carrier that requests such interconnection upon the same terms and conditions as those provided in the agreement.

(h) COLLOCATION.—A State may require telecommunications carriers to provide for actual collocation of equipment necessary for interconnection at the premises of the carrier at reasonable charges, if the State finds actual collocation to be in the public interest.

(i) IMPLEMENTATION.—

(1) RULES AND STANDARDS.—The Commission shall promulgate rules to implement the requirements of this section within 6 months after the date of enactment of the Telecommunications Act of 1995. In establishing the standards for determining what facilities and information are necessary for purposes of subsection (b)(2), the Commission shall consider, at a minimum, whether—

(A) access to such facilities and information that are proprietary in nature is necessary; and

(B) the failure to provide access to such facilities and information would impair the ability of the telecommunications carrier seeking interconnection to provide the services that it seeks to offer.

(2) COMMISSION TO ACT IF STATE WILL NOT ACT.—If a State, through action or inaction, fails to carry out its responsibility under this section in accordance with the rules prescribed by the Commission under paragraph (1) in any proceeding or other matter under this section, then the Commission shall issue an order preempting the State's jurisdiction of that proceeding or matter within 90 days after being notified (or taking notice) of such failure, and shall assume the responsibility of the State under this section with respect to the proceeding or matter and act for the State.

(3) WAIVERS AND MODIFICATIONS FOR RURAL CARRIERS.—The Commission or a State shall, upon petition or on its own initiative, waive or modify the requirements of subsection (b) for a rural telephone company or companies, and may waive or modify the requirements of subsection (b) for local exchange carriers with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide, to the extent that the Commission or a State determines that such requirements would result in unfair competition, impose a significant adverse economic impact on users of telecommunications services, be technically infeasible, or otherwise not be in the public interest. The Commission or a State shall act upon any petition filed under this paragraph within 180 days of receiving such petition. Pending such action, the Commission or a State may suspend enforcement of the requirement or requirements to which the petition applies with respect to the petitioning carrier or carriers.

(j) STATE REQUIREMENTS.—Nothing in this section precludes a State from imposing requirements on a telecommunications carrier for intrastate services that are necessary to further competition in the provision of telephone exchange service or exchange access service, as long as the State's requirements are not inconsistent with the Commission's regulations to implement this section.

(k) ACCESS CHARGE RULES.—Nothing in this section shall affect the Commission's interexchange-to-local exchange access charge rules for local exchange carriers or interexchange carriers in effect on the date of enactment of the Telecommunications Act of 1995.

(d) The Commission may, after full opportunity for hearing, in a proceeding upon complaint or upon its own initiative without complaint, authorize or require by order any carrier, party to such proceeding, to provide itself with adequate facilities for the expeditious and efficient performance of its service as a common carrier and to extend its line or to establish a public office; but no such authorization or order shall be made unless the Commission finds, as to such provision of facilities, as to such establishment of public offices, or as to such extension, that it is reasonably required in the interest of public convenience and necessity, or as to such extension or facilities that the expense involved therein will not impair the ability of the carrier to perform its duty to the public. Any carrier which refuses or neglects to comply with any order of the Commission made in pursuance of this paragraph shall forfeit to the United States $1,200 for each day during which such refusal or neglect continues.

SEC. 253. UNIVERSAL SERVICE.

(a) UNIVERSAL SERVICE PRINCIPLES.—The Joint Board and the Commission shall base policies for the preservation and advancement of universal service on the following principles:

(1) Quality services are to be provided at just, reasonable, and affordable rates.

(2) Access to advanced telecommunications and information services should be provided in all regions of the Nation.

(3) Consumers in rural and high cost areas should have access to telecommunications and information services, including interexchange services, reasonably comparable to those services provided in urban areas.

(4) Consumers in rural and high cost areas should have access to telecommunications and information services at rates that are reasonably comparable to rates charged for similar services in urban areas.

(5) Citizens in rural and high cost areas should have access to the benefits of advanced telecommunications and information services for health care, education, economic development, and other public purposes.

(6) There should be a coordinated Federal-State universal service system to preserve and advance universal service using specific and predictable Federal and State mechanisms administered by independent, non-governmental entities.

(7) Elementary and secondary schools and classrooms should have access to advanced telecommunications services.

(b) DEFINITION.—Universal service is an evolving level of intrastate and interstate telecommunications services that the Commission, based on recommendations from the public, Congress, and the Federal-State Joint Board periodically convened under section 103 of the Telecommunications Act of 1995, and taking into account advances in telecommunications and information technologies and services, determines should be provided at just, reasonable, and affordable rates to all Americans, including those in rural and high-cost areas and those with disabilities, to enable them to participate effectively in the economic, academic, medical, and democratic processes of the Nation. At a minimum, universal service shall include any telecommunications services that the Commission determines have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers.

(c) ALL TELECOMMUNICATIONS PROVIDERS CONTRIBUTE.—Every telecommunications carrier engaged in intrastate, interstate, or for-

eign communication shall contribute on an equitable and nondiscriminatory basis, in a manner that is reasonably necessary to preserve and advance universal service. Any other provider of telecommunications may be required to contribute to the preservation and advancement of universal service, if the public interest so requires.

(d) ENFORCEMENT.—In adopting rules to enforce subsection (c), the Commission and the States may impose or require service obligations, financial or other forms of contributions, sharing of equipment and services, discounted rates, or other mechanisms.

(e) STATE AUTHORITY.—A State may adopt regulations to implement this section, or to provide for additional definitions, mechanisms, and standards to preserve and advance universal service within that State, to the extent that such regulations do not conflict with the Commission's rules to implement this section.

(f) ELIGIBILITY FOR UNIVERSAL SERVICE SUPPORT.—If the Commission adopts rules for the distribution of support payments for the preservation and advancement of universal service, only telecommunications carriers which are designated as essential telecommunications carriers under section 214(d) shall be eligible to receive those support payments. The support payments shall accurately reflect the amount reasonably necessary to preserve and advance universal service.

(g) AMOUNT OF UNIVERSAL SERVICE SUPPORT.—The Commission and the States shall base the amount of support payments, if any, on the difference between the actual costs of providing universal service and the revenues from providing that service. The Commission and the States shall have as their goal the need to make any universal support explicit and targeted to those carriers that serve areas for which support is necessary. A carrier that receives any such support shall use that support only for the maintenance and upgrading of facilities and services for which the support is intended.

(h) INTEREXCHANGE SERVICE.—The rates charged by providers of interexchange telecommunications service to consumers in rural and high cost areas shall be maintained at levels no higher than those charged by each such provider to its consumers in urban areas.

(i) SUBSIDY OF COMPETITIVE SERVICES PROHIBITED.—Telecommunications carriers may not subsidize competitive services with revenues from services that are not competitive. The Commission, with respect to interstate services, and the States, with respect to intrastate services, shall establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in universal service bear no more than a reasonable share (and may, in the public interest, bear less than a reasonable share or no share) of the joint and common costs of facilities used to provide those services.

(j) EFFECTIVE DATE.—This section takes effect on the date of enactment of the Telecommunications Act of 1995, except for subsections (c), (e), (f), and (g), which take effect one year after the date of enactment of that Act.

SEC. 254. REMOVAL OF BARRIERS TO ENTRY.

(a) IN GENERAL.—No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of

prohibiting the ability of any entity to provide any interstate or intrastate telecommunications services.

(b) STATE REGULATORY AUTHORITY.—Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 253, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

(c) LOCAL GOVERNMENT AUTHORITY.—Nothing in this section affects the authority of a local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.

(d) PREEMPTION.—If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates or is inconsistent with this section, the Commission shall immediately preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.

(e) COMMERCIAL MOBILE SERVICES PROVIDERS.—Nothing in this section shall affect the application of section 332(c)(3) to commercial mobile services providers.

(b) PROVISION OF TELECOMMUNICATIONS SERVICES BY A CABLE OPERATOR.—

(1) JURISDICTION OF FRANCHISING AUTHORITY.—Section 621(b) (47 U.S.C. 541(b)) is amended by adding at the end thereof the following new paragraph:

(3)(A) To the extent that 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 title; and

(ii) the provisions of this title shall not apply to such cable operator or affiliate.

(B) A franchising authority may not order a cable operator or affiliate thereof to discontinue the provision of a telecommunications service.

(C) A franchising authority may not require a cable operator to provide any telecommunications service or facilities as a condition of the initial grant of a franchise, franchise renewal, or transfer of a franchise.

(D) Nothing in this paragraph affects existing Federal or State authority with respect to telecommunications services.

SEC. 255. INTEREXCHANGE TELECOMMUNICATIONS SERVICES.

(a) IN GENERAL.—Notwithstanding any restriction or obligation imposed before the date of enactment of the Telecommunications Act of 1995 under section II(D) of the Modification of Final Judgment, a Bell operating company, or any subsidiary or affiliate of a Bell operating company, that meets the requirements of this section may provide—

(1) interLATA telecommunications services originating in any region in which it is the dominant provider of wireline tele-

phone exchange service or exchange access service after the Commission determines that it has fully implemented the competitive checklist found in subsection (b)(2) in the area in which it seeks to provide interLATA telecommunications services, in accordance with the provisions of subsection (c);

(2) interLATA telecommunications services originating in any area where that company is not the dominant provider of wireline telephone exchange service or exchange access service in accordance with the provisions of subsection (d); and

(3) interLATA services that are incidental services in accordance with the provisions of subsection (e).

(b) SPECIFIC INTERLATA INTERCONNECTION REQUIREMENTS.—

(1) IN GENERAL.—A Bell operating company may provide interLATA services in accordance with this section only if that company has reached an interconnection agreement under section 251 and that agreement provides, at a minimum, for interconnection that meets the competitive checklist requirements of paragraph (2).

(2) COMPETITIVE CHECKLIST.—Interconnection provided by a Bell operating company to other telecommunications carriers under section 251 shall include:

(A) Nondiscriminatory access on an unbundled basis to the network functions and services of the Bell operating company's telecommunications network that is at least equal in type, quality, and price to the access the Bell operating company affords to itself or any other entity.

(B) The capability to exchange telecommunications between customers of the Bell operating company and the telecommunications carrier seeking interconnection.

(C) Nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the Bell operating company where it has the legal authority to permit such access.

(D) Local loop transmission from the central office to the customer's premises, unbundled from local switching or other services.

(E) Local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services.

(F) Local switching unbundled from transport, local loop transmission, or other services.

(G) Nondiscriminatory access to—

(i) 911 and E911 services;

(ii) directory assistance services to allow the other carrier's customers to obtain telephone numbers; and

(iii) operator call completion services.

(H) White pages directory listings for customers of the other carrier's telephone exchange service.

(I) Until the date by which neutral telephone number administration guidelines, plan, or rules are established, nondiscriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers. After that date, compliance with such guidelines, plan, or rules.

(J) Nondiscriminatory access to databases and associated signaling, including signaling links, signaling service control points, and signaling service transfer points, necessary for call routing and completion.

(K) Until the date by which the Commission determines that final telecommunications number portability is technically feasible and must be made available, interim telecommunications number portability through remote call forwarding, direct inward dialing trunks, or other comparable arrangements, with as little impairment of functioning, quality, reliability, and convenience as possible. After that date, full compliance with final telecommunications number portability.

(L) Nondiscriminatory access to whatever services or information may be necessary to allow the requesting carrier to implement local dialing parity in a manner that permits consumers to be able to dial the same number of digits when using any telecommunications carrier providing telephone exchange service or exchange access service.

(M) Reciprocal compensation arrangements on a nondiscriminatory basis for the origination and termination of telecommunications.

(N) Telecommunications services and network functions provided on an unbundled basis without any conditions or restrictions on the resale or sharing of those services or functions, including both origination and termination of telecommunications services, other than reasonable conditions required by the Commission or a State. For purposes of this subparagraph, it is not an unreasonable condition for the Commission or a State to limit the resale—

(i) of services included in the definition of universal service to a telecommunications carrier who intends to resell that service to a category of customers different from the category of customers being offered that universal service by such carrier if the Commission or State orders a carrier to provide the same service to different categories of customers at different prices necessary to promote universal service; or

(ii) of subsidized universal service in a manner that allows companies to charge another carrier rates which reflect the actual cost of such services, exclusive of any universal service support received for providing such services.

(3) JOINT MARKETING OF LOCAL AND LONG DISTANCE SERVICES.—Until a Bell operating company is authorized to provide interLATA services in a telephone exchange area, a telecommunications carrier may not jointly market telephone exchange service or exchange access service purchased from such company with interexchange services offered by that telecommunications carrier.

(4) COMMISSION MAY NOT EXPAND COMPETITIVE CHECKLIST.—The Commission may not, by rule or otherwise, limit or extend the terms used in the competitive checklist.

(c) IN-REGION SERVICES.—

(1) APPLICATION.—Upon the enactment of the Telecommunications Act of 1995, a Bell operating company or its subsidiary or affiliate may apply to the Commission for authorization notwithstanding the Modification of Final Judgment to provide interLATA telecommunications service originating in any area where such Bell operating company is the dominant provider of wireline telephone exchange service or exchange access service. The application shall describe with particularity the nature and scope of the activity and of each product market or service market, and each geographic market for which authorization is sought.

(2) DETERMINATION BY COMMISSION.—

(A) DETERMINATION.—Not later than 90 days after receiving an application under paragraph (1), the Commission shall issue a written determination, on the record after a hearing and opportunity for comment, granting or denying the application in whole or in part. Before making any determination under this subparagraph, the Commission shall consult with the Attorney General regarding the application. In consulting with the Commission under this subparagraph, the Attorney General may apply any appropriate standard.

(B) APPROVAL.—The Commission may only approve the authorization requested in an application submitted under paragraph (1) if it finds that—

(i) the petitioning Bell operating company has fully implemented the competitive checklist found in subsection (b)(2); and

(ii) the requested authority will be carried out in accordance with the requirements of section 252,

and if the Commission determines that the requested authorization is consistent with the public interest, convenience, and necessity. If the Commission does not approve an application under this subparagraph, it shall state the basis for its denial of the application.

(3) PUBLICATION.—Not later than 10 days after issuing a determination under paragraph (2), the Commission shall publish in the Federal Register a brief description of the determination.

(4) JUDICIAL REVIEW.—

(A) COMMENCEMENT OF ACTION.—Not later than 45 days after a determination by the Commission is published under paragraph (3), the Bell operating company or its subsidiary or affiliate that applied to the Commission under paragraph (1), or any person who would be threatened with loss or damage as a result of the determination regarding such company's engaging in the activity described in its application, may commence an action in any United States Court of Appeals against the Commission for judicial review of the determination regarding the application.

(B) JUDGMENT.—

(i) The Court shall enter a judgment after reviewing the determination in accordance with section 706 of title 5 of the United State Code.

(ii) A judgment—

(I) affirming any part of the determination that approves granting all or part of the requested authorization, or

(II) reversing any part of the determination that denies all or part of the requested authorization,

shall describe with particularity the nature and scope of the activity, and of each product market or service market, and each geographic market, to which the affirmance or reversal applies.

(5) REQUIREMENTS RELATING TO SEPARATE SUBSIDIARY; SAFEGUARDS; AND INTRALATA TOLL DIALING PARITY.—

(A) SEPARATE SUBSIDIARY; SAFEGUARDS.—Other than interLATA services authorized by an order entered by the United States District Court for the District of Columbia pursuant to the Modification of Final Judgment before the date of enactment of the Telecommunications Act of 1995, a Bell operating company, or any subsidiary or affiliate of such a company, providing interLATA services authorized under this subsection may provide such interLATA services in that market only in accordance with the requirements of section 252.

(B) INTRALATA TOLL DIALING PARITY.—

(i) A Bell operating company granted authority to provide interLATA services under this subsection shall provide intraLATA toll dialing parity throughout that market coincident with its exercise of that authority. If the Commission finds that such a Bell operating company has provided interLATA service authorized under this clause before its implementation of intraLATA toll dialing parity throughout that market, or fails to maintain intraLATA toll dialing parity throughout that market, the Commission, except in cases of inadvertent interruptions or other events beyond the control of the Bell operating company, shall suspend the authority to provide interLATA service for that market until the Commission determines that intraLATA toll dialing parity is implemented or reinstated.

(ii) A State may not order the implementation of toll dialing parity in an intraLATA area before a Bell operating company has been granted authority under this subsection to provide interLATA services in that area.

(d) OUT-OF-REGION SERVICES.—A Bell operating company or its subsidiary or affiliate may provide interLATA telecommunications services originating in any area where such company is not the dominant provider of wireline telephone exchange service or exchange access service upon the date of enactment of the Telecommunications Act of 1995.

(e) INCIDENTAL SERVICES.—

(1) IN GENERAL.—A Bell operating company may provide interLATA services that are incidental to the purposes of—

(A)(i) providing audio programming, video programming, or other programming services to subscribers of such company,

(ii) providing the capability for interaction by such subscribers to select or respond to such audio programming, video programming, or other programming services, to order, or control transmission of the programming, polling or balloting, and ordering other goods or services, or

(iii) providing to distributors audio programming or video programming that such company owns, controls, or is licensed by the copyright owner of such programming, or by an assignee of such owner, to distribute,

(B) providing a telecommunications service, using the transmission facilities of a cable system that is an affiliate of such company, between LATAs within a cable system franchise area in which such company is not, on the date of enactment of the Telecommunications Act of 1995, a provider of wireline telephone exchange service,

(C) providing a commercial mobile service except where such service is a replacement for land line telephone exchange service for a substantial portion of the land line telephone exchange service in a State in accordance with section 332(c) of this Act and with the regulations prescribed by the Commission,

(D) providing a service that permits a customer that is located in one LATA to retrieve stored information from, or file information for storage in, information storage facilities of such company that are located in another LATA area, so long as the customer acts affirmatively to initiate the storage or retrieval of information, except that—

(i) such service shall not cover any service that establishes a direct connection between end users or any real-time voice and data transmission,

(ii) such service shall not include voice, data, or facsimile distribution services in which the Bell operating company or affiliate forwards customer-supplied information to customer- or carrier-selected recipients;

(iii) such service shall not include any service in which the Bell operating company or affiliate searches for and connects with the intended recipient of information, or any service in which the Bell operating company or affiliate automatically forwards stored voicemail or other information to the intended recipient; and

(iv) customers of such service shall not be billed a separate charge for the interLATA telecommunications furnished in conjunction with the provision of such service;

(E) providing signaling information used in connection with the provision of telephone exchange service or exchange access service to another local exchange carrier; or

(F) providing network control signaling information to, and receiving such signaling information from, interexchange carriers at any location within the area in which such company provides telephone exchange service or exchange access service.

(2) LIMITATIONS.—The provisions of paragraph (1) are intended to be narrowly construed. The transmission facilities used by a Bell operating company or affiliate thereof to provide interLATA telecommunications under subparagraphs (C) and (D) of paragraph (1) shall be leased by that company from unaffiliated entities on terms and conditions (including price) no more favorable than those available to the competitors of that company until that Bell operating company receives authority to provide interLATA services under subsection (c). The interLATA services provided under paragraph (1)(A) are limited to those interLATA transmissions incidental to the provision by a Bell operating company or its affiliate of video, audio, and other programming services that the company or its affiliate is engaged in providing to the public. A Bell operating company may not provide telecommunications services not described in paragraph (1) without receiving the approvals required by subsection (c). The provision of services authorized under this subsection by a Bell operating company or its affiliate shall not adversely affect telephone exchange ratepayers or competition in any telecommunications market.

(f) DEFINITIONS.—As used in this section—

(1) LATA.—The term "LATA" means a local access and transport area as defined in United States v. Western Electric Co., 569 F. Supp. 990 (United States District Court, District of Columbia) and subsequent judicial orders relating thereto.

(2) AUDIO PROGRAMMING SERVICES.—The term "audio programming services" means programming provided by, or generally considered to be comparable to programming provided by, a radio broadcast station.

(3) VIDEO PROGRAMMING SERVICES; OTHER PROGRAMMING SERVICES.—The terms "video programming service" and "other programming services" have the same meanings as such terms have under section 602 of this Act.

SEC. 256. REGULATION OF MANUFACTURING BY BELL OPERATING COMPANIES.

(a) AUTHORIZATION.—

(1) IN GENERAL.—Notwithstanding any restriction or obligation imposed before the date of enactment of the Telecommunications Act of 1995 pursuant to the Modification of Final Judgment on the lines of business in which a Bell operating company may engage, if the Commission authorizes a Bell operating company to provide interLATA services under section 255, then that company may be authorized by the Commission to manufacture and provide telecommunications equipment, and to manufacture customer premises equipment, at any time after that determination is made, subject to the requirements of this section and the regulations prescribed thereunder.

(2) CERTAIN RESEARCH AND DESIGN ARRANGEMENTS; ROYALTY AGREEMENTS.—Upon the enactment of the Telecommunications Act of 1995, a Bell operating company may—

(A) engage in research and design activities related to manufacturing, and

(B) enter into royalty agreements with manufacturers of telecommunications equipment.

(b) SEPARATE SUBSIDIARY; SAFEGUARDS.—Any manufacturing or provision of equipment authorized under subsection (a) shall be conducted in accordance with the requirements of section 252.

(c) PROTECTION OF SMALL TELEPHONE COMPANY INTERESTS.—

(1) EQUIPMENT TO BE MADE AVAILABLE TO OTHERS.—A manufacturing subsidiary of a Bell operating company shall make available, without discrimination or self-preference as to price, delivery, terms, or conditions, to all local exchange carriers, for use with the public telecommunications network, any telecommunications equipment, including software integral to such telecommunications equipment, including upgrades, manufactured by such subsidiary if each such purchasing carrier—

(A) does not manufacture telecommunications equipment or have a subsidiary which manufactures telecommunications equipment; or

(B) agrees to make available, to the Bell operating company that is the parent of the manufacturing subsidiary or any of the local exchange carrier affiliates of such Bell company, any telecommunications equipment, including software integral to such telecommunications equipment, including upgrades, manufactured for use with the public telecommunications network by such purchasing carrier or by any entity or organization with which such purchasing carrier is affiliated.

(2) SALES TO OTHER LOCAL EXCHANGE CARRIERS.—

(A) A Bell operating company and any entity acting on its behalf shall make procurement decisions and award all supply contracts for equipment, services, and software on the basis of open, competitive bidding, and an objective assessment of price, quality, delivery, and other commercial factors.

(B) A Bell operating company and any entity it owns or otherwise controls shall permit any person to participate fully on a non-discriminatory basis in the process of establishing standards and certifying equipment used in or interconnected to the public telecommunications network.

(C) A manufacturing subsidiary of a Bell operating company may not restrict sales to any local exchange carrier of telecommunications equipment, including software integral to the operation of such equipment and related upgrades.

(D) A Bell operating company and any entity it owns or otherwise controls shall protect the proprietary information submitted with contract bids and in the standards and certification processes from release not specifically authorized by the owner of such information.

(d) COLLABORATION WITH OTHER MANUFACTURERS.—A Bell operating company and its subsidiaries or affiliates may engage in close collaboration with any manufacturer of customer premises equipment or telecommunications equipment not affiliated with a Bell operating company during the design and development of hardware, software, or combinations thereof relating to such equipment.

(e) ADDITIONAL RULES AND REGULATIONS.—The Commission may prescribe such additional rules and regulations as the Commission determines are necessary to carry out the provisions of this section.

(f) ADMINISTRATION AND ENFORCEMENT.—

(1) COMMISSION AUTHORITY.—For the purposes of administering and enforcing the provisions of this section and the regulations prescribed under this section, the Commission shall have the same authority, power, and functions with respect to any Bell operating company as the Commission has in administering and enforcing the provisions of this title with respect to any common carrier subject to this Act.

(2) CIVIL ACTIONS BY INJURED CARRIERS.—Any local exchange carrier injured by an act or omission of a Bell operating company or its manufacturing subsidiary or affiliate which violates the requirements of paragraph (1) or (2) of subsection (c), or the Commission's regulations implementing such paragraphs, may initiate an action in a district court of the United States to recover the full amount of damages sustained in consequence of any such violation and obtain such orders from the court as are necessary to terminate existing violations and to prevent future violations; or such local exchange carrier may seek relief from the Commission pursuant to sections 206 through 209.

(g) APPLICATION TO BELL COMMUNICATIONS RESEARCH.—Nothing in this section—

(1) provides any authority for Bell Communications Research, or any successor entity, to manufacture or provide telecommunications equipment or to manufacture customer premises equipment; or

(2) prohibits Bell Communications Research, or any successor entity, from engaging in any activity in which it is lawfully engaged on the date of enactment of the Telecommunications Act of 1995, including providing a centralized organization for the provision of engineering, administrative, and other services (including serving as a single point of contact for coordination of the Bell operating companies to meet national security and emergency preparedness requirements).

(h) DEFINITIONS.—As used in this section—

(1) The term "customer premises equipment" means equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications.

(2) The term "manufacturing" has the same meaning as such term has in the Modification of Final Judgment.

(3) The term "telecommunications equipment" means equipment, other than customer premises equipment, used by a carrier to provide telecommunications services.

SEC. 257. ENFORCEMENT.

(a) IN GENERAL.—In addition to any penalty, fine, or other enforcement remedy under this Act, the failure by a telecommunications carrier to implement the requirements of section 251 or 255, including a failure to comply with the terms of an interconnection agreement approved under section 251, is punishable by a civil penalty of not to exceed $1,000,000 per offense. Each day of a continuing offense shall be treated as a separate violation for purposes of levying any penalty under this subsection.

(b) NONCOMPLIANCE WITH INTERCONNECTION OR SEPARATE SUBSIDIARY REQUIREMENTS.—

(1) A Bell operating company that repeatedly, knowingly, and without reasonable cause fails to implement an interconnection agreement approved under section 251, to comply with the requirements of such agreement after implementing them, or to comply with the separate subsidiary requirements of this part may be fined up to $500,000,000 by a district court of the United States of competent jurisdiction.

(2) A Bell operating company that repeatedly, knowingly, and without reasonable cause fails to meet its obligations under section 255 for the provision of interLATA service may have its authority to provide any service the right to provide which is conditioned upon meeting such obligations suspended.

(c) ENFORCEMENT BY PRIVATE RIGHT OF ACTION.—

(1) DAMAGES.—Any person who is injured in its business or property by reason of a violation of this section may bring a civil action in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy.

(2) INTEREST.—The court may award under this section, pursuant to a motion by such person promptly made, simple interest on actual damages for the period beginning on the date of service of such person's pleading setting forth a claim under this title and ending on the date of judgment, or for any shorter period therein, if the court finds that the award of such interest for such period is just in the circumstances.

SEC. 258. REGULATION OF ENTRY INTO ALARM MONITORING SERVICES.

(a) IN GENERAL.—Except as provided in this section, a Bell operating company, or any subsidiary or affiliate of that company, may not provide alarm monitoring services for the protection of life, safety, or property. A Bell operating company may transport alarm monitoring service signals on a common carrier basis only.

(b) AUTHORITY TO PROVIDE ALARM MONITORING SERVICES.—Beginning 3 years after the date of enactment of the Telecommunications Act of 1995, a Bell operating company may provide alarm monitoring services for the protection of life, safety, or property if it has been authorized to provide interLATA services under section 255 unless the Commission finds that the provision of alarm monitoring services by such company is not in the public interest. The Commission may not find that provision of alarm monitoring services by a Bell operating company is in the public interest until it finds that it has the capability effectively to enforce any requirements, limitations, or conditions that may be placed upon a Bell operating company in the provision of alarm monitoring services, including the regulations prescribed under subsection (c).

(c) REGULATIONS REQUIRED.—

(1) Not later than 1 year after the date of enactment of the Telecommunications Act of 1995, the Commission shall prescribe regulations—

(A) to establish such requirements, limitations, or conditions as are—

(i) necessary and appropriate in the public interest with respect to the provision of alarm monitoring serv-

ices by Bell operating companies and their subsidiaries and affiliates, and

(ii) effective at such time as a Bell operating company or any of its subsidiaries or affiliates is authorized to provide alarm monitoring services; and

(B) to establish procedures for the receipt and review of complaints concerning violations by such companies of such regulations, or of any other provision of this Act or the regulations thereunder, that result in material financial harm to a provider of alarm monitoring services.

(2) A Bell operating company, its subsidiaries and affiliates, and any local exchange carrier are prohibited from recording or using in any fashion the occurrence or contents of calls received by providers of alarm monitoring services for the purposes of marketing such services on behalf of the Bell operating company, any of its subsidiaries or affiliates, the local exchange carrier, or any other entity. Any regulations necessary to enforce this paragraph shall be issued initially within 6 months after the date of enactment of the Telecommunications Act of 1995.

(d) EXPEDITED CONSIDERATION OF COMPLAINTS.—The procedures established under subsection (c) shall ensure that the Commission will make a final determination with respect to any complaint described in such subsection within 120 days after receipt of the complaint. If the complaint contains an appropriate showing that the alleged violation occurred, as determined by the Commission in accordance with such regulations, the Commission shall, within 60 days after receipt of the complaint, issue a cease and desist order to prevent the Bell operating company and its subsidiaries and affiliates from continuing to engage in such violation pending such final determination.

(e) REMEDIES.—The Commission may use any remedy available under title V of this Act to terminate and punish violations described in subsection (c). Such remedies may include, if the Commission determines that such violation was willful or repeated, ordering the Bell operating company or its subsidiary or affiliate to cease offering alarm monitoring services.

(f) SAVINGS PROVISION.—Subsections (a) and (b) do not prohibit or limit the provision of alarm monitoring services by a Bell operating company that was engaged in providing those services as of December 31, 1994, to the extent that such company—

(1) continues to provide those services through the subsidiary or affiliate through which it was providing them on that date; and

(2) does not acquire, directly or indirectly, an equity interest in another entity engaged in providing alarm monitoring services, and does not acquire, or enter into an agreement to provide, the alarm monitoring service activities of another entity.

(g) ALARM MONITORING SERVICES DEFINED.—As used in this section, the term "alarm monitoring services" means services that detect threats to life, safety, or property by burglary, fire, vandalism, bodily injury, or other emergency through the use of devices that transmit signals to a central point in a customer's residence, place of business, or other fixed premises which—

(1) retransmits such signals to a remote monitoring center by means of telecommunications facilities of the Bell operating company and any subsidiary or affiliate; and

(2) serves to alert persons at the monitoring center of the need to inform customers, other persons, or police, fire, rescue, or other security or public safety personnel of the threat at such premises.

Such term does not include medical monitoring devices attached to individuals for the automatic surveillance of ongoing medical conditions.

SEC. 259. REGULATORY REFORM.

(a) BIENNIAL REVIEW OF REGULATIONS.—In every odd-numbered year (beginning with 1997), the Commission, with respect to its regulations under this Act, and a Federal-State Joint Board established under section 410, for State regulations—

(1) shall review all regulations issued under this Act, or under State law, in effect at the time of the review that apply to operations or activities of providers of any telecommunications services; and

(2) shall determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between the providers of such service.

(b) EFFECT OF DETERMINATION.—The Commission shall repeal any regulation it determines to be no longer necessary in the public interest. The Joint Board shall notify the Governor of any State of any State regulation it determines to be no longer necessary in the public interest.

SEC. 260. COMPETITION IN PROVISION OF TELECOMMUNICATIONS SERVICE.

(a) REGULATORY FLEXIBILITY.—The Commission may forbear from applying any regulation or any provision of this Act to a telecommunications carrier or service, or class of carriers or services, in any or some of its or their geographic markets if the Commission determines that—

(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that carrier or service are just and reasonable and are not unjustly or unreasonably discriminatory;

(2) enforcement of such regulation or provision is not necessary for the protection of consumers; and

(3) forbearance from applying such regulation or provision is consistent with the public interest.

(b) COMPETITIVE EFFECT TO BE WEIGHED.—In making the determination under subsection (a)(3), the Commission shall consider whether forbearance from enforcing the regulation or provision will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services. If the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest.

(c) LIMITATION.—Except as provided in section 251(i)(3), the Commission may not waive the unbundling requirements of section 251(b) or 255(b)(2) under subsection (a) until it determines that those requirements have been fully implemented.

SEC. 261. TELECOMMUNICATIONS NUMBERING ADMINISTRATION.

(a) INTERIM NUMBER PORTABILITY.—In connection with any interconnection agreement reached under section 251 of this Act, a local exchange carrier shall make available interim telecommunications number portability, upon request, beginning on the date of enactment of the Telecommunications Act of 1995.

(b) FINAL NUMBER PORTABILITY.—In connection with any interconnection agreement reached under section 251 of this Act, a local exchange carrier shall make available final telecommunications number portability, upon request, when the Commission determines that final telecommunications number portability is technically feasible.

(c) NEUTRAL ADMINISTRATION OF NUMBERING PLANS.—

(1) NATIONWIDE NEUTRAL NUMBER SYSTEM COMPLIANCE.— A telecommunications carrier providing telephone exchange service shall comply with the guidelines, plan, or rules established by an impartial entity designated by the Commission for the administration of a nationwide neutral number system.

(2) OVERLAY OF AREA CODES NOT PERMITTED.—All telecommunications carriers providing telephone exchange service in the same telephone service area shall be assigned the same numbering plan area code under such guideline, plan, or rules.

(d) COSTS.—The cost of establishing neutral number administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis.

SEC. 262. ACCESS BY PERSONS WITH DISABILITIES.

(a) DEFINITIONS.—As used in this section—

(1) DISABILITY.—The term "disability" has the meaning given to it by section 3(2)(A) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(2)(A)).

(2) READILY ACHIEVABLE.—The term "readily achievable" has the meaning given to it by section 301(9) of that Act (42 U.S.C. 12181(9)).

(b) MANUFACTURING.—A manufacturer of telecommunications equipment and customer premises equipment shall ensure that the equipment is designed, developed, and fabricated to be accessible to and usable by individuals with disabilities, if readily achievable.

(c) TELECOMMUNICATIONS SERVICES.—A provider of telecommunications service shall ensure that the service is accessible to and usable by individuals with disabilities, if readily achievable.

(d) COMPATIBILITY.—Whenever the requirements of subsections (b) and (c) are not readily achievable, such a manufacturer or provider shall ensure that the equipment or service is compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, if readily achievable.

(e) STANDARDS.—Within 1 year after the date of enactment of the Telecommunications Act of 1995, the Architectural and Transportation Barriers Compliance Board described in section 504 of the

Americans with Disabilities Act of 1990 (42 U.S.C. 12204) shall develop standards for accessibility of telecommunications equipment, customer premises equipment, and telecommunications services, in conjunction with the National Telecommunications and Information Administration and the National Institute of Standards and Technology. The Board shall review and update the standards periodically.

(f) CLOSED CAPTIONING.—

(1) IN GENERAL.—The Commission shall ensure that—

(A) video programming is accessible through closed captions, if readily achievable, except as provided in paragraph (2); and

(B) video programming providers or owners maximize the accessibility of video programming previously published or exhibited through the provision of closed captions, if readily achievable, except as provided in paragraph (2).

(2) EXEMPTIONS.—Notwithstanding paragraph (1)—

(A) the Commission may exempt programs, classes of programs, locally produced programs, providers, classes of providers, or services for which the Commission has determined that the provision of closed captioning would not be readily achievable to the provider or owner of such programming;

(B) a provider of video programming or the owner of any program carried by the provider shall not be obligated to supply closed captions if such action would be inconsistent with a binding contract in effect on the date of enactment of the Telecommunications Act of 1995 for the remaining term of that contract (determined without regard to any extension of such term), except that nothing in this subparagraph relieves a video programming provider of its obligation to provide services otherwise required by Federal law; and

(C) a provider of video programming or a program owner may petition the Commission for an exemption from the requirements of this section, and the Commission may grant such a petition upon a showing that the requirements contained in this section would not be readily achievable.

(3) STUDIES.—The Commission shall undertake studies of the current extent (as of the date of enactment of the Telecommunications Act of 1995) of—

(A) closed captioning of video programming and of previously published video programming;

(B) providers of video programming;

(C) the cost and market for closed captioning;

(D) strategies to improve competition and innovation in the provision of closed captioning; and

(E) such other matters as the Commission considers relevant.

(g) REGULATIONS.—The Commission shall, not later than 18 months after the date of enactment of the Telecommunications Act of 1995, prescribe regulations to implement this section. The regulations shall be consistent with the standards developed by the Archi-

tectural and Transportation Barriers Compliance Board in accordance with subsection (e).

(h) ENFORCEMENT.—The Commission shall enforce this section. The Commission shall resolve, by final order, a complaint alleging a violation of this section within 180 days after the date on which the complaint is filed with the Commission.

SEC. 263. RURAL MARKETS.

(a) STATE AUTHORITY IN RURAL MARKETS.—Except as provided in section 251(i)(3), a State may not waive or modify any requirements of section 251, but may adopt statutes or regulations that are no more restrictive than—

(1) to require an enforceable commitment by each competing provider of telecommunications service to offer universal service comparable to that offered by the rural telephone company currently providing service in that service area, and to make such service available within 24 months of the approval date to all consumers throughout that service area on a common carrier basis, either using the applicant's facilities or through its own facilities and resale of services using another carrier's facilities (including the facilities of the rural telephone company), and subject to the same terms, conditions, and rate structure requirements as those applicable to the rural telephone company currently providing universal service;

(2) to require that the State must approve an application by a competing telecommunications carrier to provide services in a market served by a rural telephone company and that approval be based on sufficient written public findings and conclusions to demonstrate that such approval is in the public interest and that there will not be a significant adverse impact on users of telecommunications services or on the provision of universal service;

(3) to encourage the development and deployment of advanced telecommunications and information infrastructure and services in rural areas; or

(4) to protect the public safety and welfare, ensure the continued quality of telecommunications and information services, or safeguard the rights of consumers.

(b) PREEMPTION.—Upon a proper showing, the Commission may preempt any State statute or regulation that the Commission finds to be inconsistent with the Commission's regulations implementing this section, or an arbitrary or unreasonably discriminatory application of such statute or regulation. The Commission shall act upon any bona fide petition filed under this subsection within 180 days of receiving such petition. Pending such action, the Commission may, in the public interest, suspend or modify application of any statute or regulation to which the petition applies.

SEC. 264. TELECOMMUNICATIONS SERVICES FOR CERTAIN PROVIDERS.

(a) IN GENERAL.—

(1) HEALTH CARE PROVIDERS FOR RURAL AREAS.—A telecommunications carrier designated as an essential telecommunications carrier under section 214(d) shall, upon receiving a bona fide request, provide telecommunications services

which are necessary for the provisoin of health service, including instruction relating to such service, at rates that are reasonably comparable to rates charged for similar services in urban areas to any public or nonprofit health care provider that provides services to persons who reside in rural areas.

(2) EDUCATIONAL PROVIDERS AND LIBRARIES.—Any telecommunications carrier shall, upon receiving a bona fide request, provide universal service (as defined under section 253) at rates that are affordable and not higher than the incremental cost thereof to elementary schools, secondary schools, and libraries for telecommunications services that permit such schools and libraries to provide or receive educational services.

(b) SUPPORT PAYMENTS.—If the Commission adopts rules for the distribution of support payments for the preservation and advancement of universal service, the Commission shall include the amount of the support payments reasonably necessary to provide universal service (including any costs related to the provision of comparable rates under subsection (a)(1)) to public institutional telecommunications users in any universal service support mechanism it may establish under section 253.

(c) ADVANCED SERVICES.—The Commission shall establish rules—

(1) to enhance, to the extent technically feasible and economically reasonable, the availability of advanced telecommunications and information services to all public and nonprofit elementary and secondary school classrooms, health care providers, and libraries;

(2) to ensure that appropriate functional requirements or performance standards, or both, including interoperability standards, are established for telecommunications carriers that connect such public institutional telecommunications users with the public switched network;

(3) to define the circumstances under which a telecommunications carrier may be required to connect its network to such public institutional telecommunications users; and

(4) to address other matters as the Commission may determine.

(d) DEFINITIONS.—

(1) ELEMENTARY AND SECONDARY SCHOOLS.—The term "elementary and secondary schools" means elementary schools and secondary schools, as defined in paragraphs (14) and (25), respectively, of section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

(2) UNIVERSAL SERVICE.—The Commission may in the public interest provide a separate definition of universal service under section 253(b) for application only to public institutional telecommunications users.

(3) HEALTH CARE PROVIDER.—The term "health care provider" means—

(A) Post-secondary educational institutions, teaching hospitals, and medical schools.

(B) Community health centers or health centers providing health care to migrants.

(C) Local health departments or agencies.

(D) Community mental health centers.

(E) Not-for-profit hospitals.

(F) Rural health clinics.

(G) Consortia of health care providers consisting of one or more entities described in subparagraphs (A) through (F).

(4) PUBLIC INSTITUTIONAL TELECOMMUNICATIONS USER.—The term "public institutional telecommunications user" means an elementary or secondary school, a library, or a health care provider, as those terms are defined in this section.

SEC. 265. PROVISION OF PAYPHONE SERVICE AND TELEMESSAGING SERVICE.

(a) NONDISCRIMINATION SAFEGUARDS.—Any Bell operating company that provides payphone service or telemessaging service—

(1) shall not subsidize its payphone service or telemessaging service directly or indirectly with revenue from its telephone exchange service or its exchange access service; and

(2) shall not prefer or discriminate in favor of its payphone service or telemessaging service.

(b) DEFINITIONS.—As used in this section—

(1) The term "payphone service" means the provision of telecommunications service through public or semi-public pay telephones, and includes the provision of service to inmates in correctional institutions.

(2) The term "telemessaging service" means voice mail and voice storage and retrieval services, any live operator services used to record, transcribe, or relay messages (other than telecommunications relay services), and any ancillary services offered in combination with these services.

(c) REGULATIONS.—Not later than 18 months after the date of enactment of the Telecommunications Act of 1995, the Commission shall complete a rulemaking proceeding to prescribe regulations to carry out this section. In that rulemaking proceeding, the Commission shall determine whether, in order to enforce the requirements of this section, it is appropriate to require the Bell operating companies to provide payphone service or telemessaging service through a separate subsidiary that meets the requirements of section 252.

SEC. 310. LIMITATION ON HOLDING AND TRANSFER OF LICENSES.

(a) The station license required under this Act shall not be granted to or held by any foreign government or the representative thereof.

(b) No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by—

(1) any alien or the representative of any alien;

(2) any corporation organized under the laws of any foreign government;

(3) any corporation of which any officer or director is an alien or of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country;

(4) any corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth

of the directors are aliens, or of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

(f) TERMINATION OF FOREIGN OWNERSHIP RESTRICTIONS.—

(1) RESTRICTION NOT TO APPLY WHERE RECIPROCITY FOUND.—Subsection (b) shall not apply to any common carrier license held, or for which application is made, after the date of enactment of the Telecommunications Act of 1995 with respect to any alien (or representative thereof), corporation, or foreign government (or representative thereof) if the Commission determines that the foreign country of which such alien is a citizen, in which such corporation is organized, or in which such foreign government is in control provides equivalent market opportunities for common carriers to citizens of the United States (or their representatives), corporations organized in the United States, and the United States Government (or its representative). The determination of whether market opportunities are equivalent shall be made on a market segment specific basis.

(2) SNAPBACK FOR RECIPROCITY FAILURE.—If the Commission determines that any foreign country with respect to which it has made a determination under paragraph (1) ceases to meet the requirements for that determination, then—

(A) subsection (b) shall apply with respect to such aliens, corporations, and government (or their representatives) on the date on which the Commission publishes notice of its determination under this paragraph, and

(B) any license held, or application filed, which could not be held or granted under subsection (b) shall be withdrawn, or denied, as the case may be, by the Commission under the provisions of subsection (b).

SEC. 332. MOBILE SERVICES.

(c) REGULATORY TREATMENT OF MOBILE SERVICE.—

(6) FOREIGN OWNERSHIP.—The Commission, upon a petition for waiver filed within 6 months after the date of enactment of the Omnibus Budget Reconciliation Act of 1993, may waive the application of section 310(b) to any foreign ownership that lawfully existed before May 24, 1993, of any provider of a private land mobile service that will be treated as a common carrier as a result of the enactment of the Omnibus Budget Reconciliation Act of 1993, but only upon the following conditions:

(A) The extent of foreign ownership interest shall not be increased above the extent which existed on May 24, 1993.

(B) Such waiver shall not permit the subsequent transfer of ownership to any other person in violation of section 310(b).

This paragraph does not apply to any foreign ownership interest or transfer of ownership to which section 310(b) does not apply because of section 310(f).

SEC. 307. ALLOCATION OF FACILITIES; TERM OF LICENSES.

(c) [No license granted for the operation of a television broadcasting station shall be for a longer term than five years and no license so granted for any other class of station (other than a radio broadcasting station) shall be for a longer term than ten years, and any license granted may be revoked as hereinafter provided. Each license granted for the operation of a radio broadcasting station shall be for a term of not to exceed seven years. The term of any license for the operation of any auxiliary broadcast station or equipment which can be used only in conjunction with a primary radio, television, or translator station shall be concurrent with the term of the license for such primary radio, television, or translator station. Upon the expiration of any license, upon application therefor, a renewal of such license may be granted from time to time for a term of not to exceed five years in the case of television broadcasting licenses, for a term of not to exceed seven years in the case of radio broadcasting station licenses, and for a term of not to exceed ten years in the case of other licenses, if the Commission finds that public interest, convenience, and necessity would be served thereby.] *No license shall be granted for a term longer than 10 years. Upon application, a renewal of such license may be granted from time to time for a term of not to exceed 10 years, if the Commission finds that the public interest, convenience, and necessity would be served thereby.* In order to expedite action on applications for renewal of broadcasting station licenses and in order to avoid needless expense to applicants for such renewals, the Commission shall not require any such applicant to file any information which previously has been furnished to the Commission or which is not directly material to the considerations that affect the granting or denial of such application, but the Commission may require any new or additional facts it deems necessary to make its findings. Pending any hearing and final decision on such an application and the disposition of any petition for rehearing pursuant to section 405, the Commission shall continue such license in effect. Consistently with the foregoing provisions of this subsection, the Commission may by rule prescribe the period or periods for which licenses shall be granted and renewed for particular classes of stations, but the Commission may not adopt or follow any rule which would preclude it, in any case involving a station of a particular class, from granting or renewing a license for a shorter period than that prescribed for stations of such class if, in its judgment, public interest, convenience, or necessity would be served by such action.

SEC. 309. ACTION UPON APPLICATIONS; FORM OF AND CONDITIONS ATTACHED TO LICENSES.

(d)(1) Any party in interest may file with the Commission a petition to deny any application (whether as originally filed or as amended) to which subsection (b) of this section applies at any time prior to the day of Commission grant thereof without hearing or the day of formal designation thereof for hearing; except that with respect to any classification of applications, the Commission from time to time by rule may specify a shorter period (no less than thirty days following the issuance of public notice by the Commission of the acceptance for filing of such application or of any substantial amendment thereof), which shorter period shall be reasonably related to the time when the applications would normally be reached for processing. The petitioner shall serve a copy of such petition on the applicant. The petition shall contain specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the application would be prima facie inconsistent with subsection **[**(a).**]** *(a) (or subsection (k) in the case of renewal of any broadcast station license).* Such allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge thereof. The applicant shall be given the opportunity to file a reply in which allegations of fact or denials thereof shall similarly be supported by affidavit.

(2) If the Commission finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there are no substantial and material questions of fact and that a grant of the application would be consistent with subsection **[**(a),**]** *(a) (or subsection (k) in the case of renewal of any broadcast station license),* it shall make the grant, deny the petition, and issue a concise statement of the reasons for denying the petition, which statement shall dispose of all substantial issues raised by the petition. If a substantial and material question of fact is presented or if the Commission for any reason is unable to find that grant of the application would be consistent with subsection **[**(a),**]** *(a) (or subsection (k) in the case of renewal of any broadcast station license),* it shall proceed as provided in subsection (e).

(k)(1)(A) Notwithstanding subsections (c) and (d), if the licensee of a broadcast station submits an application to the Commission for renewal of such license, the Commission shall grant the application if it finds, after notice and opportunity for comment (and a hearing on the record if it finds that there are credible allegations of serious violations by the licensee of this Act or the Commission's rules or regulations), with respect to that station during the preceding term of its license, that—

(i) the station has served the public interest, convenience, and necessity;

(ii) there have been no serious violations by the licensee of this Act or the rules and regulations of the Commission; and

(iii) there have been no other violations by the licensee of this Act or the rules and regulations of the Commission which, taken together, would constitute a pattern of abuse.

(B) If any licensee of a broadcast station fails to meet the requirements of this subsection, the Commission may deny the application for renewal in accordance with paragraph (2), or grant such application on appropriate terms and conditions, including renewal for a term less than the maximum otherwise permitted.

(2) If the Commission determines that a licensee has failed to meet the requirements specified in paragraph (1)(A) and that no mitigating factors justify the imposition of lesser sanctions, the Commission shall—

(A) issue an order denying the renewal application filed by such licensee under section 308; and

(B) only thereafter accept and consider such applications for a construction permit as may be filed under section 308 specifying the channel or broadcasting facilities of the former licensee.

(3) In making the determinations specified in paragraphs (1) or (2)(A), the Commission shall not consider whether the public interest, convenience, and necessity might be served by the grant of a license to a person other than the renewal applicant.

PART II—USE OF CABLE CHANNELS AND CABLE OWNERSHIP RESTRICTIONS

SEC. 611. CABLE CHANNELS FOR PUBLIC, EDUCATIONAL, OR GOVERNMENTAL USE.

(e) Subject to section 624(d), a cable operator shall not exercise any editorial control over any public, educational, or governmental use of channel capacity provided pursuant to this ⟦section.⟧ *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.*

SEC. 612. CABLE CHANNELS FOR COMMERCIAL USE.

(c)(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 ⟦an operator⟧ *a cable operator may refuse to transmit any leased access program or portion or a leased access program which contains obscenity, indecency, or nudity* 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.

SEC. 613. OWNERSHIP RESTRICTIONS.

⟦(a)(1) 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 contour of such station covers any portion of the community served by such operator's cable system.

⟦(2) It shall be unlawful for a cable operator to hold a license for multichannel multipoint distribution service, or to offer satellite master antenna television service separate and apart from any franchised cable service, in any portion of the franchise area served by that cable operator's cable system. The Commission—

⟦(A) shall waive the requirements of this paragraph for all existing multichannel multipoint distribution services and satellite master antenna television services which are owned by a cable operator on the date of enactment of this paragraph; and

⟦(B) may waive the requirements of this paragraph to the extent the Commission determines is necessary to ensure that all significant portions of a franchise area are able to obtain video programming.⟧

(a) The Commission shall review its ownership rules biennially as part of its regulatory reform review under section 259.

⟦(b)(1) It shall be unlawful for any common carrier, subject in whole or in part to title II of this Act, to provide video programming directly to subscribers in its telephone service area, either directly or indirectly through an affiliate owned by, operated by, controlled by, or under common control with the common carrier.

⟦(2) It shall be unlawful for any common carrier, subject in whole or in part to title II of this Act, to provide channels of communications or pole, line, conduit space, or other rental arrangements, to any entity which is directly or indirectly owned by, operated by, controlled by, or under common control with such common carrier, if such facilities or arrangements are to be used for, or in connection with, the provision of video programming directly to subscribers in the telephone service area of the common carrier.

⟦(3) This subsection shall not apply to any common carrier to the extent such carrier provides telephone exchange service in any rural area (as defined by the Commission).

⟦(4) In those areas where the provision of video programming directly to subscribers through a cable system demonstrably could not exist except through a cable system owned by, operated by, controlled by, or affiliated with the common carrier involved, or upon other showing of good cause, the Commission may, on petition for waiver, waive the applicability of paragraphs (1) and (2) of this subsection. Any such waiver shall be made in accordance with section 63.56 of title 47, Code of Federal Regulations (as in effect September 20, 1984) and shall be granted by the Commission upon a finding that the issuance of such waiver is justified by the particlar circumstances demonstrated by the petitioner, taking into account the policy of this subsection.⟧

(b) VIDEO PROGRAMMING AND CABLE SERVICES.—

(1) DISTINCTION BETWEEN VIDEO PLATFORM AND CABLE SERVICE.—To the extent that any telecommunications carrier carries video programming provided by others, or provides video programming directly to subscribers, through a common carrier video platform, neither the telecommunications carrier nor any video programming provider making use of such platform shall be deemed to be a cable operator providing cable service. To the extent that any telecommunications carrier provides video programming directly to subscribers through a cable system, the carrier shall be deemed to be a cable operator providing cable service.

(2) BELL OPERATING COMPANY ACTIVITIES.—

(A) Notwithstanding the provisions of section 252, to the extent that a Bell operating company carries or provides video programming over a common carrier video platform, it need not use a separate subsidiary if—

(i) the carrier provides facilities, services, or information to all programmers on the same terms and conditions as it provides such facilities, services, or information to its own video programming operations, and

(ii) the carrier does not subsidize its provision of video programming with revenues from its telecommunications services.

(B) To the extent that a Bell operating company provides cable service as a cable operator, it shall provide such service through a subsidiary that meets the requirements of section 252, and shall meet the requirements of clauses (i) and (ii) of subparagraph (A).

(C) Upon a finding by the Commission that the requirement of a separate subsidiary under the preceding subparagraph is no longer necessary to protect consumers, competition, or the public interest, the Commission shall exempt a Bell operating company from that requirement.

(3) COMMON CARRIER VIDEO PLATFORM.—Nothing in this Act precludes a telecommunications carrier from carrying video programming provided by others directly to subscribers over a common carrier video platform.

(4) RATES; ACCESS.—Notwithstanding paragraph (2)(A)(i), a provider of common carrier video platform services shall provide local broadcast stations, and to those public, educational, and governmental entities required by local franchise authorities to be given access to cable systems operating in the same market as the video platform, with access to the video platform for the transmission of television broadcast programming at rates no higher than the incremental-cost-based rates of providing such access. Local broadcast stations shall be entitled to obtain access on the first tier of programming on the video platform.

(5) COMPETITIVE NEUTRALITY.—A provider of video programming may be required to pay fees in lieu of franchise fees (as defined in section 622(g)(1)) if the fees—

(A) are competitively neutral; and

(B) are separately identified in consumer billing.

PART III—FRANCHISING AND REGULATION

SEC. 621. GENERAL FRANCHISE REQUIREMENTS.

(b)(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) To the extent that 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 title; and

(ii) the provisions of this title shall not apply to such cable operator or affiliate.

(B) A franchising authority may not order a cable operator or affiliate thereof to discontinue the provision of a telecommunications service.

(C) A franchising authority may not require a cable operator to provide any telecommunications service or facilities as a condition of the initial grant of a franchise, franchise renewal, or transfer of a franchise.

(D) Nothing in this paragraph affects existing Federal or State authority with respect to telecommunications services.

SEC. 622. FRANCHISE FEES.

(a) Subject to the limitation of subsection (b), any cable operator may be required under the terms of any franchise to pay a franchise fee.

(b) For any twelve-month period, the franchise fees paid by a cable operator with respect to any cable system shall not exceed 5 percent of such cable operator's gross revenues derived in such period from the operation of the cable [system.] *system to provide cable services.* For purposes of this section, the 12-month period shall be the 12-month period applicable under the franchise for accounting purposes. Nothing in this subsection shall prohibit a franchising authority and a cable operator from agreeing that franchise fees which lawfully could be collected for any such 12-month period shall be paid on a prepaid or deferred basis; except that the sum of the fees paid during the term of the franchise may not exceed the amount, including the time value of money, which would have lawfully been collected if such fees had been paid per annum.

SEC. 623. REGULATION OF RATES.

(c) REGULATION OF UNREASONABLE RATES.—

(1) COMMISSION REGULATIONS.—Within 180 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission shall, by regulation, establish the following:

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

(B) fair and expeditious procedures for the receipt, consideration, and resolution of complaints from any [subscriber,] franchising [authority,] *authority* or other relevant State or local government entity alleging that a rate for cable programming services charged by a cable operator violates the criteria prescribed under subparagraph (A), which procedures shall include the minimum showing that shall be required for a complaint to obtain Commission consideration and resolution of whether the rate in question is unreasonable; and

(C) the procedures to be used to reduce rates for cable programming services that are determined by the Commission to be unreasonable and to refund such portion of the rates or charges that were paid by subscribers after the filing of such complaint and that are determined to be unreasonable.

[(2) FACTORS TO BE CONSIDERED.—In establishing the criteria for determining in individual cases whether rates for cable programming services are unreasonable under paragraph (1)(A), the Commission shall consider, among other factors—

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

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

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

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

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

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

(2) STANDARD FOR UNREASONABLE RATES.—The Commission may only consider a rate for cable programming services to be unreasonable if it substantially exceeds the national average rate for comparable cable programming services.

(l) DEFINITIONS.—As used in this section—

(1) The term "effective competition" means that—

(A) fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system;

(B) the franchise area is—

(i) served by at least two unaffiliated multichannel video programming distributors each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and

(ii) the number of households subscribing to programming services offered by multichannel video programming distributors other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise [area; or] *area;*

(C) a multichannel video programming distributor operated by the franchising authority for that franchise area offers video programming to at least 50 percent of the households in that franchise [area.] *area; or*

(D) a local exchange carrier offers video programming services directly to subscribers, either over a common carrier video platform or as a cable operator, in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area.

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

(c) REGULATIONS REQUIRED.—

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

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

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

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

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

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

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

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

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

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

SEC. 639. OBSCENE PROGRAMMING.

Whoever transmits over any cable system any matter which is obscene or otherwise unprotected by the Constitution of the United States shall be fined not more than [$10,000] *$100,000* or imprisoned not more than 2 years, or both.

SEC. 640. SCRAMBLING OF CABLE CHANNELS FOR NONSUBSCRIBERS.

(a) REQUIREMENT.—In providing video programming unsuitable for children to any subscriber through a cable system, a cable operator shall fully scramble or otherwise fully block the video and audio portion of each channel carrying such programming upon subscriber request and without any charge so that one not a subscriber does not receive it.

(b) DEFINITION.—As used in this section, the term "scramble" means to rearrange the content of the signal of the programming so that the programming cannot be received by persons unauthorized to receive the programming.

TITLE 18, UNITED STATES CODE

§ 1307. Exceptions relating to certain advertisements and other information and to State-conducted lotteries

(a) The provisions of sections 1301, 1302, 1303, and 1304 shall not apply to—

(2) an advertisement, list of prizes, or other information concerning a lottery conducted by a State acting under the authority of State law which is—

(A) conducted by a not-for-profit organization or a governmental organization; [or]

(B) conducted as a promotional activity by a commercial organization and is clearly occasional and ancillary to the primary business of that [organization.] *organization; or*

(C) conducted by a commercial organization and is contained in a publication published in a State in which such activities or the publication of such activities are authorized or not otherwise prohibited, or broadcast by a radio or television station licensed in a State in which such activities or the broadcast of such activities are authorized or not otherwise prohibited.

§ 1464. Broadcasting obscene language

Whoever utters any obscene, indecent, or profane language by means of radio communication shall be fined not more than [$10,000] *$100,000* or imprisoned not more than two years, or both.

§ 2511. Interception and disclosure of wire, oral, or electronic communications prohibited

(1) Except as otherwise specifically provided in this chapter, any person who—

(a) intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any [wire, oral, or electronic communication;] *wire, oral, electronic, or digital communication;*

(b) intentionally uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any [oral communication] *communication* when—

(i) such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication; or

(ii) such device transmits communications by radio, or interferes with the transmission of such communication; or

(iii) such person knows, or has reason to know, that such device or any component thereof has been sent through the mail or transported in interstate or foreign commerce; or

(iv) such use or endeavor to use (A) takes place on the premises of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or (B) obtains or is for the purpose of obtaining information relating to the operations of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or

(v) such person acts in the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States;

(c) intentionally discloses, or endeavors to disclose, to any other person the contents of any [wire, oral, or electronic communication] *wire, oral, electronic, or digital communication* in violation of this subsection; or

(d) intentionally uses, or endeavors to use, the contents of any [wire, oral, or electronic communication,] *wire, oral, electronic, or digital communication,* knowing or having reason to know that the information was obtained through the interception of a [wire, oral, or electronic communication,] *wire, oral, electronic, or digital communication,* in violation of this subsection;

shall be punished as provided in subsection (4) or shall be subject to suit as provided in subsection (5).

(2)(a)(i)It shall not be unlawful under this chapter for an operator of a switchboard, or an officer, employee, or agent or a provider of [wire or electronic communication service,] *wire, electronic, or digital communication service,* whose facilities are used in the transmission of a wire communication, to intercept, disclose, or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the provider of that service, except that a provider of wire communication service to the public shall not utilize service observing or random monitoring except for mechanical or service quality control checks.

(ii) Notwithstanding any other law, providers of wire or electronic communication service, their officers, employees, and agents, landlords, custodians, or other persons, are authorized to provide information, facilities, or technical assistance to persons authorized by law to intercept wire, oral, or electronic communications or to conduct electronic surveillance, as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 if such provider, its officers, employees, or agents, landlord, custodian, or other specified person, has been provided with—

(A) a court order directing such assistance signed by the authorizing judge, or

(B) a certification in writing by a person specified in section 2581(7) of this title or the Attorney General of the United States that no warrant or court order is required by law, that all statutory requirements have been met, and that the specified assistance is required, setting forth the period of time during which the provision of the information, facilities, or technical assistance is authorized and specifying the information, facilities, or technical assistance required. No provider of ⟦wire or electronic communication service,⟧ *wire, electronic, or digital communication service,* officer, employee, or agent thereof, or landlord, custodian, or other specified person shall disclose the existence of any interception or surveillance or the device used to accomplish the interception or surveillance with respect to which the person has been furnished an order or certification under this subparagraph, except as may otherwise be required by legal process and then only after prior notification to the Attorney General or to the principal prosecuting attorney of a State or any political subdivision of a State, as may be appropriate. Any such disclosure, shall render such person liable for the civil damages provided for in section 2520. No cause of action shall lie in any court against any provider of ⟦wire or electronic communication service,⟧ *wire, electronic, or digital communication service,* its officers, employees, or agents, landlord, custodian, or other specified person for providing information, facilities, or assistance in accordance with the terms of a court order or certification under this chapter.

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