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S. 2494

To amend the Communications Act of 1934 (47 U.S.C. 151 et seq.) to enhance the ability of direct broadcast satellite and other multichannel video providers to compete effectively with cable television systems, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 17, 1998

Mr. MCCAIN (for himself, Mr. LEAHY, Mr. HATCH, Mr. DEWINE, and Mr. KOHL) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend the Communications Act of 1934 (47 U.S.C. 151 et seq.) to enhance the ability of direct broadcast satellite and other multichannel video providers to compete effectively with cable television systems, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Multichannel Video
5 Competition Act of 1998”.

6 **SEC. 2. FINDINGS.**

7 The Congress makes the following findings:

1 (1) In the Cable Television Consumer Protec-
2 tion and Competition Act of 1992, Congress stated
3 its policy of promoting competition in cable services
4 and making available to the public a diversity of
5 views and information through cable television and
6 other video media.

7 (2) In the Telecommunications Act of 1996,
8 Congress stated its policy of securing lower prices
9 and higher quality service for American tele-
10 communications consumers and encouraging the
11 rapid deployment of new telecommunications tech-
12 nologies.

13 (3) Notwithstanding the intent of Congress as
14 expressed in the 1992 Cable Act and the 1996 Tele-
15 communications Act, in most places throughout
16 America, cable television system operators still do
17 not face effective competition from other providers
18 of multichannel video service.

19 (4) Absent effective competition, the market
20 power exercised by cable television operators enables
21 them to raise the price of cable service to consumers,
22 and to control the price and availability of cable pro-
23 gramming services to other multichannel video serv-
24 ice providers.

1 (5) Direct Broadcast Satellite service has over
2 8 million subscribers and constitutes the most sig-
3 nificant competitive alternative to cable television
4 service. However, Direct Broadcast Satellite Service
5 currently suffers from a number of statutory, regu-
6 latory, and technical barriers that keep it from being
7 an effective competitor to cable television in the pro-
8 vision of multichannel video services. The most
9 prominent of these barriers is its inability to provide
10 subscribers with local television broadcast signals.
11 Other barriers include the higher cost consumers
12 must pay for equipment, installation, and additional
13 equipment to receive service on additional television
14 sets.

15 (6) Permitting providers of direct broadcast
16 satellite service to retransmit local television signals
17 to their subscribers would greatly enhance the ability
18 of direct broadcast satellite service to compete effec-
19 tively in the provision of multichannel video services.

20 (7) Unlike cable television systems, providers of
21 direct broadcast satellite service cannot carry all
22 local television broadcast signals in all the local tele-
23 vision markets they serve.

24 (8) It would be in the public interest for provid-
25 ers of direct broadcast satellite service to fully com-

1 ply with the mandatory signal carriage rules at such
2 time as terrestrial or satellite-based technology en-
3 ables them to do so. In the interim, requiring full
4 compliance with the mandatory signal carriage rules
5 would substantially harm the ability of direct broad-
6 cast satellite service providers to compete in the pro-
7 vision of multichannel video services and would not
8 serve the public interest.

9 (9) Local television broadcast licensees whose
10 stations are not carried by providers of direct broad-
11 cast satellite services are entitled to be compensated
12 for any demonstrable loss of revenue that will result.

13 (10) Millions of subscribers to direct broadcast
14 satellite service currently receive the signals of net-
15 work-affiliated stations not located in these subscrib-
16 ers' local television markets. In many cases, distant
17 network signals may be these subscribers' only
18 source of network television service.

19 (11) Notwithstanding the prevalence of distant
20 network signals and their importance as a compo-
21 nent of direct broadcast satellite service to millions
22 of subscribers, a recent ruling by a federal district
23 court will result in many subscribers losing these
24 signals, regardless of whether local network signals
25 are actually viewable off-air or not.

1 (12) Widespread carriage of distant network
2 stations in local network affiliates' markets can
3 cause local affiliates to lose audience share and reve-
4 nues, which would in turn harm their ability to serve
5 their local community. Therefore, it would best serve
6 the public interest to ensure that distant network
7 stations are carried only where local network sta-
8 tions cannot be received off-air.

9 (13) Abrupt termination of satellite carriers
10 provision of distant network signals would deprive
11 direct broadcast satellite subscribers of an important
12 component of their existing satellite television serv-
13 ice, and have a severely negative impact on the abil-
14 ity of direct broadcast satellite service to compete ef-
15 fectively in the provision of multichannel video serv-
16 ices.

17 (14) It is in the public interest for direct broad-
18 cast satellite subscribers who cannot receive accept-
19 able over-the-air service from their local network-af-
20 filiated stations to continue to receive distant net-
21 work signals for an interim period sufficient to per-
22 mit the Federal Communications Commission to re-
23 define those situations in which the permanent car-
24 riage of distant network signals would be appro-
25 priate.

1 (15) Improving the ability of providers of direct
2 broadcast service to compete effectively in the provi-
3 sion of multichannel video services by eliminating re-
4 maining statutory and administrative barriers to
5 competition would be consistent with the intent of
6 Congress as expressed in the terms of the 1992
7 Cable Act and the 1996 Telecommunications Act.

8 **SEC. 3. PURPOSE.**

9 The purpose of this Act is to promote the growth of
10 competition in the provision of multichannel video services
11 by expeditiously removing certain statutory and regulatory
12 barriers that prevent providers of Direct Broadcast Sat-
13 ellite Services from competing effectively with cable tele-
14 vision systems.

15 **SEC. 4. MUST-CARRY FOR SATELLITE CARRIERS RE-**
16 **TRANSMITTING TELEVISION BROADCAST SIG-**
17 **NALS.**

18 Part I of title III of the Communications Act of 1934
19 (47 U.S.C. 301 et seq.) is amended by adding at the end
20 thereof the following:

21 **“SEC. 337. CARRIAGE OF LOCAL TELEVISION SIGNALS BY**
22 **SATELLITE CARRIERS.**

23 “(a) PURPOSE.—The purpose of this section is to
24 promote competition in the provision of multichannel video
25 services by—

1 “(1) enabling providers of direct broadcast serv-
2 ice to offer their subscribers the signals of local tele-
3 vision stations; and

4 “(2) accommodating, for an interim period,
5 technical limitations that preclude providers of direct
6 broadcast service from carrying all local signals in
7 all local television markets.

8 “(b) APPLICATION OF MANDATORY CARRIAGE TO
9 SATELLITE CARRIERS.—Except as otherwise provided in
10 this section, the mandatory carriage provisions of section
11 614 of the Communications Act will apply no later than
12 January 1, 2002, to satellite carriers retransmitting tele-
13 vision broadcast signals.

14 “(c) RULEMAKING REQUIRED.—Within 180 days
15 after the date of enactment of the Multichannel Video
16 Competition Act of 1998, the Commission shall adopt reg-
17 ulations to facilitate the provision of all qualified local
18 commercial and noncommercial television stations, either
19 through satellite or terrestrial means, by providers of di-
20 rect broadcast satellite service providing video program-
21 ming.

22 “(d) INTERIM REQUIREMENTS.—

23 “(1) INTERIM REQUIREMENT.—Before January
24 1, 2002, or the effective date of the final regulations
25 adopted pursuant to subsection (c) (if that date is

1 earlier), a provider of direct broadcast satellite serv-
2 ice providing video programming shall—

3 “(A) carry all local television stations eligi-
4 ble for carriage; or

5 “(B) compensate any such station not car-
6 ried.

7 “(2) COMPENSATION FORMULA.—Within 180
8 days of the date of enactment of the Multichannel
9 Video Competition Act of 1998, the Commission
10 shall prescribe a formula to be used to determine the
11 audience and revenue loss incurred by a local tele-
12 vision station as a result of its noncarriage by a pro-
13 vider of direct broadcast satellite service under para-
14 graph (1)(B), and procedural rules for the expedi-
15 tious resolution of petitions requesting compensa-
16 tion.

17 “(3) BURDEN OF PROOF.—A local television
18 station, otherwise eligible for carriage, whose signal
19 is not carried by a direct broadcast satellite service
20 provider under paragraph (1)(B), may petition the
21 Commission for an order directing that provider to
22 pay compensation under this paragraph. In any pro-
23 ceeding on such a petition, the burden of proof shall
24 lie with the petitioner.

1 “(4) COMPENSATION LIMITED TO FORMULA
2 AMOUNT ABSENT UNUSUAL OR COMPELLING CIR-
3 CUMSTANCES.—The Commission may not grant
4 compensation under this subsection for any pro-
5 jected revenue loss except in accordance with the
6 formula prescribed by the Commission under para-
7 graph (2) unless the Commission determines that
8 unusual or compelling circumstances warrant addi-
9 tional compensation.

10 “(5) ADDITIONAL COMPENSATION.—If the peti-
11 tioner shows that the compensation determined
12 under the formula would be insufficient to enable
13 the petitioner to operate in the public interest, the
14 Commission shall award additional compensation
15 under this section.

16 “(6) TIME LIMIT FOR COMMISSION ACTION.—
17 The Commission shall issue a decision on any peti-
18 tion filed under paragraph (3) no later than 150
19 days after the petition is filed.

20 “(e) GOOD SIGNAL REQUIRED.—A local television
21 broadcast station eligible for carriage under subsection (b)
22 shall be required to bear the costs associated with deliver-
23 ing a good quality signal for retransmission by the satellite
24 carrier.”.

1 **SEC. 5. CARRIAGE OF DISTANT NETWORK SIGNALS BY SAT-**
2 **ELLITE CARRIERS.**

3 (a) **PURPOSE.**—The purpose of this section is to pro-
4 mote competition in the provision of multichannel video
5 services by enabling direct broadcast satellite providers to
6 offer distant network signals to consumers in areas receiv-
7 ing inadequate over-the-air reception of local television sig-
8 nals.

9 (b) **CONTINUED RETRANSMISSION OF DISTANT NET-**
10 **WORK SIGNALS.**—Notwithstanding any other provision of
11 law, satellite carriers retransmitting the signal of a distant
12 network station to households located within an area
13 served by a local affiliate of the same network and receiv-
14 ing service as of July 10, 1998, shall not be required to
15 discontinue carriage of the distant network station to such
16 households prior to February 28, 1999. Nothing in this
17 subsection is intended to modify the duration of the license
18 granted in section 119 of title 17, United States Code.

19 (c) **RULEMAKING REQUIRED.**—The Federal Commu-
20 nications Commission shall complete a single rulemaking
21 proceeding in which it shall rule on any petitions or similar
22 matters regarding the definition of unserved areas or
23 households. Any definition adopted by the Commission
24 must consist of an objective measure of a satisfactory sig-
25 nal obtainable by use of generally-available off-air recep-
26 tion devices of the type used by the average viewer. The

1 Commission shall complete this rulemaking proceeding
2 within such time as to enable any rule change to become
3 effective no later than February 28, 1999.

4 (d) NO REMISSION OF PENALTY.—No action taken
5 by the Commission pursuant to subsection (c) shall indem-
6 nify any provider of direct broadcast satellite service from
7 any liability for any prior violation of section 119(a)(5)(D)
8 of title 17, United States Code, or from the imposition
9 of any penalty therefor.

10 **SEC. 6. RETRANSMISSION CONSENT.**

11 (a) AMENDMENTS.—Section 325(b) of the Commu-
12 nications Act of 1934 (47 U.S.C. 325(b)) is amended—

13 (1) by striking the subsection designation and
14 paragraphs (1) and (2) and inserting the following:

15 “(b)(1) No cable system or other multichannel video
16 programming distributor shall retransmit the signal of a
17 broadcasting station, or any part thereof, except—

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

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

22 “(C) pursuant to section 337, in the case of a
23 station eligible, in accordance with this subsection,
24 to assert the right to carriage under such section.

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

3 “(A) retransmission of the signal of a non-com-
4 mercial broadcasting station;

5 “(B) retransmission of the signal of a television
6 broadcast station outside the station’s local market
7 by a satellite carrier directly to subscribers if—

8 “(i) such station was a superstation on
9 May 1, 1991; and

10 “(ii) on December 31, 1997, such station
11 was a network station and its signal was re-
12 transmitted by satellite carriers directly to at
13 least 500,000 subscribers;

14 “(C) retransmission of the distant signal of a
15 broadcasting station that is owned or operated by, or
16 affiliated with, a broadcasting network directly to a
17 home satellite antenna, if the household receiving
18 the signal is located in an unserved area;

19 “(D) retransmission by a cable operator or
20 other multichannel video programming distributor
21 (other than by a satellite carrier direct to its sub-
22 scribers) of the signal of a television broadcast sta-
23 tion outside the station’s local market, if such signal
24 was obtained from a satellite carrier and—

1 “(i) the originating station was a supersta-
2 tion on May 1, 1991; and

3 “(ii) the originating station was a network
4 station on December 31, 1997, and its signal
5 was retransmitted by a satellite carrier directly
6 to subscribers.”; and

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

9 “(7) For purposes of this subsection:

10 “(1) TELEVISION BROADCAST STATION.—The
11 term ‘television broadcast station’ means a full
12 power television broadcast station, but does not in-
13 clude a low-power or translator television broadcast
14 station.

15 “(2) BROADCASTING NETWORK.—The term
16 ‘broadcasting network’ means a television network in
17 the United States which offers an interconnected
18 program service on a regular basis for 15 or more
19 hours per week to at least 25 affiliated broadcast
20 stations in 10 or more States.

21 “(3) NETWORK STATION.—The term ‘network
22 station’ means a television broadcast station that is
23 owned or operated by, or affiliated with, a broad-
24 casting network.

1 “(4) LOCAL MARKET.—The term ‘local market’
2 means the designated market area in which a station
3 is located, and—

4 “(A) for a commercial television broadcast
5 station located in any of the 150 largest des-
6 ignated market areas, all commercial television
7 broadcast stations licensed to a community
8 within the same designated market are within
9 the same local market;

10 “(B) for a commercial television broadcast
11 station that is located in a designated market
12 that is not one of the 150 largest, the local
13 market includes, in addition to all commercial
14 television broadcast stations licensed to a com-
15 munity within the same designated market
16 area, any station that is significantly viewed, as
17 such term is defined in section 76.54 of the
18 Commission’s regulations (47 C.F.R. 76.45);
19 and

20 “(C) for a noncommercial educational tele-
21 vision broadcast station, the local market in-
22 cludes any station that is licensed to a commu-
23 nity within the same designated market area as
24 the noncommercial educational television broad-
25 cast station.

1 “(5) DESIGNATED MARKET AREA.—The term
2 ‘designated market area’ means a designated market
3 area, as determined by Nielsen Media Research and
4 published in the DMA Market and Demographic Re-
5 port.

6 “(6) UNSERVED AREA.—The term ‘unserved
7 area’ means a place that does not receive an off-air
8 signal from a local network station that meets or ex-
9 ceeds the standards established by the Commis-
10 sion.”.

11 (b) EFFECTIVE DATE.—The amendments made by
12 subsection (a) are effective January 1, 1999.

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