TITLE 47—TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS

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CHAPTER 1—TELEGRAPHS

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§§ 1 to 6. Repealed. July 16, 1947, ch. 256, § 1, 61 Stat. 327

Section 1, R.S. § 5263, related to use of public domain.

Section 2, R.S. § 5264, related to use of materials from public lands.

Section 3, R.S. § 5266; acts June 19, 1934, ch. 652, § 601, 48 Stat. 1101; Mar. 6, 1943, ch. 10, § 6, 57 Stat. 12, related to Government priority in transmission of messages.

Section 4, R.S. § 5267; act June 19, 1934, ch. 652, § 601, 48 Stat. 1101, related to purchase of lines.

Section 5, R.S. § 5268; act June 19, 1934, ch. 652, § 601, 48 Stat. 1101, related to acceptance of obligations to be filed.

Section 6, R.S. § 5265; act June 19, 1934, ch. 652, § 601, 48 Stat. 1101, provided that rights were not transferable.

EFFECTIVE DATE OF REPEAL

Section 3 of act July 16, 1947, provided that: ''This Act [repealing sections 1 to 6 and 8 of this title] shall take effect on the tenth day following the enactment date thereof [July 16, 1947].''

AUTHORITY OF FEDERAL COMMUNICATIONS COMMISSION; EFFECT OF REPEAL

Section 2 of act July 16, 1947, provided that: ''Nothing in this Act [repealing sections 1 to 6 and 8 of this title] shall limit the authority of the Federal Communications Commission under the provisions of the Communications Act of 1934, as amended [chapter 5 of this title], to prescribe charges, classifications, regulations, and practices, including priorities, applicable to Government communications.''

§ 7. Omitted

CODIFICATION

Section, act June 23, 1879, ch. 35, § 1, 21 Stat. 31, was dependent upon and incorporated by reference in sections 1 to 6 and 8 of this title which were repealed by act July 16, 1947, ch. 256, § 1, 61 Stat. 327.

§ 8. Repealed. July 16, 1947, ch. 256, § 1, 61 Stat. 327

Section, R.S. § 5269; acts Feb. 27, 1877, ch. 69, § 1, 19 Stat. 252; June 19, 1934, ch. 652, § 601, 48 Stat. 1101, related to refusal to transmit dispatches.

EFFECTIVE DATE OF REPEAL

Repeal effective on tenth day following July 16, 1947, see section 3 of act July 16, 1947, set out as a note under sections 1 to 6 of this title.

AUTHORITY OF FEDERAL COMMUNICATIONS COMMISSION; EFFECT OF REPEAL

See note set out under section 1 of this title.

§ 9. Subsidized companies required to construct and operate lines

All railroad and telegraph companies to which the United States has granted any subsidy in lands or bonds or loan of credit for the construction of either railroad or telegraph lines, which, by the acts incorporating them, or by any act amendatory or supplementary thereto, are required to construct, maintain, or operate telegraph lines, and all companies engaged in operating said railroad or telegraph lines shall, by and through their own respective corporate officers and employees, maintain, and operate, for railroad, governmental, commercial, and all other purposes, telegraph lines, and exercise by themselves alone all the telegraph franchises conferred upon them and obligations assumed by them under the acts making the grants as aforesaid.

(Aug. 7, 1888, ch. 772, § 1, 25 Stat. 382.)

§ 10. Equal facilities to connecting lines; discrimination in rates

Whenever any telegraph company which shall have accepted the provisions of sections 1 to 6

and 8[1] of this title, prior to the effective date of the repeal of such sections, shall extend its line to any station or office of a telegraph line belonging to any one of said railroad or telegraph companies, referred to in section 9 of this title, said telegraph company so extending its line shall have the right and said railroad or telegraph company shall allow the line of said telegraph company so extending its line to connect with the telegraph line of said railroad or telegraph company to which it is extended at the place where their lines may meet, for the prompt and convenient interchange of telegraph business between said companies; and such railroad and telegraph companies, referred to in section 9 of this title, shall so operate their respective telegraph lines as to afford equal facilities to all, without discrimination in favor of or against any person, company, or corporation whatever, and shall receive, deliver, and exchange business with connecting telegraph lines on equal terms, and affording equal facilities, and without discrimination for or against any one of such connecting lines; and such exchange of business shall be on terms just and equitable.

(Aug. 7, 1888, ch. 772, § 2, 25 Stat. 383; Sept. 3, 1954, ch. 1263, § 48, 68 Stat. 1243.)

REFERENCES IN TEXT

Sections 1 to 6 and 8 of this title, referred to in text, were repealed by act July 16, 1947, ch. 256, § 1, 61 Stat. 327.

AMENDMENTS

1954—Act Sept. 3, 1954, amended section to make it clear that the rights and obligations of companies which accepted benefits under former sections 1 to 6 and 8 of this title, which have been repealed, continue irrespective of the repeal.

§ 11. Powers of Federal Communications Commission

If any railroad or telegraph company referred to in section 9 of this title, or company operating such railroad or telegraph line shall refuse or fail, in whole or in part, to maintain, and operate a telegraph line as provided herein, for the use of the Government or the public, for commercial and other purposes, without discrimination, or shall refuse or fail to make or continue such arrangements for the interchange of business with any connecting telegraph company, then any person, company, corporation, or connecting telegraph company may apply for relief to the Federal Communications Commission, whose duty it shall thereupon be, under such rules and regulations as said commission may prescribe, to ascertain the facts, and determine and order what arrangement is proper to be made in the particular case, and the railroad or telegraph company concerned shall abide by and perform such order; and it shall be the duty of the Federal Communications Commission, when such determination and order are made, to notify the parties concerned, and, if necessary, enforce the same by writ of mandamus in the courts of the United States, in the name of the United States, at the relation of either of said communication commissioners. The commissioners may institute any inquiry, upon their own motion, in the same manner and to the same effect as though complaint had been made.

(Aug. 7, 1888, ch. 772, § 3, 25 Stat. 383; June 19, 1934, ch. 652, § 601, 48 Stat. 1101.)

TRANSFER OF FUNCTIONS

Duties, powers, and functions under this section relating to operation of telegraph lines by railroad and telegraph lines granted Government aid in construction of their lines imposed on and vested in Federal Communications Commission by act June 19, 1934. See section 601 of this title.

§ 12. Interference with liens of United States

In order to secure and preserve to the United States the full value and benefit of its liens upon all the telegraph lines required to be constructed by and lawfully belonging to railroad and telegraph companies referred to in section 9 of this title, and to have the same possessed, used, and operated in conformity with sections 9 to 15 of this title, it is made the duty of the Attorney General of the United States, by proper proceedings, to prevent any unlawful interference with the rights and equities of the United States under all acts of Congress relating to such railroads and telegraph lines, and to have legally ascertained and finally adjudicated all alleged rights of all persons and corporations whatever claiming in any manner any control or interest of any kind in any telegraph lines or property, or exclusive rights-of-way upon the lands of said railroad companies, or any of them, and to have all contracts and provisions of contracts set aside and annulled which have been unlawfully and beyond their powers entered into by said railroad or telegraph companies, or any of them, with any other person, company, or corporation.

(Aug. 7, 1888, ch. 772, § 4, 25 Stat. 383.)

§ 13. Violations; punishment; action for damages

Any officer or agent of said railroad or telegraph companies, or of any company operating the railroads and telegraph lines of said companies, who shall refuse or fail to operate the telegraph lines of said railroad or telegraph companies under his control, or which he is engaged in operating, in the manner herein directed, or who shall refuse or fail, in such operation and use, to afford and secure to the Government and the public equal facilities, or to secure to each of said connecting telegraph lines equal advantages and facilities in the interchange of business, as herein provided for, without any discrimination whatever for or adverse to the telegraph line of any or either of said connecting companies, or shall refuse to abide by or perform and carry out within a reasonable time the order or orders of the Federal Communications Commission, shall in every such case of refusal or failure be guilty of a misdemeanor, and, on conviction thereof, shall in every such case be fined in a sum of not exceeding $1,000, and may be imprisoned not less than six months; and in every such case of refusal or failure the party aggrieved may not only cause the officer or agent guilty thereof to be prosecuted under the provisions of this section, but may also bring an

[1] See References in Text note below.

action for the damages sustained thereby against the company whose officer or agent may be guilty thereof, in the district court of the United States in any State or Territory in which any portion of the road or telegraph line of said company may be situated; and in case of suit process may be served upon any agent of the company found in such State or Territory, and such service shall be held by the court good and sufficient.

(Aug. 7, 1888, ch. 772, §5, 25 Stat. 384; Mar. 3, 1911, ch. 231, §289, 36 Stat. 1167; June 19, 1934, ch. 652, §601, 48 Stat. 1101.)

CODIFICATION

Words "circuit or" which preceded "district court" were omitted in view of the abolition of the circuit courts and the transfer of their jurisdiction to the district courts by act Mar. 3, 1911.

TRANSFER OF FUNCTIONS

Duties, powers, and functions under this section relating to operation of telegraph lines by railroad and telegraph lines granted Government aid in construction of their lines imposed on and vested in Federal Communications Commission by act June 19, 1934. See section 601 of this title.

§14. Contracts filed with Federal Communications Commission; reports; failure to make

It shall be the duty of each and every one of the aforesaid railroad and telegraph companies annually to report to the Federal Communications Commission, with reasonable fullness and certainty, the nature, extent, value, and condition of the telegraph lines and property then belonging to it, the gross earnings, and all expenses of maintenance, use, and operation thereof, and its relation and business with all connecting telegraph companies during the preceding year, at such time and in such manner as may be required by a system of reports which said commission shall prescribe; and if any of said railroad or telegraph companies shall refuse or fail to make such reports or any report as may be called for by said commission, or refuse to submit its books and records for inspection, such neglect or refusal shall operate as a forfeiture, in each case of such neglect or refusal, of a sum not less than $1,000 nor more than $5,000, to be recovered by the Attorney General of the United States, in the name and for the use and benefit of the United States; and it shall be the duty of the Federal Communications Commission to inform the Attorney General of all such cases of neglect or refusal, whose duty it shall be to proceed at once to judicially enforce the forfeitures herein before provided.

(Aug. 7, 1888, ch. 772, §6, 25 Stat. 384; June 19, 1934, ch. 652, §601, 48 Stat. 1101.)

CODIFICATION

A provision in the original enactment of this section requiring filing of copies of contracts, agreements, etc., within 60 days from passage of act Aug. 7, 1888 was omitted.

TRANSFER OF FUNCTIONS

Duties, powers, and functions under this section relating to operation of telegraph lines by railroad and telegraph lines granted Government aid in construction of their lines imposed on and vested in Federal Communications Commission by act June 19, 1934. See section 601 of this title.

§15. Reservation of power to alter, amend, or repeal act; power to fix rates and purchase lines

Nothing in sections 9 to 15 of this title shall be construed to affect or impair the right of Congress, at any time hereafter, to alter, amend, or repeal sections 1 to 6 and 8[1] of this title; and sections 9 to 15 of this title shall be subject to alteration, amendment, or repeal as, in the opinion of Congress, justice or the public welfare may require; and nothing herein contained shall be held to deny, exclude, or impair any right or remedy in the premises now or hereafter existing in the United States, or the authority of the Federal Communications Commission under the provisions of the Communications Act of 1934, as amended [47 U.S.C. 151 et seq.], to prescribe charges, classifications, regulations, and practices, including priorities, applicable to Government communications.

(Aug. 7, 1888, ch. 772, §7, 25 Stat. 385; Sept. 3, 1954, ch. 1263, §49, 68 Stat. 1244.)

REFERENCES IN TEXT

Sections 1 to 6 and 8 of this title, referred to in text, were repealed by act July 16, 1947, ch. 256, §1, 61 Stat. 327.

The Communications Act of 1934, as amended, referred to in text, is act June 19, 1934, ch. 652, 48 Stat. 1064, as amended, which is classified principally to chapter 5 (§151 et seq.) of this title. For complete classification of this Act to the Code, see section 609 of this title and Tables.

AMENDMENTS

1954—Act Sept. 3, 1954, corrected references and struck out obsolete material.

§16. Washington-Alaska Military Cable and Telegraph System; money transfers; portion of receipts withheld

On and after May 20, 1926, such amount of money as may be authorized by the Secretary of the Army may be withheld temporarily from the receipts of the Washington-Alaska Military Cable and Telegraph System by the auditor of said system as a working balance from which to make payments of money transfers from and to Alaska and between points within Alaska, to be accounted for accordingly.

(May 20, 1926, ch. 345, 44 Stat. 576; July 26, 1947, ch. 343, title II, §205(a), 61 Stat. 501; Pub. L. 92–310, title III, §233, June 6, 1972, 86 Stat. 214.)

AMENDMENTS

1972—Pub. L. 92–310 struck out provisions which permitted the expenses of procuring necessary official bonds of certain enlisted men to be paid from the receipts of the system.

CHANGE OF NAME

Department of War designated Department of the Army and title of Secretary of War changed to Secretary of the Army by section 205(a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, en-

[1] See References in Text note below.

acted Title 10, Armed Forces, which in sections 3010 to 3013 continued Department of the Army under administrative supervision of Secretary of the Army.

§ 17. Repealed. Pub. L. 105–119, title VI, § 620, Nov. 26, 1997, 111 Stat. 2519

Section, act May 26, 1900, ch. 586, 31 Stat. 206, related to prohibition of establishment of telegraph or cable lines by foreigners.

CHAPTER 2—SUBMARINE CABLES

Sec.
21. Submarine cables; willful injury to; punishment.
22. Negligent injury to submarine cables; punishment.
23. Injury to submarine cables in efforts to save life excepted.
24. Vessels laying cables; signals; avoidance of buoys.
25. Fishing vessels; duty to keep nets from cables.
26. Duties of commanders of warships.
27. Offending vessels to show nationality.
28. Penalties not to bar suits for damages.
29. Master of offending vessel punishable.
30. Definitions.
31. Summary trials.
32. Application.
33. Jurisdiction and venue of actions and offenses.
34. Licenses for landing or operating cables connecting United States with foreign country; necessity for.
35. Withholding or revoking of licenses by President; terms and conditions of licenses.
36. Preventing landing or operating of cables; injunction.
37. Violations; punishment.
38. ''United States'' defined.
39. Amendment, modification, etc., of rights granted.

§ 21. Submarine cables; willful injury to; punishment

Any person who shall willfully and wrongfully break or injure, or attempt to break or injure, or who shall in any manner procure, counsel, aid, abet, or be accessory to such breaking or injury, or attempt to break or injure, a submarine cable in such manner as to interrupt or embarrass, in whole or in part, telegraphic communication, shall be guilty of a misdemeanor, and, on conviction thereof, shall be liable to imprisonment for a term not exceeding two years, or to a fine not exceeding $5,000, or to both fine and imprisonment, at the discretion of the court.

(Feb. 29, 1888, ch. 17, § 1, 25 Stat. 41.)

SHORT TITLE

Act Feb. 29, 1888, ch. 17, 25 Stat. 41, which enacted sections 21 to 33 of this title, is popularly known as the ''Submarine Cable Act''.

INTERNATIONAL CONVENTION

The protection of submarine cables was made the subject of an international convention between the United States and Germany, Argentine Confederation, Austria-Hungary, Belgium, Brazil, Costa Rica, Denmark, Dominican Republic, Spain, United States of Columbia, France, Great Britain, Guatemala, Greece, Italy, Turkey, Netherlands, Persia, Portugal, Roumania, Russia, Salvador, Servia, Sweden and Norway, Uruguay, and the British Colonies. It was concluded Mar. 14, 1884, ratified Jan. 26, 1885, ratifications exchanged Apr. 16, 1885, proclaimed May 22, 1885, and entered into force for the United States May 1, 1888. Its provisions were set forth in 24 Stat. 989 to 1000.

§ 22. Negligent injury to submarine cables; punishment

Any person who by culpable negligence shall break or injure a submarine cable in such manner as to interrupt or embarrass, in whole or in part, telegraphic communication, shall be guilty of a misdemeanor, and, on conviction thereof, shall be liable to imprisonment for a term not exceeding three months, or to a fine not exceeding $500, or to both fine and imprisonment, at the discretion of the court.

(Feb. 29, 1888, ch. 17, § 2, 25 Stat. 41.)

§ 23. Injury to submarine cables in efforts to save life excepted

The provisions of sections 21 and 22 of this title shall not apply to a person who breaks or injures a cable in an effort to save the life or limb of himself or of any other person, or to save his own or any other vessel: *Provided*, That he takes reasonable precautions to avoid such breaking or injury.

(Feb. 29, 1888, ch. 17, § 3, 25 Stat. 41.)

§ 24. Vessels laying cables; signals; avoidance of buoys

The master of any vessel which, while engaged in laying or repairing submarine cables, shall fail to observe the rules concerning signals that have been or shall be adopted by the parties to the convention described in section 30 of this title with a view to preventing collisions at sea; or the master of any vessel that, perceiving, or being able to perceive the said signals displayed upon a telegraph ship engaged in repairing a cable, shall not withdraw to or keep at distance of at least one nautical mile; or the master of any vessel that seeing or being able to see buoys intended to mark the position of a cable when being laid or when out of order or broken, shall not keep at a distance of at least a quarter of a nautical mile, shall be guilty of a misdemeanor, and on conviction thereof, shall be liable to imprisonment for a term not exceeding one month, or to a fine of not exceeding $500.

(Feb. 29, 1888, ch. 17, § 4, 25 Stat. 41.)

INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

For the International Regulations for Preventing Collisions at Sea, 1972, see International Regulations for Preventing Collisions at Sea, 1972, set out as a note under section 1602 of Title 33, Navigation and Navigable Waters.

§ 25. Fishing vessels; duty to keep nets from cables

The master of any fishing vessel who shall not keep his implements or nets at a distance of at least one nautical mile from a vessel engaged in laying or repairing a cable; or the master of any fishing vessel who shall not keep his implements or nets at a distance of at least a quarter of a nautical mile from a buoy or buoys intended to mark the position of a cable when being laid or

when out of order or broken, shall be guilty of a misdemeanor, and on conviction thereof, shall be liable to imprisonment for a term not exceeding ten days, or to a fine not exceeding $250, or to both such fine and imprisonment, at the discretion of the court. Fishing vessels, on perceiving or being able to perceive the said signals displayed on a telegraph ship, shall be allowed such time as may be necessary to obey the notice thus given, not exceeding twenty-four hours, during which period no obstacle shall be placed in the way of their operations.

(Feb. 29, 1888, ch. 17, § 5, 25 Stat. 42.)

§ 26. Duties of commanders of warships

For the purpose of carrying into effect the convention described in section 30 of this title a person commanding a ship of war of the United States or of any foreign state for the time being bound by the convention, or a ship specially commissioned by the Government of the United States or by the government of such foreign state, may exercise and perform the duties with respect to requiring exhibition of documents evidencing the nationality of offending vessels and making reports of infractions vested in and imposed on such officer by the convention.

(Feb. 29, 1888, ch. 17, § 6, 25 Stat. 42.)

CODIFICATION

The original enactment of this section did not contain the words, ''with respect to requiring exhibition of documents evidencing the nationality of offending vessels and making reports of infractions,'' which are inserted in view of the powers conferred on commanders of vessels of war contained in article 10 of the Convention, 24 Stat. 996, set out as a note under section 27 of this title.

§ 27. Offending vessels to show nationality

Any person having the custody of the papers necessary for the preparation of the statements provided for in article 10 of the said convention with respect to reports of infractions, by officers commanding vessels of war or vessels especially commissioned, who shall refuse to exhibit them or shall violently resist persons having authority according to article 10 of said convention to draw up statements of facts in the exercise of their functions, shall be guilty of a misdemeanor, and on conviction thereof shall be liable to imprisonment not exceeding two years, or to a fine not exceeding $5,000, or to both fine and imprisonment, at the discretion of the court.

(Feb. 29, 1888, ch. 17, § 7, 25 Stat. 42.)

CODIFICATION

The original enactment of this section did not contain the words, ''with respect to reports of infractions, by officers commanding vessels of war or vessels especially commissioned,'' which have been inserted in view of article 10 of the Convention, referred to in text, and set out as a note below.

PROVISION OF INTERNATIONAL CONVENTION

Article 10 of the International Convention for the Protection of Submarine Cables, made at Paris on May (March) 14, 1884, and proclaimed by the President of the United States on May 22, 1885, 24 Stat. 996, referred to in this section, read as follows:

''Evidence of violations of this convention may be obtained by all methods of securing proof that are allowed by the laws of the country of the court before which a case has been brought.

''When the officers commanding the vessels of war or the vessels specially commissioned for that purpose, of one of the High Contracting Parties, shall have reason to believe that an infraction of the measures provided for by this Convention has been committed by a vessel other than a vessel of war, they may require the captain or master to exhibit the official documents furnishing evidence of the nationality of the said vessel. Summary mention of such exhibition shall at once be made on the documents exhibited.

''Reports may, moreover, be prepared by the said officers, whatever may be the nationality of the inculpated vessel. These reports shall be drawn up in the form and in the language in use in the country to which the officer drawing them up belongs; they may be used as evidence in the country in which they shall be invoked, and according to the laws of such country. The accused parties and the witnesses shall have the right to add or to cause to be added thereto, in their own language, any explanations that they may deem proper; these declarations shall be duly signed.''

§ 28. Penalties not to bar suits for damages

The penalties provided in this chapter for the breaking or injury of a submarine cable shall not be a bar to a suit for damages on account of such breaking or injury.

(Feb. 29, 1888, ch. 17, § 8, 25 Stat. 42.)

§ 29. Master of offending vessel punishable

When an offense against this chapter shall have been committed by means of a vessel, or of any boat belonging to a vessel, the master of such vessel shall, unless some other person is shown to have been in charge of and navigating such vessel or boat, be deemed to have been in charge of and navigating the same, and be liable to be punished accordingly.

(Feb. 29, 1888, ch. 17, § 9, 25 Stat. 42.)

§ 30. Definitions

Unless the context of this chapter otherwise requires, the term ''vessel'' shall be taken to mean every description of vessel used in navigation, in whatever way it is propelled; the term ''master'' shall be taken to include every person having command or charge of a vessel; and the term ''person'' to include a body of persons, corporate or incorporate. The term ''convention'' shall be taken to mean the International Convention for the Protection of Submarine Cables, made at Paris on the 14th day of May [March], 1884, and proclaimed by the President of the United States on the 22d day of May, 1885.

(Feb. 29, 1888, ch. 17, § 10, 25 Stat. 42.)

§ 31. Summary trials

The provisions of sections 391–396 of title 33 shall extend to the trial of offenses against the provisions of sections 24 and 25 of this title.

(Feb. 29, 1888, ch. 17, § 11, 25 Stat. 42.)

§ 32. Application

The provisions of this chapter shall be held to apply only to cables to which the convention for the time being applies.

(Feb. 29, 1888, ch. 17, § 12, 25 Stat. 42.)

§ 33. Jurisdiction and venue of actions and offenses

The district courts of the United States shall have jurisdiction over all offenses against this chapter and of all suits of a civil nature arising thereunder, whether the infraction complained of shall have been committed within the territorial waters of the United States or on board a vessel of the United States outside of said waters. From the decrees and judgments of the district courts in actions and suits arising under this chapter appeals shall be allowed as provided by law in other cases. Criminal actions and proceedings for a violation of the provisions of this chapter shall be commenced and prosecuted in the district court for the district within which the offense was committed, and when not committed within any judicial district, then in the district court for the district within which the offender may be found; and suits of a civil nature may be commenced in the district court for any district within which the defendant may be found and shall be served with process.

(Feb. 29, 1888, ch. 17, § 13, 25 Stat. 42; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54.)

CODIFICATION

Words ''and writs of error'' after ''appeals'' deleted in view of section 1 of act Jan. 31, 1928, which abolished writs of error and provided for similar relief by appeal.

§ 34. Licenses for landing or operating cables connecting United States with foreign country; necessity for

No person shall land or operate in the United States any submarine cable directly or indirectly connecting the United States with any foreign country, or connecting one portion of the United States with any other portion thereof, unless a written license to land or operate such cable has been issued by the President of the United States. The conditions of sections 34 to 39 of this title shall not apply to cables, all of which, including both terminals, lie wholly within the continental United States.

(May 27, 1921, ch. 12, § 1, 42 Stat. 8.)

CODIFICATION

Section was not enacted as part of the Submarine Cable Act which comprises this chapter.

DELEGATION OF FUNCTIONS

For delegation of functions, vested in President by sections 34 to 39 of this title, to Federal Communications Commission, see section 5(a) of Ex. Ord. No. 10530, eff. May 10, 1954, 19 F.R. 2709, set out under section 301 of Title 3, The President.

§ 35. Withholding or revoking of licenses by President; terms and conditions of licenses

The President may withhold or revoke such license when he shall be satisfied after due notice and hearing that such action will assist in securing rights for the landing or operation of cables in foreign countries, or in maintaining the rights or interests of the United States or of its citizens in foreign countries, or will promote the security of the United States, or may grant such license upon such terms as shall be necessary to assure just and reasonable rates and service in the operation and use of cables so licensed. The license shall not contain terms or conditions granting to the licensee exclusive rights of landing or of operation in the United States. Nothing herein contained shall be construed to limit the power and jurisdiction of the Federal Communications Commission with respect to the transmission of messages.

(May 27, 1921, ch. 12, § 2, 42 Stat. 8; June 19, 1934, ch. 652, title VII, § 702(c), formerly title VI, § 602(c), 48 Stat. 1102; renumbered Pub. L. 98–549, § 6(a), Oct. 30, 1984, 98 Stat. 2804.)

CODIFICATION

Section was not enacted as part of the Submarine Cable Act which comprises this chapter.

AMENDMENTS

1934—Act June 19, 1934, substituted ''of the Federal Communications Commission'' for ''heretofore granted the Interstate Commerce Commission''.

DELEGATION OF FUNCTIONS

For delegation of functions vested in President by this section to Federal Communications Commission, see note set out under section 34 of this title.

§ 36. Preventing landing or operating of cables; injunction

The President is empowered to prevent the landing of any cable about to be landed in violation of sections 34 to 39 of this title. When any such cable is about to be or is landed or is being operated without a license, any district court of the United States exercising jurisdiction in the district in which such cable is about to be or is landed, or any district court of the United States having jurisdiction of the parties, shall have jurisdiction, at the suit of the United States, to enjoin the landing or operation of such cable or to compel, by injunction, the removal thereof.

(May 27, 1921, ch. 12, § 3, 42 Stat. 8.)

CODIFICATION

Section was not enacted as part of the Submarine Cable Act which comprises this chapter.

DELEGATION OF FUNCTIONS

For delegation of functions vested in President by this section to Federal Communications Commission, see note set out under section 34 of this title.

§ 37. Violations; punishment

Whoever knowingly commits, instigates, or assists in any act forbidden by section 34 of this title shall be guilty of a misdemeanor and shall be fined not more than $5,000, or imprisoned for not more than one year, or both.

(May 27, 1921, ch. 12, § 4, 42 Stat. 8.)

CODIFICATION

Section was not enacted as part of the Submarine Cable Act which comprises this chapter.

§ 38. "United States" defined

The term ''United States'' as used in sections 34 to 39 of this title includes the Canal Zone and

all territory continental or insular, subject to the jurisdiction of the United States of America.

(May 27, 1921, ch. 12, § 5, 42 Stat. 8; Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352.)

REFERENCES IN TEXT

For definition of Canal Zone, referred to in text, see section 3602(b) of Title 22, Foreign Relations and Intercourse.

CODIFICATION

Words ''the Philippine Islands'' deleted on authority of Proc. No. 2695 issued pursuant to section 1394 of Title 22, Foreign Relations and Intercourse, which recognized independence of Philippine Islands as of July 4, 1946. Proc. No. 2695 is set out under section 1394 of Title 22.

Section was not enacted as part of the Submarine Cable Act which comprises this chapter.

§ 39. Amendment, modification, etc., of rights granted

No right shall accrue to any government, person, or corporation under the terms of sections 34 to 39 of this title that may not be rescinded, changed, modified, or amended by the Congress.

(May 27, 1921, ch. 12, § 6, 42 Stat. 9.)

CODIFICATION

Section was not enacted as part of the Submarine Cable Act which comprises this chapter.

CHAPTER 3—RADIOTELEGRAPHS

§§ 51 to 63. Repealed. Feb. 23, 1927, ch. 169, § 39, 44 Stat. 1174

Section 51, act Aug. 13, 1912, ch. 287, § 1, 37 Stat. 302, required license for operation of apparatus for radio communication and transmission of radiograms or signals, revocable for cause, described its interstate, foreign and local aspects, exempted the United States from its requirement and provided for special call letters for every Government station and penalties and forfeiture of offending apparatus. See sections 301, 305, 312, 501, and 503 of this title.

Section 52, act Aug. 13, 1912, ch. 287, § 2, 37 Stat. 303, related to form of license, United States citizenship of licensee, and contents of license, including statement of restrictions, ownership, location, purpose, wave length, and hours for work of station, subjection to rules and regulations and to closing by the President in time of war, public peril or disaster or Government use or control with payment of just compensation. See sections 307 to 309 of this title.

Section 53, act Aug. 13, 1912, ch. 287, § 3, 37 Stat. 303, required that operators of radio apparatus be licensed, provided for one year period of suspension of license for noncompliance with rules and regulations, declared the employment of unlicensed operators to be unlawful and provided penalty therefor and authorized the issuance of temporary permits in emergencies by collector of customs to operators on a vessel. See sections 308 and 318 of this title.

Section 54, act Aug. 13, 1912, ch. 287, § 4, 37 Stat. 304, subjected private and commercial stations to certain specific regulations, provided for enforcement and waiver of regulations, for grant of special temporary licenses to conduct radio tests and experiments, and prescribed general penalty for violation of regulations and reduction and remittance of such penalty and suspension or revocation of license. The Regulations, numbered First-Nineteenth, related to: (1) normal wave length; (2) other wave lengths; (3) use of a pure wave; (4) use of a sharp wave; (5) use of a standard distress wave; (6) signal of distress; (7) use of broad interfering wave for distress signals (see section 321(a) of this title); (8) distance requirement for distress signals; (9) right of way for distress signals (see section 321(b) of this title); (10) reduced power for ships near a Government station; (11) intercommunication (see section 322 of this title); (12) division of time (see section 323(a) of this title); (13) Government stations to observe divisions of time (see section 323(b) of this title); (14) use of unnecessary power (see section 324 of this title); (15) general restrictions on private stations; (16) special restrictions in the vicinities of Government stations; (17) ship stations to communicate with nearest shore stations; (18) limitations for future installations in vicinities of Government stations; (19) secrecy of messages and penalty for violations (see sections 501 and 605 of this title). See also sections 502 and 504 of this title.

Section 55, act Aug. 13, 1912, ch. 287, § 5, 37 Stat. 308, required license to prescribe that operator shall not willfully or maliciously interfere with any other radio communications and provided penalty for such violations. See sections 308 and 501 of this title.

Section 56, act Aug. 13, 1912, ch. 287, § 6, 37 Stat. 308, defined radio communication. See section 153(33) of this title.

Section 57, act of Aug. 13, 1912, ch. 287, § 7, 37 Stat. 308, prohibited uttering or transmitting false or fraudulent signals and prescribed penalty therefor. See sections 325 and 501 of this title.

Section 58, act Aug. 13, 1912, ch. 287, § 8, 37 Stat. 308, related to restriction of use of apparatus for radio communication on foreign ships. See section 306 of this title.

Section 59, act Aug. 13, 1912, ch. 287, § 9, 37 Stat. 308, related to jurisdictions of offenses. See section 505 of this title.

Section 60, act Aug. 13, 1912, ch. 287, § 10, 37 Stat. 308, declared radiotelegraph provisions to be inapplicable to Philippine Islands. See section 152 of this title.

Section 61, act June 5, 1920, ch. 269, § 1, 41 Stat. 1061, related to use of Government-owned radio stations and apparatus for official business, compass reports, and safety of ships. See section 305 of this title.

Section 62, acts June 5, 1920, ch. 269, § 2, 41 Stat. 1061; Apr. 14, 1922, ch. 132, 42 Stat. 495; Feb. 28, 1925, ch. 378, 43 Stat. 1091, related to use of Naval stations for commercial messages and rates thereof. See section 327 of this title.

Section 63, act June 5, 1920, ch. 269, § 3, 41 Stat. 1061, declared radiotelegraph provisions to be applicable to Government owned stations, except as otherwise provided therein. See section 305 of this title.

CHAPTER 4—RADIO ACT OF 1927

§§ 81 to 83. Repealed. June 19, 1934, ch. 652, § 602(a), 48 Stat. 1102

Section 81, act Feb. 23, 1927, ch. 169, § 1, 44 Stat. 1162, related to regulation of interstate and foreign radio communications and grant of license. See section 301 of this title.

Section 82, act Feb. 23, 1927, ch. 169, § 2, 44 Stat. 1162, related to division of United States into five zones.

Section 83, acts Feb. 23, 1927, ch. 169, § 3, 44 Stat. 1162; Mar. 28, 1928, ch. 263, § 2, 45 Stat. 373; Mar. 4, 1929, ch. 701, § 2, 45 Stat. 1559; Dec. 18, 1929, ch. 7, § 2, 46 Stat. 50, related to creation of Federal Radio Commission, composition, qualifications, appointments, meetings, employees, seal, reports and compensation. See sections 151 and 154 of this title and section 5311 et seq. of Title 5, Government Organization and Employees.

§§ 83a to 83e. Omitted

CODIFICATION

Sections 83a to 83e were omitted in view of abolition of Federal Radio Commission by act June 19, 1934, ch. 652, title VI, § 603, 48 Stat. 1102, which was classified to former section 603 of this title.

Section 83a, act June 30, 1932, ch. 314, § 511, 47 Stat. 417, abolished Radio Division of Department of Com-

merce and transferred its powers and duties to Federal Radio Commission.

Section 83b, act June 30, 1932, ch. 314, § 512, 47 Stat. 417, transferred officers and employees of Radio Division to Federal Radio Commission.

Section 83c, act June 30, 1932, ch. 314, § 513, 47 Stat. 417, provided that orders, rules, regulations, and laws of Radio Division have continuing application until modified, amended or repealed by Federal Radio Commission.

Section 83d, act June 30, 1932, ch. 314, § 514, 47 Stat. 417, transferred unexpended appropriations from Radio Division to Federal Radio Commission.

Section 83e, act Mar. 28, 1934, ch. 102, title I, § 1, 48 Stat. 513, related to adjustment of classification or compensation of employees.

§ 84. Repealed. June 19, 1934, ch. 652, § 602(a), 48 Stat. 1102

Section, act Feb. 23, 1927, ch. 169, § 4, 44 Stat. 1163, defined powers and duties of Federal Radio Commission. See sections 154(g), 303, and 409 of this title.

§§ 84a, 84b. Repealed. Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 647

Section 84a, act Mar. 4, 1929, ch. 701, § 5, 45 Stat. 1559, provided for appointment and pay of general counsel, assistants to general counsel, and other legal assistants to Federal Radio Commission.

Section 84b, act Dec. 18, 1929, ch. 7, § 3, 46 Stat. 50, provided for appointment and pay of chief engineer, assistants to chief engineer, and other technical assistants to Federal Radio Commission.

§§ 85 to 119. Repealed. June 19, 1934, ch. 652, § 602(a), 48 Stat. 1102

Section 85, acts Feb. 23, 1927, ch. 169, § 5, 44 Stat. 1164; Mar. 28, 1928, ch. 263, § 1, 45 Stat. 373; Mar. 4, 1929, ch. 701, § 1, 45 Stat. 1559; Dec. 18, 1929, ch. 7, § 1, 46 Stat. 50; May 19, 1932, ch. 192, 47 Stat. 160 related to powers and authority of Secretary of Commerce, appeals to Federal Radio Commission, grant of station license, and waiver affecting wave length. See sections 155, 303(*l*) to (p), 304, and 307 to 309 of this title.

Section 86, act Feb. 23, 1927, ch. 169, § 6, 44 Stat. 1165, related to government radio stations, regulations, control of all stations by government in national emergency and stations on vessels. See sections 305(a), (b) and 606(c) of this title.

Section 87, act Feb. 23, 1927, ch. 169, § 7, 44 Stat. 1165, related to compensation by government for use or control of stations during national emergency. See section 606(e) of this title.

Section 88, act Feb. 23, 1927, ch. 169, § 8, 44 Stat. 1166, related to special call letters for stations and application of former section 81 of this title to foreign ships. See sections 305(c) and 306 of this title.

Section 89, acts Feb. 23, 1927, ch. 169, § 9, 44 Stat. 1166; Mar. 28, 1928, ch. 263, §§ 3, 5, 45 Stat. 373; Mar. 4, 1929, ch. 701, § 3, 45 Stat. 1559, related to grant and renewal of station licenses and period thereof. See section 307 of this title.

Section 90, act Feb. 23, 1927, ch. 169, § 10, 44 Stat. 1166, related to application for station license and conditions and restrictions therein. See section 308 of this title.

Section 91, acts Feb. 23, 1927, ch. 169, § 11, 44 Stat. 1167; Mar. 28, 1928, ch. 263, § 1, 45 Stat. 373; Mar. 4, 1929, ch. 701, § 1, 45 Stat. 1559; Dec. 18, 1929, ch. 7, § 1, 46 Stat. 50, related to issuance, renewal or modification of station licenses, hearing, form and terms of license. See section 309(a), (b), (d) of this title.

Section 92, act Feb. 23, 1927, ch. 169, § 12, 44 Stat. 1167, related to restrictions on grants and transfers of station licenses. See section 310 of this title.

Section 93, act Feb. 23, 1927, ch. 169, § 13, 44 Stat. 1167, related to refusal of station license to persons guilty of monopoly and liability to prosecution under laws against monopoly. See section 311 of this title.

Section 94, act Feb. 23, 1927, ch. 169, § 14, 44 Stat. 1168, related to revocation of station license, notice of revocation and hearing. See section 312 of this title.

Section 95, act Feb. 23, 1927, ch. 169, § 15, 44 Stat. 1168, related to application of laws against monopolies to radio combinations and revocation of licenses. See section 313 of this title.

Section 96, acts Feb. 23, 1927, ch. 169, § 16, 44 Stat. 1169; July 1, 1930, ch. 788, 46 Stat. 844, related to appeals in matters affecting permit and licenses. See section 402 of this title.

Section 97, act Feb. 23, 1927, ch. 169, § 17, 44 Stat. 1169, related to control by radio interests of cable, wire, telegraph or telephone system and prohibition thereof. See section 314 of this title.

Section 98, act Feb. 23, 1927, ch. 169, § 18, 44 Stat. 1170, related to use of broadcasting stations by legally qualified candidates and censorship over material for broadcast. See section 315(a) of this title.

Section 99, act Feb. 23, 1927, ch. 169, § 19, 44 Stat. 1170, related to broadcasting matter for valuable consideration and announcement of person furnishing. See section 317 of this title.

Section 100, act Feb. 23, 1927, ch. 169, § 20, 44 Stat. 1170, related to operation of transmitting apparatus in radio station and operator's license. See section 318 of this title.

Section 101, act Feb. 23, 1927, ch. 169, § 21, 44 Stat. 1170, related to permits for construction and licenses for operation of stations. See section 319 of this title.

Section 102, act Feb. 23, 1927, ch. 169, § 22, 44 Stat. 1171, related to stations interfering with distress signals of ships and regulation thereof. See section 320 of this title.

Section 103, act Feb. 23, 1927, ch. 169, § 23, 44 Stat. 1171, related to radio stations or ships and equipment and regulation thereof. See section 321 of this title.

Section 104, act Feb. 23, 1927, ch. 169, § 24, 44 Stat. 1171, related to shore stations and ships stations and exchanging radio communications and signals. See section 322 of this title.

Section 105, act Feb. 23, 1927, ch. 169, § 25, 44 Stat. 1172, related to proximity of Government and private or commercial stations causing interference and regulation thereof. See section 323 of this title.

Section 106, act Feb. 23, 1927, ch. 169, § 26, 44 Stat. 1172, related to limit on amount of power used at stations. See section 324 of this title.

Section 107, act Feb. 23, 1927, ch. 169, § 27, 44 Stat. 1172, related to divulging and publishing radio communications. See section 605 of this title.

Section 108, act Feb. 23, 1927, ch. 169, § 28, 44 Stat. 1172, related to false and fraudulent signals of distress and communications and rebroadcasting programs without authority. See section 325(a) of this title.

Section 109, act Feb. 23, 1927, ch. 169, § 29, 44 Stat. 1172, related to censorship over radio communications and signals, protection of free speech and obscene language. See section 326 of this title.

Section 110, act Feb. 23, 1927, ch. 169, § 30, 44 Stat. 1173, related to use of United States owned radio stations and apparatus by Secretary of Navy for transmission of press messages, etc. See section 327 of this title.

Section 111, act Feb. 23, 1927, ch. 169, § 31, 44 Stat. 1173, defined radio communication. See section 153(33) of this title.

Section 112, act Feb. 23, 1927, ch. 169, § 32, 44 Stat. 1173, related to penalties for violation of rules of licensing authority, etc. See section 502 of this title.

Section 113, act Feb. 23, 1927, ch. 169, § 33, 44 Stat. 1173, related to penalties for violation of statutory provisions and perjury. See section 501 of this title and section 1621 of Title 18, Crimes and Criminal Procedure.

Section 114, act Feb. 23, 1927, ch. 169, § 34, 44 Stat. 1173, related to jurisdiction of offenses. See section 505 of this title.

Section 115, act Feb. 23, 1927, ch. 169, § 35, 44 Stat. 1174, related to application of section 81 et seq. of this title to Philippine Islands and Canal Zone.

Section 116, act Feb. 23, 1927, ch. 169, § 36, 44 Stat. 1174, related to administration of radio laws in Territories and insular possessions. See section 329 of this title.

Section 117, act Feb. 23, 1927, ch. 169, § 38, 44 Stat. 1174, related to invalidity of part of chapter and effect as to remainder. See section 608 of this title.

Section 118, act Feb. 23, 1927, ch. 169, § 39, 44 Stat. 1174, related to repeal of sections 51–63 and effect of repeal on existing rights.

Section 119, act Feb. 23, 1927, ch. 169, § 41, 44 Stat. 1174, related to citation of section 81 et seq. of this title as ''Radio Act of 1927.''

§§ 120, 121. Omitted

CODIFICATION

Section 120, act July 5, 1932, ch. 421, § 1, 47 Stat. 576, related to equipment necessary on ocean-going vessels using ports in the Canal Zone.

Section 121, act July 5, 1932, ch. 421, § 2, 47 Stat. 576, related to jurisdiction of violations and penalties for ocean-going vessels not properly equipped.

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SUBCHAPTER I—GENERAL PROVISIONS

§151. Purposes of chapter; Federal Communications Commission created

For the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense, for the purpose of promoting safety of life and property through the use of wire and radio communications, and for the purpose of securing a more effective execution of this policy by centralizing authority heretofore granted by law to several agencies and by granting additional authority with respect to interstate and foreign commerce in wire and radio communication, there is created a commission to be known as the ''Federal Communications Commission'', which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this chapter.

(June 19, 1934, ch. 652, title I, §1, 48 Stat. 1064; May 20, 1937, ch. 229, §1, 50 Stat. 189; Pub. L. 104–104, title I, §104, Feb. 8, 1996, 110 Stat. 86.)

REFERENCES IN TEXT

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

AMENDMENTS

1996—Pub. L. 104–104 inserted '', without discrimination on the basis of race, color, religion, national origin, or sex,'' after ''to all the people of the United States''.

1937—Act May 20, 1937, inserted ''for the purpose of promoting safety of life and property through the use of wire and radio communication''.

MORATORIUM ON INTERNET TAXES

Pub. L. 105–277, div. C, title XI, Oct. 21, 1998, 112 Stat. 2681–719, as amended by Pub. L. 107–75, §2, Nov. 28, 2001, 115 Stat. 703; Pub. L. 108–435, §§2–6A, Dec. 3, 2004, 118 Stat. 2615–2618, provided that:

''SEC. 1100. SHORT TITLE.

''This title may be cited as the 'Internet Tax Freedom Act'.

''SEC. 1101. MORATORIUM.

''(a) MORATORIUM.—No State or political subdivision thereof may impose any of the following taxes during the period beginning November 1, 2003, and ending November 1, 2007:

''(1) Taxes on Internet access.

''(2) Multiple or discriminatory taxes on electronic commerce.

''(b) PRESERVATION OF STATE AND LOCAL TAXING AUTHORITY.—Except as provided in this section, nothing

in this title shall be construed to modify, impair, or supersede, or authorize the modification, impairment, or superseding of, any State or local law pertaining to taxation that is otherwise permissible by or under the Constitution of the United States or other Federal law and in effect on the date of enactment of this Act [Oct. 21, 1998].

''(c) LIABILITIES AND PENDING CASES.—Nothing in this title affects liability for taxes accrued and enforced before the date of enactment of this Act, nor does this title affect ongoing litigation relating to such taxes.

''(d) EXCEPTION TO MORATORIUM.—

''(1) IN GENERAL.—Subsection (a) shall also not apply in the case of any person or entity who knowingly and with knowledge of the character of the material, in interstate or foreign commerce by means of the World Wide Web, makes any communication for commercial purposes that is available to any minor and that includes any material that is harmful to minors unless such person or entity has restricted access by minors to material that is harmful to minors—

''(A) by requiring use of a credit card, debit account, adult access code, or adult personal identification number;

''(B) by accepting a digital certificate that verifies age; or

''(C) by any other reasonable measures that are feasible under available technology.

''(2) SCOPE OF EXCEPTION.—For purposes of paragraph (1), a person shall not be considered to [be] making a communication for commercial purposes of material to the extent that the person is—

''(A) a telecommunications carrier engaged in the provision of a telecommunications service;

''(B) a person engaged in the business of providing an Internet access service;

''(C) a person engaged in the business of providing an Internet information location tool; or

''(D) similarly engaged in the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication made by another person, without selection or alteration of the communication.

''(3) DEFINITIONS.—In this subsection:

''(A) BY MEANS OF THE WORLD WIDE WEB.—The term 'by means of the World Wide Web' means by placement of material in a computer server-based file archive so that it is publicly accessible, over the Internet, using hypertext transfer protocol, file transfer protocol, or other similar protocols.

''(B) COMMERCIAL PURPOSES; ENGAGED IN THE BUSINESS.—

''(i) COMMERCIAL PURPOSES.—A person shall be considered to make a communication for commercial purposes only if such person is engaged in the business of making such communications.

''(ii) ENGAGED IN THE BUSINESS.—The term 'engaged in the business' means that the person who makes a communication, or offers to make a communication, by means of the World Wide Web, that includes any material that is harmful to minors, devotes time, attention, or labor to such activities, as a regular course of such person's trade or business, with the objective of earning a profit as a result of such activities (although it is not necessary that the person make a profit or that the making or offering to make such communications be the person's sole or principal business or source of income). A person may be considered to be engaged in the business of making, by means of the World Wide Web, communications for commercial purposes that include material that is harmful to minors, only if the person knowingly causes the material that is harmful to minors to be posted on the World Wide Web or knowingly solicits such material to be posted on the World Wide Web.

''(C) INTERNET.—The term 'Internet' means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

''(D) INTERNET ACCESS SERVICE.—The term 'Internet access service' means a service that enables users to access content, information, electronic mail, or other services offered over the Internet and may also include access to proprietary content, information, and other services as part of a package of services offered to consumers. The term 'Internet access service' does not include telecommunications services, except to the extent such services are purchased, used, or sold by a provider of Internet access to provide Internet access.

''(E) INTERNET INFORMATION LOCATION TOOL.—The term 'Internet information location tool' means a service that refers or links users to an online location on the World Wide Web. Such term includes directories, indices, references, pointers, and hypertext links.

''(F) MATERIAL THAT IS HARMFUL TO MINORS.—The term 'material that is harmful to minors' means any communication, picture, image, graphic image file, article, recording, writing, or other matter of any kind that is obscene or that—

''(i) the average person, applying contemporary community standards, would find, taking the material as a whole and with respect to minors, is designed to appeal to, or is designed to pander to, the prurient interest;

''(ii) depicts, describes, or represents, in a manner patently offensive with respect to minors, an actual or simulated sexual act or sexual contact, an actual or simulated normal or perverted sexual act, or a lewd exhibition of the genitals or post-pubescent female breast; and

''(iii) taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.

''(G) MINOR.—The term 'minor' means any person under 17 years of age.

''(H) TELECOMMUNICATIONS CARRIER; TELECOMMUNICATIONS SERVICE.—The terms 'telecommunications carrier' and 'telecommunications service' have the meanings given such terms in section 3 of the Communications Act of 1934 (47 U.S.C. 153).

''(e) ADDITIONAL EXCEPTION TO MORATORIUM.—

''(1) IN GENERAL.—Subsection (a) shall also not apply with respect to an Internet access provider, unless, at the time of entering into an agreement with a customer for the provision of Internet access services, such provider offers such customer (either for a fee or at no charge) screening software that is designed to permit the customer to limit access to material on the Internet that is harmful to minors.

''(2) DEFINITIONS.—In this subsection:

''(A) INTERNET ACCESS PROVIDER.—The term 'Internet access provider' means a person engaged in the business of providing a computer and communications facility through which a customer may obtain access to the Internet, but does not include a common carrier to the extent that it provides only telecommunications services.

''(B) INTERNET ACCESS SERVICES.—The term 'Internet access services' means the provision of computer and communications services through which a customer using a computer and a modem or other communications device may obtain access to the Internet, but does not include telecommunications services provided by a common carrier.

''(C) SCREENING SOFTWARE.—The term 'screening software' means software that is designed to permit a person to limit access to material on the Internet that is harmful to minors.

''(3) APPLICABILITY.—Paragraph (1) shall apply to agreements for the provision of Internet access services entered into on or after the date that is 6 months after the date of enactment of this Act [Oct. 21, 1998].

''SEC. 1102. ADVISORY COMMISSION ON ELECTRONIC COMMERCE.

''(a) ESTABLISHMENT OF COMMISSION.—There is established a commission to be known as the Advisory Commission on Electronic Commerce (in this title referred to as the 'Commission'). The Commission shall—

''(1) be composed of 19 members appointed in accordance with subsection (b), including the chairperson who shall be selected by the members of the Commission from among themselves; and

''(2) conduct its business in accordance with the provisions of this title.

''(b) MEMBERSHIP.—

''(1) IN GENERAL.—The Commissioners shall serve for the life of the Commission. The membership of the Commission shall be as follows:

''(A) 3 representatives from the Federal Government, comprised of the Secretary of Commerce, the Secretary of the Treasury, and the United States Trade Representative (or their respective delegates).

''(B) 8 representatives from State and local governments (one such representative shall be from a State or local government that does not impose a sales tax and one representative shall be from a State that does not impose an income tax).

''(C) 8 representatives of the electronic commerce industry (including small business), telecommunications carriers, local retail businesses, and consumer groups, comprised of—

''(i) 5 individuals appointed by the Majority Leader of the Senate;

''(ii) 3 individuals appointed by the Minority Leader of the Senate;

''(iii) 5 individuals appointed by the Speaker of the House of Representatives; and

''(iv) 3 individuals appointed by the Minority Leader of the House of Representatives.

''(2) APPOINTMENTS.—Appointments to the Commission shall be made not later than 45 days after the date of the enactment of this Act [Oct. 21, 1998]. The chairperson shall be selected not later than 60 days after the date of the enactment of this Act.

''(3) VACANCIES.—Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

''(c) ACCEPTANCE OF GIFTS AND GRANTS.—The Commission may accept, use, and dispose of gifts or grants of services or property, both real and personal, for purposes of aiding or facilitating the work of the Commission. Gifts or grants not used at the expiration of the Commission shall be returned to the donor or grantor.

''(d) OTHER RESOURCES.—The Commission shall have reasonable access to materials, resources, data, and other information from the Department of Justice, the Department of Commerce, the Department of State, the Department of the Treasury, and the Office of the United States Trade Representative. The Commission shall also have reasonable access to use the facilities of any such Department or Office for purposes of conducting meetings.

''(e) SUNSET.—The Commission shall terminate 18 months after the date of the enactment of this Act [Oct. 21, 1998].

''(f) RULES OF THE COMMISSION.—

''(1) QUORUM.—Nine members of the Commission shall constitute a quorum for conducting the business of the Commission.

''(2) MEETINGS.—Any meetings held by the Commission shall be duly noticed at least 14 days in advance and shall be open to the public.

''(3) OPPORTUNITIES TO TESTIFY.—The Commission shall provide opportunities for representatives of the general public, taxpayer groups, consumer groups, and State and local government officials to testify.

''(4) ADDITIONAL RULES.—The Commission may adopt other rules as needed.

''(g) DUTIES OF THE COMMISSION.—

''(1) IN GENERAL.—The Commission shall conduct a thorough study of Federal, State and local, and international taxation and tariff treatment of transactions using the Internet and Internet access and other comparable intrastate, interstate or international sales activities.

''(2) ISSUES TO BE STUDIED.—The Commission may include in the study under subsection (a)—

''(A) an examination of—

''(i) barriers imposed in foreign markets on United States providers of property, goods, services, or information engaged in electronic commerce and on United States providers of telecommunications services; and

''(ii) how the imposition of such barriers will affect United States consumers, the competitiveness of United States citizens providing property, goods, services, or information in foreign markets, and the growth and maturing of the Internet;

''(B) an examination of the collection and administration of consumption taxes on electronic commerce in other countries and the United States, and the impact of such collection on the global economy, including an examination of the relationship between the collection and administration of such taxes when the transaction uses the Internet and when it does not;

''(C) an examination of the impact of the Internet and Internet access (particularly voice transmission) on the revenue base for taxes imposed under section 4251 of the Internal Revenue Code of 1986 [26 U.S.C. 4251];

''(D) an examination of model State legislation that—

''(i) would provide uniform definitions of categories of property, goods, service, or information subject to or exempt from sales and use taxes; and

''(ii) would ensure that Internet access services, online services, and communications and transactions using the Internet, Internet access service, or online services would be treated in a tax and technologically neutral manner relative to other forms of remote sales;

''(E) an examination of the effects of taxation, including the absence of taxation, on all interstate sales transactions, including transactions using the Internet, on retail businesses and on State and local governments, which examination may include a review of the efforts of State and local governments to collect sales and use taxes owed on in-State purchases from out-of-State sellers; and

''(F) the examination of ways to simplify Federal and State and local taxes imposed on the provision of telecommunications services.

''(3) EFFECT ON THE COMMUNICATIONS ACT OF 1934.—Nothing in this section shall include an examination of any fees or charges imposed by the Federal Communications Commission or States related to—

''(A) obligations under the Communications Act of 1934 (47 U.S.C. 151 et seq.); or

''(B) the implementation of the Telecommunications Act of 1996 [Pub. L. 104–104, see Short Title of 1996 Amendment note set out under section 609 of this title] (or of amendments made by that Act).

''(h) NATIONAL TAX ASSOCIATION COMMUNICATIONS AND ELECTRONIC COMMERCE TAX PROJECT.—The Commission shall, to the extent possible, ensure that its work does not undermine the efforts of the National Tax Association Communications and Electronic Commerce Tax Project.

''SEC. 1103. REPORT.

''Not later than 18 months after the date of the enactment of this Act [Oct. 21, 1998], the Commission shall transmit to Congress for its consideration a report reflecting the results, including such legislative recommendations as required to address the findings of the Commission's study under this title. Any recommendation agreed to by the Commission shall be tax and technologically neutral and apply to all forms of remote

commerce. No finding or recommendation shall be included in the report unless agreed to by at least two-thirds of the members of the Commission serving at the time the finding or recommendation is made.

''SEC. 1104. GRANDFATHERING OF STATES THAT TAX INTERNET ACCESS.

''(a) PRE-OCTOBER 1998 TAXES.—

''(1) IN GENERAL.—Section 1101(a) does not apply to a tax on Internet access that was generally imposed and actually enforced prior to October 1, 1998, if, before that date—

''(A) the tax was authorized by statute; and

''(B) either—

''(i) a provider of Internet access services had a reasonable opportunity to know, by virtue of a rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access services; or

''(ii) a State or political subdivision thereof generally collected such tax on charges for Internet access.

''(2) TERMINATION.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), this subsection shall not apply after November 1, 2007.

''(B) STATE TELECOMMUNICATIONS SERVICE TAX.—

''(i) DATE FOR TERMINATION.—This subsection shall not apply after November 1, 2006, with respect to a State telecommunications service tax described in clause (ii).

''(ii) DESCRIPTION OF TAX.—A State telecommunications service tax referred to in subclause (i) is a State tax—

''(I) enacted by State law on or after October 1, 1991, and imposing a tax on telecommunications service; and

''(II) applied to Internet access through administrative code or regulation issued on or after December 1, 2002.

''(b) PRE-NOVEMBER 2003 TAXES.—

''(1) IN GENERAL.—Section 1101(a) does not apply to a tax on Internet access that was generally imposed and actually enforced as of November 1, 2003, if, as of that date, the tax was authorized by statute and—

''(A) a provider of Internet access services had a reasonable opportunity to know by virtue of a public rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access services; and

''(B) a State or political subdivision thereof generally collected such tax on charges for Internet access.

''(2) TERMINATION.—This subsection shall not apply after November 1, 2005.

''SEC. 1105. DEFINITIONS.

''For the purposes of this title:

''(1) BIT TAX.—The term 'bit tax' means any tax on electronic commerce expressly imposed on or measured by the volume of digital information transmitted electronically, or the volume of digital information per unit of time transmitted electronically, but does not include taxes imposed on the provision of telecommunications services.

''(2) DISCRIMINATORY TAX.—The term 'discriminatory tax' means—

''(A) any tax imposed by a State or political subdivision thereof on electronic commerce that—

''(i) is not generally imposed and legally collectible by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means;

''(ii) is not generally imposed and legally collectible at the same rate by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means, unless the rate is lower as part of a phase-out of the tax over not more than a 5-year period;

''(iii) imposes an obligation to collect or pay the tax on a different person or entity than in the case of transactions involving similar property, goods, services, or information accomplished through other means;

''(iv) establishes a classification of Internet access service providers or online service providers for purposes of establishing a higher tax rate to be imposed on such providers than the tax rate generally applied to providers of similar information services delivered through other means; or

''(B) any tax imposed by a State or political subdivision thereof, if—

''(i) the sole ability to access a site on a remote seller's out-of-State computer server is considered a factor in determining a remote seller's tax collection obligation; or

''(ii) a provider of Internet access service or online services is deemed to be the agent of a remote seller for determining tax collection obligations solely as a result of—

''(I) the display of a remote seller's information or content on the out-of-State computer server of a provider of Internet access service or online services; or

''(II) the processing of orders through the out-of-State computer server of a provider of Internet access service or online services.

''(3) ELECTRONIC COMMERCE.—The term 'electronic commerce' means any transaction conducted over the Internet or through Internet access, comprising the sale, lease, license, offer, or delivery of property, goods, services, or information, whether or not for consideration, and includes the provision of Internet access.

''(4) INTERNET.—The term 'Internet' means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected worldwide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

''(5) INTERNET ACCESS.—The term 'Internet access' means a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information, and other services as part of a package of services offered to users. The term 'Internet access' does not include telecommunications services, except to the extent such services are purchased, used, or sold by a provider of Internet access to provide Internet access.

''(6) MULTIPLE TAX.—

''(A) IN GENERAL.—The term 'multiple tax' means any tax that is imposed by one State or political subdivision thereof on the same or essentially the same electronic commerce that is also subject to another tax imposed by another State or political subdivision thereof (whether or not at the same rate or on the same basis), without a credit (for example, a resale exemption certificate) for taxes paid in other jurisdictions.

''(B) EXCEPTION.—Such term shall not include a sales or use tax imposed by a State and 1 or more political subdivisions thereof on the same electronic commerce or a tax on persons engaged in electronic commerce which also may have been subject to a sales or use tax thereon.

''(C) SALES OR USE TAX.—For purposes of subparagraph (B), the term 'sales or use tax' means a tax that is imposed on or incident to the sale, purchase, storage, consumption, distribution, or other use of tangible personal property or services as may be defined by laws imposing such tax and which is meas-

ured by the amount of the sales price or other charge for such property or service.

''(7) STATE.—The term 'State' means any of the several States, the District of Columbia, or any commonwealth, territory, or possession of the United States.

''(8) TAX.—

''(A) IN GENERAL.—The term 'tax' means—

''(i) any charge imposed by any governmental entity for the purpose of generating revenues for governmental purposes, and is not a fee imposed for a specific privilege, service, or benefit conferred; or

''(ii) the imposition on a seller of an obligation to collect and to remit to a governmental entity any sales or use tax imposed on a buyer by a governmental entity.

''(B) EXCEPTION.—Such term does not include any franchise fee or similar fee imposed by a State or local franchising authority, pursuant to section 622 or 653 of the Communications Act of 1934 (47 U.S.C. 542, 573), or any other fee related to obligations or telecommunications carriers under the Communications Act of 1934 (47 U.S.C. 151 et seq.).

''(9) TELECOMMUNICATIONS SERVICE.—The term 'telecommunications service' has the meaning given such term in section 3(46) of the Communications Act of 1934 (47 U.S.C. 153(46)) and includes communications services (as defined in section 4251 of the Internal Revenue Code of 1986 [26 U.S.C. 4251]).

''(10) TAX ON INTERNET ACCESS.—

''(A) IN GENERAL.—The term 'tax on Internet access' means a tax on Internet access, regardless of whether such tax is imposed on a provider of Internet access or a buyer of Internet access and regardless of the terminology used to describe the tax.

''(B) GENERAL EXCEPTION.—The term 'tax on Internet access' does not include a tax levied upon or measured by net income, capital stock, net worth, or property value.

''SEC. 1106. ACCOUNTING RULE.

''(a) IN GENERAL.—If charges for Internet access are aggregated with and not separately stated from charges for telecommunications services or other charges that are subject to taxation, then the charges for Internet access may be subject to taxation unless the Internet access provider can reasonably identify the charges for Internet access from its books and records kept in the regular course of business.

''(b) DEFINITIONS.—In this section:

''(1) CHARGES FOR INTERNET ACCESS.—The term 'charges for Internet access' means all charges for Internet access as defined in section 1105(5).

''(2) CHARGES FOR TELECOMMUNICATIONS SERVICES.—The term 'charges for telecommunications services' means all charges for telecommunications services, except to the extent such services are purchased, used, or sold by a provider of Internet access to provide Internet access.

''SEC. 1107. EFFECT ON OTHER LAWS.

''(a) UNIVERSAL SERVICE.—Nothing in this Act [probably means ''this title''] shall prevent the imposition or collection of any fees or charges used to preserve and advance Federal universal service or similar State programs—

''(1) authorized by section 254 of the Communications Act of 1934 (47 U.S.C. 254); or

''(2) in effect on February 8, 1996.

''(b) 911 AND E–911 SERVICES.—Nothing in this Act [probably means ''this title''] shall prevent the imposition or collection, on a service used for access to 911 or E–911 services, of any fee or charge specifically designated or presented as dedicated by a State or political subdivision thereof for the support of 911 or E–911 services if no portion of the revenue derived from such fee or charge is obligated or expended for any purpose other than support of 911 or E–911 services.

''(c) NON-TAX REGULATORY PROCEEDINGS.—Nothing in this Act [probably means ''this title''] shall be construed to affect any Federal or State regulatory proceeding that is not related to taxation.

''SEC. 1108. EXCEPTION FOR VOICE SERVICES OVER THE INTERNET.

''Nothing in this Act [probably means ''this title''] shall be construed to affect the imposition of tax on a charge for voice or similar service utilizing Internet Protocol or any successor protocol. This section shall not apply to any services that are incidental to Internet access, such as voice-capable e-mail or instant messaging.

''SEC. 1109. EXCEPTION FOR TEXAS MUNICIPAL ACCESS LINE FEE.

''Nothing in this Act [probably means ''this title''] shall prohibit Texas or a political subdivision thereof from imposing or collecting the Texas municipal access line fee pursuant to Texas Local Govt. Code Ann. ch. 283 (Vernon 2005) and the definition of access line as determined by the Public Utility Commission of Texas in its 'Order Adopting Amendments to Section 26.465 As Approved At The February 13, 2003 Public Hearing', issued March 5, 2003, in Project No. 26412.''

[Pub. L. 108–435, §8, Dec. 3, 2004, 118 Stat. 2619, provided that: ''The amendments made by this Act [amending title XI of div. C of Pub. L. 105–277, set out above] take effect on November 1, 2003.'']

STYLISTIC CONSISTENCY

Section 101(c) of title I of Pub. L. 104–104 provided that: ''The Act [Communications Act of 1934 (47 U.S.C. 151 et seq.)] is amended so that—

''(1) the designation and heading of each title of the Act shall be in the form and typeface of the designation and heading of this title of this Act [110 Stat. 61]; and

''(2) the designation and heading of each part of each title of the Act shall be in the form and typeface of the designation and heading of part I of title II of the Act [110 Stat. 61], as amended by subsection (a).''

STUDY OF TELECOMMUNICATIONS AND INFORMATION GOALS

Pub. L. 97–259, title II, §202, Sept. 13, 1982, 96 Stat. 1099, provided that:

''(a) The National Telecommunications and Information Administration shall conduct a comprehensive study of the long-range international telecommunications and information goals of the United States, the specific international telecommunications and information policies necessary to promote those goals and the strategies that will ensure that the United States achieves them. The Administration shall further conduct a review of the structures, procedures, and mechanisms which are utilized by the United States to develop international telecommunications and information policy.

''(b) In any study or review conducted pursuant to this section, the National Telecommunications and Information Administration shall not make public information regarding usage or traffic patterns which would damage United States commercial interests. Any such study or review shall be limited to international telecommunications policies or to domestic telecommunications issues which *directly* affect such policies.''

COMMISSION ON GOVERNMENTAL USE OF INTERNATIONAL TELECOMMUNICATIONS

Act July 29, 1954, ch. 647, 68 Stat. 587, established the Commission on Governmental Use of International Telecommunications to examine, study and report on the objectives, operations, and effectiveness of information programs with respect to the prompt development of techniques, methods, and programs for greatly expanded and far more effective operations in this vital area of foreign policy through the use of foreign telecommunications. The Commission was required to make a report of its findings and recommendations on or before Dec. 31, 1954, and the Commission ceased to

exist 90 days after submission of its report to the Congress.

COMMUNICATION PRIVILEGES TO PARTICIPANTS IN WORLD TELECOMMUNICATION CONFERENCES

Act May 13, 1947, ch. 51, 61 Stat. 83, provided that nothing in this chapter, or in any other provision of law should be construed to prohibit United States communication common carriers from rendering free communication services to official participants in the world telecommunications conferences which were held in the United States in 1947.

EXECUTIVE ORDER NO. 10460

Ex. Ord. No. 10460, eff. June 18, 1953, 18 F.R. 3513, as amended by Ex. Ord. No. 10773, eff. July 1, 1958, 23 F.R. 5061; Ex. Ord. No. 10782, eff. Sept. 8, 1958, 23 F.R. 6971, which related to the performance of telecommunication functions by Director of the Office of Civil and Defense Mobilization, was revoked by section 4 of Ex. Ord. No. 10995, eff. Feb. 16, 1962, 27 F.R. 1519.

§ 152. Application of chapter

(a) The provisions of this chapter 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 chapter 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 subchapter V–A.

(b) Except as provided in sections 223 through 227 of this title, inclusive, and section 332 of this title, and subject to the provisions of section 301 of this title and subchapter V–A of this chapter, nothing in this chapter 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) of this subsection 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 to 205 of this title shall, except as otherwise provided therein, apply to carriers described in clauses (2), (3), and (4) of this subsection.

(June 19, 1934, ch. 652, title I, § 2, 48 Stat. 1064; Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352; Apr. 27, 1954, ch. 175, § 1, 68 Stat. 63; Pub. L. 95–234, § 5, Feb. 21, 1978, 92 Stat. 35; Pub. L. 98–549, § 3(a), Oct. 30, 1984, 98 Stat. 2801; Pub. L. 101–166, title V, § 521(2), Nov. 21, 1989, 103 Stat. 1193; Pub. L. 101–336, title IV, § 401(b)(1), July 26, 1990, 104 Stat. 369; Pub. L. 102–243, § 3(b), Dec. 20, 1991, 105 Stat. 2401; Pub. L. 103–66, title VI, § 6002(b)(2)(B)(i), Aug. 10, 1993, 107 Stat. 396.)

REFERENCES IN TEXT

For definition of Canal Zone, referred to in subsec. (a), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

CODIFICATION

Words ''the Philippine Islands or'' were omitted from this section on authority of Proc. No. 2695, issued pursuant to section 1394 of Title 22, Foreign Relations and Intercourse, which recognized the independence of the Philippine Islands as of July 4, 1946. Proc. No. 2695 is set out under section 1394 of Title 22.

AMENDMENTS

1993—Subsec. (b). Pub. L. 103–66 inserted ''and section 332 of this title,'' after ''inclusive,''.

1991—Subsec. (b). Pub. L. 102–243 substituted ''Except as provided in sections 223 through 227 of this title, inclusive,'' for ''Except as provided in section 223 or 224 of this title''.

1990—Subsec. (b). Pub. L. 101–336, which directed substitution of ''sections 224 and 225'' for ''section 224'', could not be executed because of the intervening amendment by Pub. L. 101–166 which substituted ''section 223 or 224'' for ''section 224''. See 1989 Amendment note below.

1989—Subsec. (b). Pub. L. 101–166 substituted ''section 223 or 224'' for ''section 224''.

1984—Subsec. (a). Pub. L. 98–549, § 3(a)(1), inserted provision making this chapter applicable 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 subchapter V–A of this chapter.

Subsec. (b). Pub. L. 98–549, § 3(a)(2), inserted ''and subchapter V–A of this chapter'' after ''section 301 of this title''.

1978—Subsec. (b). Pub. L. 95–234 substituted ''Except as provided in section 224 of this title and subject'' for ''Subject''.

1954—Subsec. (b). Act Apr. 27, 1954, made it clear that intrastate communication service, whether by ''wire or radio'', would not be subject to the Commission's jurisdiction over charges, classifications, etc., and added cls. (3) and (4).

EFFECTIVE DATE OF 1989 AMENDMENT

Section 521(3) of Pub. L. 101–166 provided that: ''The amendments made by this subsection [probably should be ''section'', which amended this section and section 223 of this title] shall take effect 120 days after the date of enactment of this Act [Nov. 21, 1989].''

EFFECTIVE DATE OF 1984 AMENDMENT

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

EFFECTIVE DATE OF 1978 AMENDMENT

Section 7 of Pub. L. 95–234 provided that: ''The amendments made by this Act [enacting section 224 of this title, amending this section and sections 503 and

504 of this title, repealing sections 510 of this title, and enacting provisions set out as a note under section 609 of this title] shall take effect on the thirtieth day after the date of enactment of this Act [Feb. 21, 1978]; except that the provisions of sections 503(b) and 510 of the Communications Act of 1934 [sections 503(b) and 510 of this title], as in effect on such date of enactment, shall continue to constitute the applicable law with the respect to any act or omission which occurs prior to such thirtieth day.''

APPLICABILITY OF CONSENT DECREES AND OTHER LAW

Pub. L. 104–104, title VI, §601, Feb. 8, 1996, 110 Stat. 143, provided that:

''(a) APPLICABILITY OF AMENDMENTS TO FUTURE CONDUCT.—

''(1) AT&T CONSENT DECREE.—Any conduct or activity that was, before the date of enactment of this Act [Feb. 8, 1996], subject to any restriction or obligation imposed by the AT&T Consent Decree shall, on and after such date, be subject to the restrictions and obligations imposed by the Communications Act of 1934 [47 U.S.C. 151 et seq.] as amended by this Act and shall not be subject to the restrictions and the obligations imposed by such Consent Decree.

''(2) GTE CONSENT DECREE.—Any conduct or activity that was, before the date of enactment of this Act, subject to any restriction or obligation imposed by the GTE Consent Decree shall, on and after such date, be subject to the restrictions and obligations imposed by the Communications Act of 1934 as amended by this Act and shall not be subject to the restrictions and the obligations imposed by such Consent Decree.

''(3) MCCAW CONSENT DECREE.—Any conduct or activity that was, before the date of enactment of this Act, subject to any restriction or obligation imposed by the McCaw Consent Decree shall, on and after such date, be subject to the restrictions and obligations imposed by the Communications Act of 1934 as amended by this Act and subsection (d) of this section and shall not be subject to the restrictions and the obligations imposed by such Consent Decree.

''(b) ANTITRUST LAWS.—

''(1) SAVINGS CLAUSE.—Except as provided in paragraphs (2) and (3), nothing in this Act [see Short Title of 1996 Amendment note set out under section 609 of this title] or the amendments made by this Act shall be construed to modify, impair, or supersede the applicability of any of the antitrust laws.

''(2) REPEAL.—[Amended section 221 of this title.]

''(3) CLAYTON ACT.—[Amended section 18 of Title 15, Commerce and Trade.]

''(c) FEDERAL, STATE, AND LOCAL LAW.—

''(1) NO IMPLIED EFFECT.—This Act and the amendments made by this Act shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided in such Act or amendments.

''(2) STATE TAX SAVINGS PROVISION.—Notwithstanding paragraph (1), nothing in this Act or the amendments made by this Act shall be construed to modify, impair, or supersede, or authorize the modification, impairment, or supersession of, any State or local law pertaining to taxation, except as provided in sections 622 and 653(c) of the Communications Act of 1934 [47 U.S.C. 542, 573(c)] and section 602 of this Act [set out as a note below].

''(d) COMMERCIAL MOBILE SERVICE JOINT MARKETING.—Notwithstanding section 22.903 of the Commission's regulations (47 C.F.R. 22.903) or any other Commission regulation, a Bell operating company or any other company may, except as provided in sections 271(e)(1) and 272 of the Communications Act of 1934 [47 U.S.C. 271(e)(1), 272] as amended by this Act as they relate to wireline service, jointly market and sell commercial mobile services in conjunction with telephone exchange service, exchange access, intraLATA telecommunications service, interLATA telecommunications service, and information services.

''(e) DEFINITIONS.—As used in this section:

''(1) AT&T CONSENT DECREE.—The term 'AT&T Consent Decree' means the order entered August 24, 1982, in the antitrust action styled United States v. Western Electric, Civil Action No. 82–0192, in the United States District Court for the District of Columbia, and includes any judgment or order with respect to such action entered on or after August 24, 1982.

''(2) GTE CONSENT DECREE.—The term 'GTE Consent Decree' means the order entered December 21, 1984, as restated January 11, 1985, in the action styled United States v. GTE Corp., Civil Action No. 83–1298, in the United States District Court for the District of Columbia, and any judgment or order with respect to such action entered on or after December 21, 1984.

''(3) MCCAW CONSENT DECREE.—The term 'McCaw Consent Decree' means the proposed consent decree filed on July 15, 1994, in the antitrust action styled United States v. AT&T Corp. and McCaw Cellular Communications, Inc., Civil Action No. 94–01555, in the United States District Court for the District of Columbia. Such term includes any stipulation that the parties will abide by the terms of such proposed consent decree until it is entered and any order entering such proposed consent decree.

''(4) ANTITRUST LAWS.—The term 'antitrust laws' has the meaning given it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes the Act of June 19, 1936 (49 Stat. 1526; 15 U.S.C. 13 et seq.), commonly known as the Robinson-Patman Act, and section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that such section 5 applies to unfair methods of competition.''

PREEMPTION OF LOCAL TAXATION WITH RESPECT TO DIRECT-TO-HOME SERVICES

Pub. L. 104–104, title VI, §602, Feb. 8, 1996, 110 Stat. 144, provided that:

''(a) PREEMPTION.—A provider of direct-to-home satellite service shall be exempt from the collection or remittance, or both, of any tax or fee imposed by any local taxing jurisdiction on direct-to-home satellite service.

''(b) DEFINITIONS.—For the purposes of this section—

''(1) DIRECT-TO-HOME SATELLITE SERVICE.—The term 'direct-to-home satellite service' means only programming transmitted or broadcast by satellite directly to the subscribers' premises without the use of ground receiving or distribution equipment, except at the subscribers' premises or in the uplink process to the satellite.

''(2) PROVIDER OF DIRECT-TO-HOME SATELLITE SERVICE.—For purposes of this section, a 'provider of direct-to-home satellite service' means a person who transmits, broadcasts, sells, or distributes direct-to-home satellite service.

''(3) LOCAL TAXING JURISDICTION.—The term 'local taxing jurisdiction' means any municipality, city, county, township, parish, transportation district, or assessment jurisdiction, or any other local jurisdiction in the territorial jurisdiction of the United States with the authority to impose a tax or fee, but does not include a State.

''(4) STATE.—The term 'State' means any of the several States, the District of Columbia, or any territory or possession of the United States.

''(5) TAX OR FEE.—The terms 'tax' and 'fee' mean any local sales tax, local use tax, local intangible tax, local income tax, business license tax, utility tax, privilege tax, gross receipts tax, excise tax, franchise fees, local telecommunications tax, or any other tax, license, or fee that is imposed for the privilege of doing business, regulating, or raising revenue for a local taxing jurisdiction.

''(c) PRESERVATION OF STATE AUTHORITY.—This section shall not be construed to prevent taxation of a provider of direct-to-home satellite service by a State or to prevent a local taxing jurisdiction from receiving revenue derived from a tax or fee imposed and collected by a State.''

§ 153. Definitions

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

(1) Affiliate

The term ''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.

(2) Amateur station

The term ''amateur station'' means a radio station operated by a duly authorized person interested in radio technique solely with a personal aim and without pecuniary interest.

(3) AT&T Consent Decree

The term ''AT&T Consent Decree'' means the order entered August 24, 1982, in the antitrust action styled United States v. Western Electric, Civil Action No. 82–0192, in the United States District Court for the District of Columbia, and includes any judgment or order with respect to such action entered on or after August 24, 1982.

(4) Bell operating company

The term ''Bell operating company''—

(A) means any of the following companies: Bell Telephone Company of Nevada, Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, New England Telephone and Telegraph Company, New Jersey Bell Telephone Company, New York Telephone Company, U S West Communications Company, South Central Bell Telephone Company, Southern Bell Telephone and Telegraph Company, Southwestern Bell Telephone Company, The Bell Telephone Company of Pennsylvania, The Chesapeake and Potomac Telephone Company, The Chesapeake and Potomac Telephone Company of Maryland, The Chesapeake and Potomac Telephone Company of Virginia, The Chesapeake and Potomac Telephone Company of West Virginia, The Diamond State Telephone Company, The Ohio Bell Telephone Company, The Pacific Telephone and Telegraph Company, or Wisconsin Telephone Company; and

(B) includes any successor or assign of any such company that provides wireline telephone exchange service; but

(C) does not include an affiliate of any such company, other than an affiliate described in subparagraph (A) or (B).

(5) Broadcast station

The term ''broadcast station'', ''broadcasting station'', or ''radio broadcast station'' means a radio station equipment to engage in broadcasting as herein defined.

(6) Broadcasting

The term ''broadcasting'' means the dissemination of radio communications intended to be received by the public, directly or by the intermediary of relay stations.

(7) Cable service

The term ''cable service'' has the meaning given such term in section 522 of this title.

(8) Cable system

The term ''cable system'' has the meaning given such term in section 522 of this title.

(9) Chain broadcasting

The term ''chain broadcasting'' means simultaneous broadcasting of an identical program by two or more connected stations.

(10) Common carrier

The term ''common carrier'' or ''carrier'' means any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or interstate or foreign radio transmission of energy, except where reference is made to common carriers not subject to this chapter; but a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier.

(11) Connecting carrier

The term ''connecting carrier'' means a carrier described in clauses (2), (3), or (4) of section 152(b) of this title.

(12) Construction permit

The term ''construction permit'' or ''permit for construction'' means that instrument of authorization required by this chapter or the rules and regulations of the Commission made pursuant to this chapter for the construction of a station, or the installation of apparatus, for the transmission of energy, or communications, or signals by radio, by whatever name the instrument may be designated by the Commission.

(13) Corporation

The term ''corporation'' includes any corporation, joint-stock company, or association.

(14) Customer premises equipment

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

(15) Dialing parity

The term ''dialing parity'' means that a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer's designation from among 2 or more telecommunications services providers (including such local exchange carrier).

(16) Exchange access

The term ''exchange access'' means the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.

(17) Foreign communication

The term ''foreign communication'' or ''foreign transmission'' means communication or

transmission from or to any place in the United States to or from a foreign country, or between a station in the United States and a mobile station located outside the United States.

(18) Great Lakes Agreement

The term ''Great Lakes Agreement'' means the Agreement for the Promotion of Safety on the Great Lakes by Means of Radio in force and the regulations referred to therein.

(19) Harbor

The term ''harbor'' or ''port'' means any place to which ships may resort for shelter or to load or unload passengers or goods, or to obtain fuel, water, or supplies. This term shall apply to such places whether proclaimed public or not and whether natural or artificial.

(20) Information service

The term ''information service'' means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

(21) InterLATA service

The term ''interLATA service'' means telecommunications between a point located in a local access and transport area and a point located outside such area.

(22) Interstate communication

The term ''interstate communication'' or ''interstate transmission'' means communication or transmission (A) from any State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, to any other State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, (B) from or to the United States to or from the Canal Zone, insofar as such communication or transmission takes place within the United States, or (C) between points within the United States but through a foreign country; but shall not, with respect to the provisions of subchapter II of this chapter (other than section 223 of this title), include wire or radio communication between points in the same State, Territory, or possession of the United States, or the District of Columbia, through any place outside thereof, if such communication is regulated by a State commission.

(23) Land station

The term ''land station'' means a station, other than a mobile station, used for radio communication with mobile stations.

(24) Licensee

The term ''licensee'' means the holder of a radio station license granted or continued in force under authority of this chapter.

(25) Local access and transport area

The term ''local access and transport area'' or ''LATA'' means a contiguous geographic area—

(A) established before February 8, 1996, by a Bell operating company such that no exchange area includes points within more than 1 metropolitan statistical area, consolidated metropolitan statistical area, or State, except as expressly permitted under the AT&T Consent Decree; or

(B) established or modified by a Bell operating company after February 8, 1996, and approved by the Commission.

(26) Local exchange carrier

The term ''local exchange carrier'' means any person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under section 332(c) of this title, except to the extent that the Commission finds that such service should be included in the definition of such term.

(27) Mobile service

The term ''mobile service'' means a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes (A) both one-way and two-way radio communication services, (B) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation, and (C) any service for which a license is required in a personal communications service established pursuant to the proceeding entitled ''Amendment to the Commission's Rules to Establish New Personal Communications Services'' (GEN Docket No. 90–314; ET Docket No. 92–100), or any successor proceeding.

(28) Mobile station

The term ''mobile station'' means a radiocommunication station capable of being moved and which ordinarily does move.

(29) Network element

The term ''network element'' means a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.

(30) Number portability

The term ''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.

(31) Operator

(A) The term ''operator'' on a ship of the United States means, for the purpose of parts

II and III of subchapter III of this chapter, a person holding a radio operator's license of the proper class as prescribed and issued by the Commission.

(B) ''Operator'' on a foreign ship means, for the purpose of part II of subchapter III of this chapter, a person holding a certificate as such of the proper class complying with the provisions of the radio regulations annexed to the International Telecommunication Convention in force, or complying with an agreement or treaty between the United States and the country in which the ship is registered.

(32) Person

The term ''person'' includes an individual, partnership, association, joint-stock company, trust, or corporation.

(33) Radio communication

The term ''radio communication'' or ''communication by radio'' means the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.

(34) Radio officer

(A) The term ''radio officer'' on a ship of the United States means, for the purpose of part II of subchapter III of this chapter, a person holding at least a first or second class radiotelegraph operator's license as prescribed and issued by the Commission. When such person is employed to operate a radiotelegraph station aboard a ship of the United States, he is also required to be licensed as a ''radio officer'' in accordance with chapter 71 of title 46.

(B) ''Radio officer'' on a foreign ship means, for the purpose of part II of subchapter III of this chapter, a person holding at least a first or second class radiotelegraph operator's certificate complying with the provisions of the radio regulations annexed to the International Telecommunication Convention in force.

(35) Radio station

The term ''radio station'' or ''station'' means a station equipped to engage in radio communication or radio transmission of energy.

(36) Radiotelegraph auto alarm

The term ''radiotelegraph auto alarm'' on a ship of the United States subject to the provisions of part II of subchapter III of this chapter means an automatic alarm receiving apparatus which responds to the radiotelegraph alarm signal and has been approved by the Commission. ''Radiotelegraph auto alarm'' on a foreign ship means an automatic alarm receiving apparatus which responds to the radiotelegraph alarm signal and has been approved by the government of the country in which the ship is registered: *Provided*, That the United States and the country in which the ship is registered are parties to the same treaty, convention, or agreement prescribing the requirements for such apparatus. Nothing in this chapter or in any other provision of law shall be construed to require the recognition of a radiotelegraph auto alarm as complying with part II of subchapter III of this chapter, on a foreign ship subject to part II of subchapter III of this chapter, where the country in which the ship is registered and the United States are not parties to the same treaty, convention, or agreement prescribing the requirements for such apparatus.

(37) Rural telephone company

The term ''rural telephone company'' means a local exchange carrier operating entity to the extent that such entity—

(A) provides common carrier service to any local exchange carrier study area that does not include either—

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

(ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

(B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(D) has less than 15 percent of its access lines in communities of more than 50,000 on February 8, 1996.

(38) Safety convention

The term ''safety convention'' means the International Convention for the Safety of Life at Sea in force and the regulations referred to therein.

(39) Ship

(A) The term ''ship'' or ''vessel'' includes every description of watercraft or other artificial contrivance, except aircraft, used or capable of being used as a means of transportation on water, whether or not it is actually afloat.

(B) A ship shall be considered a passenger ship if it carries or is licensed or certificated to carry more than twelve passengers.

(C) A cargo ship means any ship not a passenger ship.

(D) A passenger is any person carried on board a ship or vessel except (1) the officers and crew actually employed to man and operate the ship, (2) persons employed to carry on the business of the ship, and (3) persons on board a ship when they are carried, either because of the obligation laid upon the master to carry shipwrecked, distressed, or other persons in like or similar situations or by reason of any circumstance over which neither the master, the owner, nor the charterer (if any) has control.

(E) ''Nuclear ship'' means a ship provided with a nuclear powerplant.

(40) State

The term ''State'' includes the District of Columbia and the Territories and possessions.

(41) State commission

The term ''State commission'' means the commission, board, or official (by whatever

name designated) which under the laws of any State has regulatory jurisdiction with respect to intrastate operations of carriers.

(42) Station license

The term ''station license'', ''radio station license'', or ''license'' means that instrument of authorization required by this chapter or the rules and regulations of the Commission made pursuant to this chapter, for the use or operation of apparatus for transmission of energy, or communications, or signals by radio, by whatever name the instrument may be designated by the Commission.

(43) Telecommunications

The term ''telecommunications'' means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

(44) Telecommunications carrier

The term ''telecommunications carrier'' means any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226 of this title). A telecommunications carrier shall be treated as a common carrier under this chapter only to the extent that it is engaged in providing telecommunications services, except that the Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage.

(45) Telecommunications equipment

The term ''telecommunications equipment'' means equipment, other than customer premises equipment, used by a carrier to provide telecommunications services, and includes software integral to such equipment (including upgrades).

(46) Telecommunications service

The term ''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 directly to the public, regardless of the facilities used.

(47) Telephone exchange service

The term ''telephone exchange service'' means (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.

(48) Telephone toll service

The term ''telephone toll service'' means telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service.

(49) Television service

(A) Analog television service

The term ''analog television service'' means television service provided pursuant to the transmission standards prescribed by the Commission in section 73.682(a) of its regulations (47 C.F.R. 73.682(a)).

(B) Digital television service

The term ''digital television service'' means television service provided pursuant to the transmission standards prescribed by the Commission in section 73.682(d) of its regulations (47 C.F.R. 73.682(d)).

(50) Transmission of energy by radio

The term ''transmission of energy by radio'' or ''radio transmission of energy'' includes both such transmission and all instrumentalities, facilities, and services incidental to such transmission.

(51) United States

The term ''United States'' means the several States and Territories, the District of Columbia, and the possessions of the United States, but does not include the Canal Zone.

(52) Wire communication

The term ''wire communication'' or ''communication by wire'' means the transmission of writing, signs, signals, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.

(June 19, 1934, ch. 652, title I, §3, 48 Stat. 1065; May 20, 1937, ch. 229, §2, 50 Stat. 189; Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352; July 16, 1952, ch. 879, §2, 66 Stat. 711; Apr. 27, 1954, ch. 175, §§2, 3, 68 Stat. 64; Aug. 13, 1954, ch. 729, §3, 68 Stat. 707; Aug. 13, 1954, ch. 735, §1, 68 Stat. 729; Aug. 6, 1956, ch. 973, §3, 70 Stat. 1049; Pub. L. 89–121, §1, Aug. 13, 1965, 79 Stat. 511; Pub. L. 90–299, §2, May 3, 1968, 82 Stat. 112; Pub. L. 97–259, title I, §120(b), Sept. 13, 1982, 96 Stat. 1097; Pub. L. 103–66, title VI, §6002(b)(2)(B)(ii), Aug. 10, 1993, 107 Stat. 396; Pub. L. 104–104, §3(a), (c), Feb. 8, 1996, 110 Stat. 58, 61; Pub. L. 105–33, title III, §3001(b), Aug. 5, 1997, 111 Stat. 258.)

REFERENCES IN TEXT

For definition of Canal Zone, referred to in pars. (22) and (51), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

Part II of subchapter III of this chapter, referred to in pars. (31), (34), and (36), is classified to section 351 et seq. of this title. Part III of subchapter III of this chapter, referred to in par. (31)(A), is classified to section 381 et seq. of this title.

CODIFICATION

In par. (34)(A), ''chapter 71 of title 46'' substituted for ''the Act of May 12, 1948 (46 U.S.C. 229a–h)'' on authority of Pub. L. 98–89, §2(b), Aug. 26, 1983, 97 Stat. 598, section 1 of which enacted Title 46, Shipping.

References to Philippine Islands in pars. (22) and (51) of this section omitted on authority of Proc. No. 2695, issued pursuant to section 1394 of Title 22, Foreign Relations and Intercourse, which proclamation recognized

the independence of Philippine Islands as of July 4, 1946. Proc. No. 2695 is set out under section 1394 of Title 22.

AMENDMENTS

1997—Pars. (49) to (52). Pub. L. 105–33 added par. (49) and redesignated former pars. (49) to (51) as (50) to (52), respectively.

1996—Pub. L. 104–104, § 3(a)(2), (c)(4)–(8), redesignated subsecs. (a) to (ff) as pars. (1) to (32), respectively, realigned margins, inserted headings and words ''The term'', changed capitalization, added pars. (33) to (51), reordered pars. in alphabetical order based on headings of pars. and renumbered pars. as so reordered.

Subsecs. (e), (n). Pub. L. 104–104, § 3(c)(1), redesignated clauses (1) to (3) as (A) to (C), respectively.

Subsec. (r). Pub. L. 104–104, § 3(a)(1), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (w). Pub. L. 104–104, § 3(c)(2), redesignated pars. (1) to (5) as subpars. (A) to (E), respectively.

Subsecs. (y), (z). Pub. L. 104–104, § 3(c)(3), redesignated pars. (1) and (2) as subpars. (A) and (B), respectively.

1993—Subsec. (n). Pub. L. 103–66, § 6002(b)(2)(B)(ii)(I), inserted cl. (1) designation and added cls. (2) and (3).

Subsec. (gg). Pub. L. 103–66, § 6002(b)(2)(B)(ii)(II), struck out subsec. (gg) which read as follows: '' 'Private land mobile service' means a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation.''

1982—Subsec. (n). Pub. L. 97–259, § 120(b)(2), substituted ''a radio'' for ''the radio'', inserted ''or receivers'' after ''between mobile stations'', and inserted provision that ''mobile service'' includes both one-way and two-way radio communication services.

Subsec. (gg). Pub. L. 97–259, § 120(b)(1), added subsec. (gg).

1968—Subsec. (e). Pub. L. 90–299 inserted ''(other than section 223 of this title)'' after ''subchapter II of this chapter''.

1965—Subsec. (w)(5). Pub. L. 89–121, § 1(1), added par. (5).

Subsec. (x). Pub. L. 89–121, § 1(2), among other changes, substituted ''radiotelegraph auto alarm'' for ''auto-alarm'' wherever appearing, ''receiving apparatus which responds to the radiotelegraph alarm signal'' for ''receiver'' in two places, and ''country in which the ship is registered'' for ''country to which the ship belongs'' and for ''country of origin''.

Subsec. (y). Pub. L. 89–121, § 1(3), struck out ''qualified operator'' from pars. (1) and (2), and substituted ''country in which the ship is registered'' for ''country to which the ship belongs''.

Subsec. (z). Pub. L. 89–121, § 1(4)(D), (E), added subsec. (z) and redesignated former subsec. (z) as (aa).

Subsec. (aa). Pub. L. 89–121, § 1(4)(A), (D), redesignated former subsec. (z) as (aa) and former subsec. (aa) as (bb).

Subsecs. (bb) to (dd). Pub. L. 89–121, § 1(4)(A), redesignated former subsecs. (aa) to (cc) as (bb) to (dd) and former subsec. (dd) as (ee).

Subsec. (ee). Pub. L. 89–121, § 1(4)(A), (B), redesignated former subsec. (dd) as (ee), and repealed former subsec. (ee) which defined ''existing installation''.

Subsecs. (ff), (gg). Pub. L. 89–121, § 1(4)(B), (C), redesignated subsec. (gg) as (ff) and repealed former subsec. (ff) which defined ''new installation''.

1956—Subsec. (y)(2). Act Aug. 6, 1956, substituted ''parts II and III of subchapter III of this chapter'' for ''part II of subchapter III of this chapter''.

1954—Subsec. (e). Act Apr. 27, 1954, § 2, obviated any possible construction that the Commission is empowered to assert common-carrier jurisdiction over point-to-point communication by radio between two points within a single State when the only possible claim that such an operation constitutes an interstate communication rests on the fact that the signal may traverse the territory of another State.

Subsec. (u). Act Apr. 27, 1954, § 3, inserted reference to clauses (3) and (4) of section 152(b) of this title.

Subsecs. (ee), (ff). Act Aug. 13, 1954, ch. 729, added subsecs. (ee) and (ff).

Subsec. (gg), ''Great Lakes Agreement''. Act Aug. 13, 1954, ch. 735, added another subsec. (ee) which for purposes of codification was designated subsec. (gg).

1952—Subsecs. (bb) to (dd). Act July 16, 1952, added subsecs. (bb) to (dd).

1937—Subsecs. (w) to (aa). Act May 20, 1937, added subsecs. (w) to (aa).

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Aug. 6, 1956, effective Mar. 1, 1957, see section 4 of act Aug. 6, 1956, set out as an Effective Date note under section 381 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 13, 1954, ch. 735, effective Nov. 13, 1954, see section 6 of act Aug. 13, 1954, set out as an Effective Date note under section 507 of this title.

EFFECTIVE DATE OF 1952 AMENDMENT

Section 19 of act July 16, 1952, provided that: ''This Act [enacting section 1343 of Title 18, Crimes and Criminal Procedure, amending this section and sections 154, 155, 307 to 312, 315, 316, 319, 402, 405, 409, and 410 of this title, and enacting provisions set out as notes under this section and section 609 of this title] shall take effect on the date of its enactment [July 16, 1952], but—

''(1) Insofar as the amendments made by this Act to the Communications Act of 1934 [this chapter] provide for procedural changes, requirements imposed by such changes shall not be mandatory as to any agency proceeding (as defined in the Administrative Procedure Act) [see sections 551 et seq. and 701 et seq. of Title 5, Government Organization and Employees] with respect to which hearings have been commenced prior to the date of enactment of this Act [July 16, 1952].

''(2) The amendments made by this Act to section 402 of the Communications Act of 1934 [section 402 of this title] (relating to judicial review of orders and decisions of the Commission) shall not apply with respect to any action or appeal which is pending before any court on the date of enactment of this Act [July 16, 1952].''

COMMON TERMINOLOGY

Section 3001(a) of title III of Pub. L. 105–33 provided that: ''Except as otherwise provided in this title [enacting section 337 of this title, amending this section and sections 303, 309, and 923 to 925 of this title, enacting provisions set out as notes under sections 254, 309, and 925 of this title, and repealing provisions set out as a note under section 309 of this title], the terms used in this title have the meanings provided in section 3 of the Communications Act of 1934 (47 U.S.C. 153), as amended by this section.''

Section 3(b) of Pub. L. 104–104 provided that: ''Except as otherwise provided in this Act [see Short Title of 1996 Amendment note set out under section 609 of this title], the terms used in this Act have the meanings provided in section 3 of the Communications Act of 1934 (47 U.S.C. 153), as amended by this section.''

GREAT LAKES AGREEMENT

The Great Lakes Agreement, referred to in this section, relates to the bilateral Agreement for the Promotion of Safety on the Great Lakes by Means of Radio, signed at Ottawa, Canada, Feb. 21, 1952; entered into force Nov. 13, 1954, 3 UST 4926. A subsequent agreement for Promotion of Safety on the Great Lakes by Means of Radio, 1973, was signed at Ottawa, Canada, Feb. 26, 1973, and entered into force May 16, 1975, 25 UST 935.

SAFETY CONVENTION

The United States was a party to the International Convention for the Safety of Life at Sea, signed at Lon-

don May 31, 1929, entered into force as to the United States, Nov. 7, 1936, 50 Stat. 1121, 1306. For subsequent International Conventions for the Safety of Life at Sea to which the United States has been a party, see section 1602 of Title 33, Navigation and Navigable Waters, and notes thereunder.

§ 154. Federal Communications Commission

(a) Number of commissioners; appointment

The Federal Communications Commission (in this chapter referred to as the ''Commission'') shall be composed of five commissioners appointed by the President, by and with the advice and consent of the Senate, one of whom the President shall designate as chairman.

(b) Qualifications

(1) Each member of the Commission shall be a citizen of the United States.

(2)(A) No member of the Commission or person employed by the Commission shall—

(i) be financially interested in any company or other entity engaged in the manufacture or sale of telecommunications equipment which is subject to regulation by the Commission;

(ii) be financially interested in any company or other entity engaged in the business of communication by wire or radio or in the use of the electromagnetic spectrum;

(iii) be financially interested in any company or other entity which controls any company or other entity specified in clause (i) or clause (ii), or which derives a significant portion of its total income from ownership of stocks, bonds, or other securities of any such company or other entity; or

(iv) be employed by, hold any official relation to, or own any stocks, bonds, or other securities of, any person significantly regulated by the Commission under this chapter;

except that the prohibitions established in this subparagraph shall apply only to financial interests in any company or other entity which has a significant interest in communications, manufacturing, or sales activities which are subject to regulation by the Commission.

(B)(i) The Commission shall have authority to waive, from time to time, the application of the prohibitions established in subparagraph (A) to persons employed by the Commission if the Commission determines that the financial interests of a person which are involved in a particular case are minimal, except that such waiver authority shall be subject to the provisions of section 208 of title 18. The waiver authority established in this subparagraph shall not apply with respect to members of the Commission.

(ii) In any case in which the Commission exercises the waiver authority established in this subparagraph, the Commission shall publish notice of such action in the Federal Register and shall furnish notice of such action to the appropriate committees of each House of the Congress. Each such notice shall include information regarding the identity of the person receiving the waiver, the position held by such person, and the nature of the financial interests which are the subject of the waiver.

(3) The Commission, in determining whether a company or other entity has a significant interest in communications, manufacturing, or sales activities which are subject to regulation by the Commission, shall consider (without excluding other relevant factors)—

(A) the revenues, investments, profits, and managerial efforts directed to the related communications, manufacturing, or sales activities of the company or other entity involved, as compared to the other aspects of the business of such company or other entity;

(B) the extent to which the Commission regulates and oversees the activities of such company or other entity;

(C) the degree to which the economic interests of such company or other entity may be affected by any action of the Commission; and

(D) the perceptions held by the public regarding the business activities of such company or other entity.

(4) Members of the Commission shall not engage in any other business, vocation, profession, or employment while serving as such members.

(5) The maximum number of commissioners who may be members of the same political party shall be a number equal to the least number of commissioners which constitutes a majority of the full membership of the Commission.

(c) Terms of office; vacancies

commissioners[1] shall be appointed for terms of five years and until their successors are appointed and have been confirmed and taken the oath of office, except that they shall not continue to serve beyond the expiration of the next session of Congress subsequent to the expiration of said fixed term of office; except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he succeeds. No vacancy in the Commission shall impair the right of the remaining commissioners to exercise all the powers of the Commission.

(d) Compensation of Commission members

Each Commissioner shall receive an annual salary at the annual rate payable from time to time for level IV of the Executive Schedule, payable in monthly installments. The Chairman of the Commission, during the period of his service as Chairman, shall receive an annual salary at the annual rate payable from time to time for level III of the Executive Schedule.

(e) Principal office; special sessions

The principal office of the Commission shall be in the District of Columbia, where its general sessions shall be held; but whenever the convenience of the public or of the parties may be promoted or delay or expense prevented thereby, the Commission may hold special sessions in any part of the United States.

(f) Employees and assistants; compensation of members of Field Engineering and Monitoring Bureau; use of amateur volunteers for certain purposes; commercial radio operator examinations

(1) The Commission shall have authority, subject to the provisions of the civil-service laws and chapter 51 and subchapter III of chapter 53 of title 5, to appoint such officers, engineers, ac-

[1] So in original. Probably should be capitalized.

countants, attorneys, inspectors, examiners, and other employees as are necessary in the exercise of its functions.

(2) Without regard to the civil-service laws, but subject to chapter 51 and subchapter III of chapter 53 of title 5, each commissioner may appoint three professional assistants and a secretary, each of whom shall perform such duties as such commissioner shall direct. In addition, the chairman of the Commission may appoint, without regard to the civil-service laws, but subject to chapter 51 and subchapter III of chapter 53 of title 5, and administrative assistant who shall perform such duties as the chairman shall direct.

(3) The Commission shall fix a reasonable rate of extra compensation for overtime services of engineers in charge and radio engineers of the Field Engineering and Monitoring Bureau of the Federal Communications Commission, who may be required to remain on duty between the hours of 5 o'clock postmeridian and 8 o'clock antemeridian or on Sundays or holidays to perform services in connection with the inspection of ship radio equipment and apparatus for the purposes of part II of subchapter III of this chapter or the Great Lakes Agreement, on the basis of one-half day's additional pay for each two hours or fraction thereof of at least one hour that the overtime extends beyond 5 o'clock postmeridian (but not to exceed two and one-half days' pay for the full period from 5 o'clock postmeridian to 8 o'clock antemeridian) and two additional days' pay for Sunday or holiday duty. The said extra compensation for overtime services shall be paid by the master, owner, or agent of such vessel to the local United States collector of customs or his representative, who shall deposit such collection into the Treasury of the United States to an appropriately designated receipt account: *Provided*, That the amounts of such collections received by the said collector of customs or his representatives shall be covered into the Treasury as miscellaneous receipts; and the payments of such extra compensation to the several employees entitled thereto shall be made from the annual appropriations for salaries and expenses of the Commission: *Provided further*, That to the extent that the annual appropriations which are authorized to be made from the general fund of the Treasury are insufficient, there are authorized to be appropriated from the general fund of the Treasury such additional amounts as may be necessary to the extent that the amounts of such receipts are in excess of the amounts appropriated: *Provided further*, That such extra compensation shall be paid if such field employees have been ordered to report for duty and have so reported whether the actual inspection of the radio equipment or apparatus takes place or not: *And provided further*, That in those ports where customary working hours are other than those hereinabove mentioned, the engineers in charge are vested with authority to regulate the hours of such employees so as to agree with prevailing working hours in said ports where inspections are to be made, but nothing contained in this proviso shall be construed in any manner to alter the length of a working day for the engineers in charge and radio engineers or the overtime pay herein fixed: and *Provided further*, That, in the alternative, an entity designated by the Commission may make the inspections referred to in this paragraph.

(4)(A) The Commission, for purposes of preparing or administering any examination for an amateur station operator license, may accept and employ the voluntary and uncompensated services of any individual who holds an amateur station operator license of a higher class than the class of license for which the examination is being prepared or administered. In the case of examinations for the highest class of amateur station operator license, the Commission may accept and employ such services of any individual who holds such class of license.

(B)(i) The Commission, for purposes of monitoring violations of any provision of this chapter (and of any regulation prescribed by the Commission under this chapter) relating to the amateur radio service, may—

(I) recruit and train any individual licensed by the Commission to operate an amateur station; and

(II) accept and employ the voluntary and uncompensated services of such individual.

(ii) The Commission, for purposes of recruiting and training individuals under clause (i) and for purposes of screening, annotating, and summarizing violation reports referred under clause (i), may accept and employ the voluntary and uncompensated services of any amateur station operator organization.

(iii) The functions of individuals recruited and trained under this subparagraph shall be limited to—

(I) the detection of improper amateur radio transmissions;

(II) the conveyance to Commission personnel of information which is essential to the enforcement of this chapter (or regulations prescribed by the Commission under this chapter) relating to the amateur radio service; and

(III) issuing advisory notices, under the general direction of the Commission, to persons who apparently have violated any provision of this chapter (or regulations prescribed by the Commission under this chapter) relating to the amateur radio service.

Nothing in this clause shall be construed to grant individuals recruited and trained under this subparagraph any authority to issue sanctions to violators or to take any enforcement action other than any action which the Commission may prescribe by rule.

(C)(i) The Commission, for purposes of monitoring violations of any provision of this chapter (and of any regulation prescribed by the Commission under this chapter) relating to the citizens band radio service, may—

(I) recruit and train any citizens band radio operator; and

(II) accept and employ the voluntary and uncompensated services of such operator.

(ii) The Commission, for purposes of recruiting and training individuals under clause (i) and for purposes of screening, annotating, and summarizing violation reports referred under clause (i), may accept and employ the voluntary and uncompensated services of any citizens band radio operator organization. The Commission, in ac-

cepting and employing services of individuals under this subparagraph, shall seek to achieve a broad representation of individuals and organizations interested in citizens band radio operation.

(iii) The functions of individuals recruited and trained under this subparagraph shall be limited to—

(I) the detection of improper citizens band radio transmissions;

(II) the conveyance to Commission personnel of information which is essential to the enforcement of this chapter (or regulations prescribed by the Commission under this chapter) relating to the citizens band radio service; and

(III) issuing advisory notices, under the general direction of the Commission, to persons who apparently have violated any provision of this chapter (or regulations prescribed by the Commission under this chapter) relating to the citizens band radio service.

Nothing in this clause shall be construed to grant individuals recruited and trained under this subparagraph any authority to issue sanctions to violators or to take any enforcement action other than any action which the Commission may prescribe by rule.

(D) The Commission shall have the authority to endorse certification of individuals to perform transmitter installation, operation, maintenance, and repair duties in the private land mobile services and fixed services (as defined by the Commission by rule) if such certification programs are conducted by organizations or committees which are representative of the users in those services and which consist of individuals who are not officers or employees of the Federal Government.

(E) The authority of the Commission established in this paragraph shall not be subject to or affected by the provisions of part III of title 5 or section 1342 of title 31.

(F) Any person who provides services under this paragraph shall not be considered, by reason of having provided such services, a Federal employee.

(G) The Commission, in accepting and employing services of individuals under subparagraphs (A) and (B), shall seek to achieve a broad representation of individuals and organizations interested in amateur station operation.

(H) The Commission may establish rules of conduct and other regulations governing the service of individuals under this paragraph.

(I) With respect to the acceptance of voluntary uncompensated services for the preparation, processing, or administration of examinations for amateur station operator licenses pursuant to subparagraph (A) of this paragraph, individuals, or organizations which provide or coordinate such authorized volunteer services may recover from examinees reimbursement for out-of-pocket costs.

(5)(A) The Commission, for purposes of preparing and administering any examination for a commercial radio operator license or endorsement, may accept and employ the services of persons that the Commission determines to be qualified. Any person so employed may not receive compensation for such services, but may recover from examinees such fees as the Commission permits, considering such factors as public service and cost estimates submitted by such person.

(B) The Commission may prescribe regulations to select, oversee, sanction, and dismiss any person authorized under this paragraph to be employed by the Commission.

(C) Any person who provides services under this paragraph or who provides goods in connection with such services shall not, by reason of having provided such service or goods, be considered a Federal or special government employee.

(g) Expenditures

(1) The Commission may make such expenditures (including expenditures for rent and personal services at the seat of government and elsewhere, for office supplies, law books, periodicals, and books of reference, for printing and binding, for land for use as sites for radio monitoring stations and related facilities, including living quarters where necessary in remote areas, for the construction of such stations and facilities, and for the improvement, furnishing, equipping, and repairing of such stations and facilities and of laboratories and other related facilities (including construction of minor subsidiary buildings and structures not exceeding $25,000 in any one instance) used in connection with technical research activities), as may be necessary for the execution of the functions vested in the Commission and as may be appropriated for by the Congress in accordance with the authorizations of appropriations established in section 156 of this title. All expenditures of the Commission, including all necessary expenses for transportation incurred by the commissioners or by their employees, under their orders, in making any investigation or upon any official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman of the Commission or by such other member or officer thereof as may be designated by the Commission for that purpose.

(2)(A) If—

(i) the necessary expenses specified in the last sentence of paragraph (1) have been incurred for the purpose of enabling commissioners or employees of the Commission to attend and participate in any convention, conference, or meeting;

(ii) such attendance and participation are in furtherance of the functions of the Commission; and

(iii) such attendance and participation are requested by the person sponsoring such convention, conference, or meeting;

then the Commission shall have authority to accept direct reimbursement from such sponsor for such necessary expenses.

(B) The total amount of unreimbursed expenditures made by the Commission for travel for any fiscal year, together with the total amount of reimbursements which the Commission accepts under subparagraph (A) for such fiscal year, shall not exceed the level of travel expenses appropriated to the Commission for such fiscal year.

(C) The Commission shall submit to the appropriate committees of the Congress, and publish

in the Federal Register, quarterly reports specifying reimbursements which the Commission has accepted under this paragraph.

(D) The provisions of this paragraph shall cease to have any force or effect at the end of fiscal year 1994.

(E) Funds which are received by the Commission as reimbursements under the provisions of this paragraph after the close of a fiscal year shall remain available for obligation.

(3)(A) Notwithstanding any other provision of law, in furtherance of its functions the Commission is authorized to accept, hold, administer, and use unconditional gifts, donations, and bequests of real, personal, and other property (including voluntary and uncompensated services, as authorized by section 3109 of title 5).

(B) The Commission, for purposes of providing radio club and military-recreational call signs, may utilize the voluntary, uncompensated, and unreimbursed services of amateur radio organizations authorized by the Commission that have tax-exempt status under section 501(c)(3) of title 26.

(C) For the purpose of Federal law on income taxes, estate taxes, and gift taxes, property or services accepted under the authority of subparagraph (A) shall be deemed to be a gift, bequest, or devise to the United States.

(D) The Commission shall promulgate regulations to carry out the provisions of this paragraph. Such regulations shall include provisions to preclude the acceptance of any gift, bequest, or donation that would create a conflict of interest or the appearance of a conflict of interest.

(h) Quorum; seal

Three members of the Commission shall constitute a quorum thereof. The Commission shall have an official seal which shall be judicially noticed.

(i) Duties and powers

The Commission may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions.

(j) Conduct of proceedings; hearings

The Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. No commissioner shall participate in any hearing or proceeding in which he has a pecuniary interest. Any party may appear before the Commission and be heard in person or by attorney. Every vote and official act of the Commission shall be entered of record, and its proceedings shall be public upon the request of any party interested. The Commission is authorized to withhold publication of records or proceedings containing secret information affecting the national defense.

(k) Annual reports to Congress

The Commission shall make an annual report to Congress, copies of which shall be distributed as are other reports transmitted to Congress. Such reports shall contain—

(1) such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of interstate and foreign wire and radio communication and radio transmission of energy;

(2) such information and data concerning the functioning of the Commission as will be of value to Congress in appraising the amount and character of the work and accomplishments of the Commission and the adequacy of its staff and equipment;

(3) an itemized statement of all funds expended during the preceding year by the Commission, of the sources of such funds, and of the authority in this chapter or elsewhere under which such expenditures were made; and

(4) specific recommendations to Congress as to additional legislation which the Commission deems necessary or desirable, including all legislative proposals submitted for approval to the Director of the Office of Management and Budget.

(*l*) Record of reports

All reports of investigations made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier or licensee that may have been complained of.

(m) Publication of reports; admissibility as evidence

The Commission shall provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use, and such authorized publications shall be competent evidence of the reports and decisions of the Commission therein contained in all courts of the United States and of the several States without any further proof or authentication thereof.

(n) Compensation of appointees

Rates of compensation of persons appointed under this section shall be subject to the reduction applicable to officers and employees of the Federal Government generally.

(*o*) Use of communications in safety of life and property

For the purpose of obtaining maximum effectiveness from the use of radio and wire communications in connection with safety of life and property, the Commission shall investigate and study all phases of the problem and the best methods of obtaining the cooperation and coordination of these systems.

(June 19, 1934, ch. 652, title I, § 4, 48 Stat. 1066; Jan. 22, 1936, ch. 25, 49 Stat. 1098; May 20, 1937, ch. 229, §§ 3, 4, 50 Stat. 190; Mar. 23, 1941, ch. 24, 55 Stat. 46; July 16, 1952, ch. 879, § 3, 66 Stat. 711; Aug. 13, 1954, ch. 735, § 2, 68 Stat. 729; Pub. L. 86–533, § 1(24), June 29, 1960, 74 Stat. 249; Pub. L. 86–619, § 2, July 12, 1960, 74 Stat. 407; Pub. L. 86–752, § 2, Sept. 13, 1960, 74 Stat. 889; Pub. L. 97–35, title XII, § 1251(b), Aug. 13, 1981, 95 Stat. 738; Pub. L. 97–253, title V, § 501(b)(1)–(3), Sept. 8, 1982, 96 Stat. 805, 806; Pub. L. 97–259, title I, §§ 102–104, Sept. 13, 1982, 96 Stat. 1087–1089; Pub. L. 98–214, §§ 10, 11, Dec. 8, 1983, 97 Stat. 1471; Pub. L. 99–272, title V, § 5002(b), Apr. 7, 1986, 100 Stat. 118; Pub. L. 99–334, § 1(a), June 6, 1986, 100 Stat. 513; Pub. L. 100–594, § 3, Nov. 3, 1988, 102 Stat.

3021; Pub. L. 101–396, §§3, 4, Sept. 28, 1990, 104 Stat. 848, 849; Pub. L. 102–538, title II, §§201, 208, Oct. 27, 1992, 106 Stat. 3542, 3543; Pub. L. 103–414, title III, §303(a)(1), Oct. 25, 1994, 108 Stat. 4294; Pub. L. 104–66, title II, §2051(b), Dec. 21, 1995, 109 Stat. 729; Pub. L. 104–104, title IV, §403(a), (b), Feb. 8, 1996, 110 Stat. 130.)

REFERENCES IN TEXT

Level III and level IV of the Executive Schedule, referred to in subsec. (d), are set out in sections 5314 and 5315, respectively, of Title 5, Government Organization and Employees.

The civil-service laws, referred to in subsec. (f)(1), (2), are set forth in Title 5. See particularly, section 3301 et seq. of Title 5.

Part II of subchapter III of this chapter, referred to in subsec. (f)(3), is classified to section 351 et seq. of this title.

Provisions of part III of title 5, referred to in subsec. (f)(4)(E), are classified to section 2101 et seq. of Title 5, Government Organization and Employees.

Federal law on income taxes, estate taxes, and gift taxes, referred to in subsec. (g)(3)(C), is classified generally to Title 26, Internal Revenue Code.

CODIFICATION

In subsec. (f)(1), (2) ''chapter 51 and subchapter III of chapter 53 of title 5'' substituted for ''the Classification of 1949'' on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

In subsec. (f)(4)(E), ''section 1342 of title 31'' substituted for ''section 3679(b) of the Revised Statutes (31 U.S.C. 665(b))'' on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1996—Subsec. (f)(3). Pub. L. 104–104, §403(b), inserted before period at end ''; and *Provided further*, That, in the alternative, an entity designated by the Commission may make the inspections referred to in this paragraph''.

Subsec. (f)(4)(A). Pub. L. 104–104, §403(a)(1), in first sentence, inserted ''or administering'' after ''for purposes of preparing'', ''of'' after ''than the class'', and ''or administered'' after ''being prepared''.

Subsec. (f)(4)(B). Pub. L. 104–104, §403(a)(2), (5), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: ''The Commission, for purposes of administering any examination for an amateur station operator license, may accept and employ the voluntary and uncompensated services of any individual who holds an amateur station operator license of a higher class than the class license for which the examination is being conducted. In the case of examinations for the highest class of amateur station operator license, the Commission may accept and employ such services of any individual who holds such class of license. Any person who owns a significant interest in, or is an employee of, any company or other entity which is engaged in the manufacture or distribution of equipment used in connection with amateur radio transmissions, or in the preparation or distribution of any publication used in preparation for obtaining amateur station operator licenses, shall not be eligible to render any service under this subparagraph.''

Subsec. (f)(4)(C) to (G). Pub. L. 104–104, §403(a)(5), redesignated subpars. (D) to (H) as (C) to (G), respectively. Former subpar. (C) redesignated (B).

Subsec. (f)(4)(H). Pub. L. 104–104, §403(a)(5), redesignated subpar. (I) as (H). Former subpar. (H) redesignated (G).

Pub. L. 104–104, §403(a)(3), substituted ''subparagraphs (A) and (B)'' for ''subparagraphs (A), (B), and (C)''.

Subsec. (f)(4)(I). Pub. L. 104–104, §403(a)(5), redesignated subpar. (J) as (I). Former subpar. (I) redesignated (H).

Subsec. (f)(4)(J). Pub. L. 104–104, §403(a)(4), (5), redesignated subpar. (J) as (I) and substituted ''subparagraph (A) of this paragraph'' for ''subparagraph (A) or (B) of this paragraph'' and struck out last sentence which read as follows: ''The total amount of allowable cost reimbursement per examinee shall not exceed $4, adjusted annually every January 1 for changes in the Department of Labor Consumer Price Index.''

1995—Subsec. (f)(4)(J). Pub. L. 104–66 struck out at end ''Such individuals and organizations shall maintain records of out-of-pocket expenditures and shall certify annually to the Commission that all costs for which reimbursement was obtained were necessarily and prudently incurred.''

1994—Subsec. (f)(3). Pub. L. 103–414 substituted ''overtime extends beyond'' for ''overtime exceeds beyond''.

1992—Subsec. (g)(2)(D). Pub. L. 102–538, §201, substituted ''1994'' for ''1992''.

Subsec. (g)(3). Pub. L. 102–538, §208, added par. (3).

1990—Subsec. (f)(5). Pub. L. 101–396, §3, added par. (5).

Subsec. (g)(2)(D). Pub. L. 101–396, §4, substituted ''1992'' for ''1989''.

1988—Subsec. (g)(2)(D). Pub. L. 100–594 substituted ''1989'' for ''1987''.

1986—Subsec. (c). Pub. L. 99–334 substituted ''five years'' for ''seven years''.

Subsec. (g)(2)(D). Pub. L. 99–272, §5002(b)(1), substituted ''1987'' for ''1985''.

Subsec. (g)(2)(E). Pub. L. 99–272, §5002(b)(2), added subpar. (E).

1983—Subsec. (f)(4)(E) to (I). Pub. L. 98–214, §10, added subpar. (E) and redesignated existing subpars. (E) to (H) as (F) to (I), respectively.

Subsec. (f)(4)(J). Pub. L. 98–214, §11, added subpar. (J).

1982—Subsec. (a). Pub. L. 97–253, §501(b)(1), substituted ''five'' for ''seven''.

Subsec. (b). Pub. L. 97–259, §102, amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''Each member of the Commission shall be a citizen of the United States. No member of the Commission or person in its employ shall be financially interested in the manufacture or sale of radio apparatus or of apparatus for wire or radio communication; in communication by wire or radio or in radio transmission of energy; in any company furnishing services or such apparatus to any company engaged in communication by wire or radio or to any company manufacturing or selling apparatus used for communication by wire or radio; or in any company owning stocks, bonds, or other securities of any such company; nor be in the employ of or hold any official relation to any person subject to any of the provisions of this chapter, nor own stocks, bonds, or other securities of any corporation subject to any of the provisions of this chapter. Such commissioners shall not engage in any other business, vocation, profession, or employment. Any such commissioner serving as such after one year from July 16, 1952, shall not for a period of one year following the termination of his services as a commissioner represent any person before the Commission in a professional capacity, except that this restriction shall not apply to any commissioner who has served the full term for which he was appointed. Not more than four members of the Commission shall be members of the same political party.''

Pub. L. 97–253, §501(b)(2), amended last sentence of subsec. (b), prior to the general amendment by Pub. L. 97–259, by substituting language identical to that contained in par. (5), as added by Pub. L. 97–259.

Subsec. (c). Pub. L. 97–259, §103(a), struck out ''The'' before ''commissioners'' at beginning of subsection, immediately thereafter struck out ''first appointed under this chapter shall continue in office for the terms of one, two, three, four, five, six, and seven years, respectively, from the date of the taking effect of this chapter, the term of each to be designated by the President, but their successors'', and substituted ''been confirmed and taken the oath of office'' for ''qualified''.

Subsec. (d). Pub. L. 97–259, §103(b), amended subsec. (d) generally, relating to the annual salary rate for the Chairman and Commissioners.

Subsec. (f)(2). Pub. L. 97–259, § 103(c), substituted ''three professional assistants'' for ''a legal assistant, an engineering assistant,''.

Subsec. (f)(4). Pub. L. 97–259, § 104, added par. (4).

Subsec. (g). Pub. L. 97–259, § 103(d), designated existing provisions as par. (1) and added par. (2).

Subsec. (h). Pub. L. 97–253, § 501(b)(3), substituted ''Three'' for ''Four''.

Subsec. (k)(2). Pub. L. 97–259, § 103(e), struck out proviso after ''its staff and equipment'', relating to the content of first and second annual reports after the enactment of the Communications Act Amendments of 1952.

Subsec. (k)(3). Pub. L. 97–259, § 103(f), redesignated par. (4) as (3).

Subsec. (k)(4), (5). Pub. L. 97–259, § 103(f), (g), redesignated par. (5) as (4) and substituted ''Office of Management and Budget'' for ''Bureau of the Budget''. Former par. (4) redesignated (3).

1981—Subsec. (g). Pub. L. 97–35 substituted requirement respecting authorizations under section 156 of this title, for provisions respecting appropriations from time to time.

1960—Subsec. (b). Pub. L. 86–752 struck out provision that permitted commissioners to accept ''reasonable honorarium or compensation'' for ''the presentation or delivery of publications or papers''.

Subsec. (c). Pub. L. 86–619 provided for continuation in office of the commissioners upon termination of their term until their successors are appointed and have qualified, not beyond expiration of next session of Congress subsequent to the expiration of said fixed term of office.

Subsec. (k)(3). Pub. L. 86–533 repealed par. (3) which required the report to contain information with respect to all persons taken into the employment of the Commission during the preceding year, together with the names of those persons who left the employ of the Commission during the year.

1954—Subsec. (f)(3). Act Aug. 13, 1954, substituted ''engineers'' for ''inspectors'' and ''Field Engineering and Monitoring Bureau of the Federal Communications Commission'' for ''Field Division of the Engineering Department of the Federal Communications Commission'' and extended provisions to include inspections required pursuant to the Great Lakes Agreement.

1952—Subsec. (b). Act July 16, 1952, § 3(a), prohibited commissioners from engaging in any other work except that they may present or deliver papers for an honorarium, and prohibited any commissioner from appearing before the Commission in a professional capacity for 1 year after termination of his services except that this prohibition would not apply where commissioner has completed his full term.

Subsec. (f). Act July 16, 1952, § 3(b), authorized Commission to appoint employees, allowed each commissioner to appoint a legal assistant, and a secretary, and allowed the Chairman to appoint an administrative assistant.

Subsec. (g). Act July 16, 1952, § 3(c), authorized Commission to acquire land for monitoring stations and related facilities.

Subsec. (k). Act July 16, 1952, § 3(d), required Commission to make more detailed reports to Congress.

1941—Subsec. (f). Act Mar. 23, 1941, designated existing provisions as par. (1) and added par. (2).

1937—Subsec. (k). Act May 20, 1937, inserted provisions that the Commission report to Congress annually at the beginning session of the Congress whether new wire or radio communication legislation is necessary and make specific recommendations thereof to Congress.

Subsec. (*o*). Act May 20, 1937, added subsec. (*o*).

1936—Subsec. (f). Act Jan. 22, 1936, inserted references to a chief accountant and three assistants.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1(b) of Pub. L. 99–334 provided that: ''The amendment made by subsection (a) of this section [amending this section] shall take effect on the date of enactment of this Act [June 6, 1986, except that—

''(1) upon the expiration of the term of office prescribed by law to occur on June 30, 1986, any person appointed as a member of the Federal Communications Commission to fill such office for the term following such date shall be eligible to serve until June 30, 1990, and any person appointed as a member of the Federal Communications Commission to the term of office prescribed by law to expire on June 30, 1987, shall be eligible to serve until June 30, 1989; and

''(2) notwithstanding the provisions of subsection (a) of this section [amending this section], persons appointed as members of the Federal Communications Commission to terms of office prescribed by law to expire on June 30, 1988, June 30, 1991, and June 30, 1992, shall be eligible to serve until the expiration of the term of office on June 30, 1988, June 30, 1991, and June 30, 1992, whichever is applicable.''

EFFECTIVE DATE OF 1982 AMENDMENT

Section 501(b)(4) of Pub. L. 97–253 provided that: ''The amendments made in paragraphs (1), (2), and (3) of this subsection [amending this section] shall take effect on July 1, 1983.''

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 13, 1954, effective Nov. 13, 1954, see section 6 of act Aug. 13, 1954, set out as an Effective Date note under section 507 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsecs. (g)(2)(C) and (k) of this section relating to requirements to submit regular periodic reports to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 5th and 9th items on page 167 of House Document No. 103–7.

TRANSFER OF FUNCTIONS

All offices of collector of customs, referred to in subsec. (f)(3), in Bureau of Customs of Department of the Treasury to which appointments were required to be made by President with advice and consent of Senate ordered abolished with such offices to be terminated not later than Dec. 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. All functions of offices eliminated were already vested in Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5.

OLDER AMERICANS PROGRAM

Section 6 of Pub. L. 100–594, as amended by Pub. L. 101–396, § 5, Sept. 28, 1990, 104 Stat. 849; Pub. L. 102–538, title II, § 212, Oct. 27, 1992, 106 Stat. 3545, provided that:

''(a) During fiscal years 1992 and 1993, the Federal Communications Commission is authorized to make grants to, or enter into cooperative agreements with, private nonprofit organizations designated by the Secretary of Labor under title V of the Older Americans Act of 1965 (42 U.S.C. 3056 et seq.) to utilize the talents of older Americans in programs authorized by other provisions of law administered by the Commission (and consistent with such provisions of law) in providing technical and administrative assistance for projects related to the implementation, promotion, or enforcement of the regulations of the Commission.

''(b) Prior to awarding any grant or entering into any agreement under subsection (a), the Office of the Managing Director of the Commission shall certify to the Commission that such grant or agreement will not—

''(1) result in the displacement of individuals currently employed by the Commission;

''(2) result in the employment of any individual when any other individual is on layoff status from the same or a substantially equivalent job within the jurisdiction of the Commission; or

''(3) affect existing contracts for services.

''(c) Participants in any program under a grant or cooperative agreement pursuant to this section shall—

''(1) execute a signed statement with the Commission in which such participants certify that they will adhere to the standards of conduct prescribed for regular employees of the Commission, as set forth in part 19 of title 47, Code of Federal Regulations; and

''(2) execute a confidential statement of employment and financial interest (Federal Communications Commission Form A–54) prior to commencement of work under the program.

Failure to comply with the terms of the signed statement described in paragraph (1) shall result in termination of the individual under the grant or agreement.

''(d) Nothing in this section shall be construed to permit employment of any such participant in any decisionmaking or policymaking position.

''(e) Grants or agreements under this section shall be subject to prior appropriation Acts.''

EXPIRATION OF COMMISSIONERS' TERMS

Pub. L. 97–253, title V, §501(a), Sept. 8, 1982, 96 Stat. 805, provided that: ''Upon expiration of the term of office as a member of the Federal Communications Commission, which is prescribed by law to occur on June 30, 1982, any member appointed to fill such office after such date shall be appointed for a term which ends on June 30, 1983, and such office shall be abolished on July 1, 1983. Upon expiration of the term of office as a member of such Commission, which—

''(1) is prescribed by law;

''(2) is in effect before the date of the enactment of this Act [Sept. 8, 1982]; and

''(3) is to occur on June 30, 1983;

no person shall be appointed to fill such office after such date, and such office shall be abolished on July 1, 1983.''

§155. Commission

(a) Chairman; duties; vacancy

The member of the Commission designated by the President as chairman shall be the chief executive officer of the Commission. It shall be his duty to preside at all meetings and sessions of the Commission, to represent the Commission in all matters relating to legislation and legislative reports, except that any commissioner may present his own or minority views or supplemental reports, to represent the Commission in all matters requiring conferences or communications with other governmental officers, departments or agencies, and generally to coordinate and organize the work of the Commission in such manner as to promote prompt and efficient disposition of all matters within the jurisdiction of the Commission. In the case of a vacancy in the office of the chairman of the Commission, or the absence or inability of the chairman to serve, the Commission may temporarily designate one of its members to act as chairman until the cause or circumstance requiring such designation shall have been eliminated or corrected.

(b) Organization of staff

From time to time as the Commission may find necessary, the Commission shall organize its staff into (1) integrated bureaus, to function on the basis of the Commission's principal workload operations, and (2) such other divisional organizations as the Commission may deem necessary. Each such integrated bureau shall include such legal, engineering, accounting, administrative, clerical, and other personnel as the Commission may determine to be necessary to perform its functions.

(c) Delegation of functions; exceptions to initial orders; force, effect and enforcement of orders; administrative and judicial review; qualifications and compensation of delegates; assignment of cases; separation of review and investigative or prosecuting functions; secretary; seal

(1) When necessary to the proper functioning of the Commission and the prompt and orderly conduct of its business, the Commission may, by published rule or by order, delegate any of its functions (except functions granted to the Commission by this paragraph and by paragraphs (4), (5), and (6) of this subsection and except any action referred to in sections 204(a)(2), 208(b), and 405(b) of this title) to a panel of commissioners, an individual commissioner, an employee board, or an individual employee, including functions with respect to hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter; except that in delegating review functions to employees in cases of adjudication (as defined in section 551 of title 5), the delegation in any such case may be made only to an employee board consisting of two or more employees referred to in paragraph (8) of this subsection. Any such rule or order may be adopted, amended, or rescinded only by a vote of a majority of the members of the Commission then holding office. Except for cases involving the authorization of service in the instructional television fixed service, or as otherwise provided in this chapter, nothing in this paragraph shall authorize the Commission to provide for the conduct, by any person or persons other than persons referred to in paragraph (2) or (3) of section 556(b) of title 5, of any hearing to which such section applies.

(2) As used in this subsection the term ''order, decision, report, or action'' does not include an initial, tentative, or recommended decision to which exceptions may be filed as provided in section 409(b) of this title.

(3) Any order, decision, report, or action made or taken pursuant to any such delegation, unless reviewed as provided in paragraph (4) of this subsection, shall have the same force and effect, and shall be made, evidenced, and enforced in the same manner, as orders, decisions, reports, or other actions of the Commission.

(4) Any person aggrieved by any such order, decision, report or action may file an application for review by the Commission within such time and in such manner as the Commission shall prescribe, and every such application shall be passed upon by the Commission. The Commission, on its own initiative, may review in whole or in part, at such time and in such manner as it shall determine, any order, decision, report, or action made or taken pursuant to any delegation under paragraph (1) of this subsection.

(5) In passing upon applications for review, the Commission may grant, in whole or in part, or deny such applications without specifying any reasons therefor. No such application for review shall rely on questions of fact or law upon which the panel of commissioners, individual commissioner, employee board, or individual employee has been afforded no opportunity to pass.

(6) If the Commission grants the application for review, it may affirm, modify, or set aside

the order, decision, report, or action, or it may order a rehearing upon such order, decision, report, or action in accordance with section 405 of this title.

(7) The filing of an application for review under this subsection shall be a condition precedent to judicial review of any order, decision, report, or action made or taken pursuant to a delegation under paragraph (1) of this subsection. The time within which a petition for review must be filed in a proceeding to which section 402(a) of this title applies, or within which an appeal must be taken under section 402(b) of this title, shall be computed from the date upon which public notice is given of orders disposing of all applications for review filed in any case.

(8) The employees to whom the Commission may delegate review functions in any case of adjudication (as defined in section 551 of title 5) shall be qualified, by reason of their training, experience, and competence, to perform such review functions, and shall perform no duties inconsistent with such review functions. Such employees shall be in a grade classification or salary level commensurate with their important duties, and in no event less than the grade classification or salary level of the employee or employees whose actions are to be reviewed. In the performance of such review functions such employees shall be assigned to cases in rotation so far as practicable and shall not be responsible to or subject to the supervision or direction of any officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency.

(9) The secretary and seal of the Commission shall be the secretary and seal of each panel of the Commission, each individual commissioner, and each employee board or individual employee exercising functions delegated pursuant to paragraph (1) of this subsection.

(d) Meetings

Meetings of the Commission shall be held at regular intervals, not less frequently than once each calendar month, at which times the functioning of the Commission and the handling of its work load shall be reviewed and such orders shall be entered and other action taken as may be necessary or appropriate to expedite the prompt and orderly conduct of the business of the Commission with the objective of rendering a final decision (1) within three months from the date of filing in all original application, renewal, and transfer cases in which it will not be necessary to hold a hearing, and (2) within six months from the final date of the hearing in all hearing cases.

(e) Managing Director; appointment, functions, pay

The Commission shall have a Managing Director who shall be appointed by the Chairman subject to the approval of the Commission. The Managing Director, under the supervision and direction of the Chairman, shall perform such administrative and executive functions as the Chairman shall delegate. The Managing Director shall be paid at a rate equal to the rate then payable for level V of the Executive Schedule.

(June 19, 1934, ch. 652, title I, § 5, 48 Stat. 1068; July 16, 1952, ch. 879, § 4, 66 Stat. 712; Pub. L. 87–192, §§ 1, 2, Aug. 31, 1961, 75 Stat. 420; Pub. L. 96–470, title I, § 116, Oct. 19, 1980, 94 Stat. 2240; Pub. L. 97–35, title XII, § 1252, Aug. 13, 1981, 95 Stat. 738; Pub. L. 97–259, title I, § 105, Sept. 13, 1982, 96 Stat. 1091; Pub. L. 99–272, title V, § 5002(c), Apr. 7, 1986, 100 Stat. 118; Pub. L. 100–594, §§ 4, 8(a), Nov. 3, 1988, 102 Stat. 3021, 3023; Pub. L. 103–414, title III, § 303(a)(2), Oct. 25, 1994, 108 Stat. 4294; Pub. L. 104–104, title IV, § 403(c), Feb. 8, 1996, 110 Stat. 130.)

REFERENCES IN TEXT

Level V of the Executive Schedule, referred to in subsec. (e), is set out in section 5316 of Title 5, Government Organization and Employees.

CODIFICATION

In subsec. (c)(1), (8), ''adjudication (as defined in section 551 of title 5)'' substituted for ''adjudication (as defined in the Administrative Procedure Act)'', and in subsec. (c)(1) ''section 556(b) of title 5'' substituted for references to ''section 7(a) of the Administrative Procedure Act'', on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1996—Subsec. (c)(1). Pub. L. 104–104 inserted last sentence and struck out former last sentence which read as follows: ''Nothing in this paragraph shall authorize the Commission to provide for the conduct, by any person or persons other than persons referred to in clauses (2) and (3) of section 556(b) of title 5, of any hearing to which such section 556(b) applies.''

1994—Subsecs. (e), (f). Pub. L. 103–414 redesignated subsec. (f) as (e).

1988—Subsec. (c)(1). Pub. L. 100–594, § 8(a), inserted ''and except any action referred to in sections 204(a)(2), 208(b), and 405(b) of this title'' after ''and (6) of this subsection'' in first sentence.

Subsec. (g). Pub. L. 100–594, § 4, struck out subsec. (g) which required an annual report to Congress and specified its contents.

1986—Subsec. (g). Pub. L. 99–272 substituted ''March 31'' for ''January 31''.

1982—Subsec. (b). Pub. L. 97–259, § 105(a), substituted ''From'' for ''Within six months after July 16, 1952, and from'' at beginning of subsection, and struck out ''thereafter'' after ''time to time''.

Subsecs. (c) to (e). Pub. L. 97–259, § 105(b), (c), redesignated subsecs. (d) and (e) as (c) and (d), respectively, and in par. (1) of subsec. (c), as so redesignated, substituted ''two'' for ''three'' after ''employee board consisting of''.

1981—Subsecs. (f), (g). Pub. L. 97–35 added subsecs. (f) and (g).

1980—Subsec. (e). Pub. L. 96–470 struck out ''; and the Commission shall promptly report to the Congress each such case which has been pending before it more than such three- or six-month period, respectively, stating the reasons therefor'' after ''hearing cases''.

1961—Subsec. (c). Pub. L. 87–192, § 1, repealed subsec. (c) which provided for establishment of review staff, its composition, responsibility and duties.

Subsec. (d)(1). Pub. L. 87–192, § 2, substituted provisions which authorized the delegation of functions by published rule or by order to a panel of commissioners, and individual commissioner, an employee board, or an individual employee, and of review functions to an employee board of three or more employees, enumerated the functions to be delegated, with stated exceptions, and prescribed majority vote for order delegating review functions for former provision which authorized the assignment of reference of work, business or functions by order to an individual commissioner or commissioners or to a board of one or more employees and eliminated provision concerning force, effect and enforcement of orders, now incorporated in par. (3) of this subsection.

Subsec. (d)(2). Pub. L. 87–192, § 2, added par. (2). The subject matter was formerly covered by the introductory words of former par. (1) of this subsection which read ''Except as provided in section 409 of this title.'' Sentences 1 and 2 of former par. (2) redesignated pars. (4) and (6), respectively.

Subsec. (d)(3). Pub. L. 87–192, § 2, redesignated second sentence of former par. (1) as par. (3) and substituted therein ''report, or action made or taken pursuant to any such delegation, unless reviewed as provided in paragraph (4), shall have'' and ''other actions'' for ''report made, or other action taken, pursuant to any such order of assignment or reference shall, unless reviewed pursuant to paragraph (2), have'' and ''action'', respectively. Former par. (3) redesignated (9).

Subsec. (d)(4). Pub. L. 87–192, § 2, redesignated first sentence of former par. (2) as par. (4), included ''action'' in enumeration, and inserted provision for review on initiative of the Commission.

Subsec. (d)(5). Pub. L. 87–192, § 2, added par. (5).

Subsec. (d)(6). Pub. L. 87–192, § 2, redesignated second sentence of former par. (2) as par. (6), inserting ''for review'' after ''applications'' and substituting ''the Commission'', ''the order'', ''it may order'' and ''in accordance with'' for ''it'', ''such order'', ''may order'' and ''under'', respectively.

Subsec. (d)(7), (8). Pub. L. 87–192, § 2, added pars. (7) and (8).

Subsec. (d)(9). Pub. L. 87–192, § 2, redesignated former par. (3) as (9) and made it applicable to each panel of the Commission, each employee board instead of each board, and each individual employee.

1952—Act July 16, 1952, amended section generally to provide for the organization of the staff, integrated bureaus, and for a review staff.

§ 156. Authorization of appropriations

(a) There are authorized to be appropriated for the administration of this chapter by the Commission $109,831,000 for fiscal year 1990 and $119,831,000 for fiscal year 1991, together with such sums as may be necessary for increases resulting from adjustments in salary, pay, retirement, other employee benefits required by law, and other nondiscretionary costs, for each of the fiscal years 1990 and 1991.

(b) In addition to the amounts authorized to be appropriated under this section, not more than 4 percent of the amount of any fees or other charges payable to the United States which are collected by the Commission during fiscal year 1990 are authorized to be made available to the Commission until expended to defray the fully distributed costs of such fees collection.

(c) Of the amounts appropriated pursuant to subsection (a) of this section for fiscal year 1991, such sums as may be necessary not to exceed $2,000,000 shall be expended for upgrading and modernizing equipment at the Commission's electronic emissions test laboratory located in Laurel, Maryland.

(d) Of the sum appropriated in any fiscal year under this section, a portion, in an amount determined under section 159(b) of this title, shall be derived from fees authorized by section 159 of this title.

(June 19, 1934, ch. 652, title I, § 6, as added Pub. L. 97–35, title XII, § 1251(a), Aug. 13, 1981, 95 Stat. 738; amended Pub. L. 98–214, § 2(a), Dec. 8, 1983, 97 Stat. 1467; Pub. L. 99–272, title V, § 5002(a)(1), Apr. 7, 1986, 100 Stat. 117; Pub. L. 100–594, § 2(a), Nov. 3, 1988, 102 Stat. 3021; Pub. L. 101–396, § 2(a), Sept. 28, 1990, 104 Stat. 848; Pub. L. 103–66, title VI, § 6003(b), Aug. 10, 1993, 107 Stat. 401.)

AMENDMENTS

1993—Subsec. (d). Pub. L. 103–66 added subsec. (d).

1990—Pub. L. 101–396 amended section generally. Prior to amendment, section read as follows: ''There are authorized to be appropriated for the administration of this chapter by the Commission $107,250,000 for fiscal year 1988 and $109,250,000 for fiscal year 1989, together with such sums as may be necessary for increases resulting from adjustments in salary, pay, retirement, other employee benefits required by law, and other nondiscretionary costs, for each of the fiscal years 1988 and 1989.''

1988—Pub. L. 100–594 amended section generally. Prior to amendment, section read as follows: ''There are authorized to be appropriated for the administration of this chapter by the Commission $98,100,000 for fiscal year 1986 and $97,600,000 for fiscal year 1987, together with such sums as may be necessary for increases resulting from adjustments in salary, pay, retirement, other employee benefits required by law, and other nondiscretionary costs, for each of the fiscal years 1986 and 1987.''

1986—Pub. L. 99–272 amended section generally. Prior to amendment, section read as follows: ''There are authorized to be appropriated for the administration of this chapter by the Commission $91,156,000, together with such sums as may be necessary for increases resulting from adjustments in salary, pay, retirement, other employee benefits required by law, and other nondiscretionary costs, for each of the fiscal years 1984 and 1985.''

1983—Pub. L. 98–214 substituted provisions authorizing appropriations of $91,156,000 for each of the fiscal years 1984 and 1985 for provisions authorizing appropriations of $76,900,000 for each of the fiscal years 1982 and 1983.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 2(b) of Pub. L. 100–594 provided that: ''The amendment made by subsection (a) of this section [amending this section] shall apply with respect to fiscal years beginning after September 30, 1987.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 5002(a)(2) of Pub. L. 99–272 provided that: ''The amendment made by paragraph (1) of this subsection [amending this section] shall apply with respect to fiscal years beginning after September 30, 1985.''

EFFECTIVE DATE OF 1983 AMENDMENT

Section 2(b) of Pub. L. 98–214 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to fiscal years beginning after September 30, 1983.''

AUTHORIZATION OF APPROPRIATIONS

Pub. L. 104–104, title VII, § 710(a), (b), Feb. 8, 1996, 110 Stat. 160, provided that:

''(a) IN GENERAL.—In addition to any other sums authorized by law, there are authorized to be appropriated to the Federal Communications Commission such sums as may be necessary to carry out this Act [see Short Title of 1996 Amendment note set out under section 609 of this title] and the amendments made by this Act.

''(b) EFFECT ON FEES.—For the purposes of section 9(b)(2) (47 U.S.C. 159(b)(2)), additional amounts appropriated pursuant to subsection (a) shall be construed to be changes in the amounts appropriated for the performance of activities described in section 9(a) of the Communications Act of 1934 [47 U.S.C. 159(a)].''

§ 157. New technologies and services

(a) It shall be the policy of the United States to encourage the provision of new technologies and services to the public. Any person or party

(other than the Commission) who opposes a new technology or service proposed to be permitted under this chapter shall have the burden to demonstrate that such proposal is inconsistent with the public interest.

(b) The Commission shall determine whether any new technology or service proposed in a petition or application is in the public interest within one year after such petition or application is filed. If the Commission initiates its own proceeding for a new technology or service, such proceeding shall be completed within 12 months after it is initiated.

(June 19, 1934, ch. 652, title I, § 7, as added Pub. L. 98–214, § 12, Dec. 8, 1983, 97 Stat. 1471; amended Pub. L. 103–414, title III, § 304(a)(1), Oct. 25, 1994, 108 Stat. 4296.)

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–414 struck out ''or twelve months after December 8, 1983, if later'' after ''petition or application is filed'' and after ''12 months after it is initiated''.

ADVANCED TELECOMMUNICATIONS INCENTIVES

Pub. L. 104–104, title VII, § 706, Feb. 8, 1996, 110 Stat. 153, as amended by Pub. L. 107–110, title X, § 1076(gg), Jan. 8, 2002, 115 Stat. 2093, provided that:

''(a) IN GENERAL.—The Commission and each State commission with regulatory jurisdiction over telecommunications services shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.

''(b) INQUIRY.—The Commission shall, within 30 months after the date of enactment of this Act [Feb. 8, 1996], and regularly thereafter, initiate a notice of inquiry concerning the availability of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) and shall complete the inquiry within 180 days after its initiation. In the inquiry, the Commission shall determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion. If the Commission's determination is negative, it shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.

''(c) DEFINITIONS.—For purposes of this subsection:

''(1) ADVANCED TELECOMMUNICATIONS CAPABILITY.—The term 'advanced telecommunications capability' is defined, without regard to any transmission media or technology, as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.

''(2) ELEMENTARY AND SECONDARY SCHOOLS.—The term 'elementary and secondary schools' means elementary and secondary schools, as defined in section 9101 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7801].''

§ 158. Application fees

(a) Assessment and collection

The Commission shall assess and collect application fees at such rates as the Commission shall establish or at such modified rates as it shall establish pursuant to the provisions of subsection (b) of this section.

(b) Review and adjustment of Schedule by Commission; notification to Congress; judicial review

(1) The Schedule of Application Fees established under this section shall be reviewed by the Commission every two years after October 1, 1991, and adjusted by the Commission to reflect changes in the Consumer Price Index. Increases or decreases in application fees shall apply to all categories of application fees, except that individual fees shall not be adjusted until the increase or decrease, as determined by the net change in the Consumer Price Index since April 7, 1986, amounts to at least $5.00 in the case of fees under $100.00, or 5 percent in the case of fees of $100.00 or more. All fees which require adjustment will be rounded upward to the next $5.00 increment. The Commission shall transmit to the Congress notification of any such adjustment not later than 90 days before the effective date of such adjustment.

(2) Increases or decreases in application fees made pursuant to this subsection shall not be subject to judicial review.

(c) Additional application fee; assessment as penalty; amount; dismissal of application or other filing

(1) The Commission shall prescribe by regulation an additional application fee which shall be assessed as a penalty for late payment of application fees required by subsection (a) of this section. Such penalty shall be 25 percent of the amount of the application fee which was not paid in a timely manner.

(2) The Commission may dismiss any application or other filing for failure to pay in a timely manner any application fee or penalty under this section.

(d) Inapplicability of application fees to certain radio services; waiver or deferment of payment

(1) The application fees established under this section shall not be applicable (A) to governmental entities and nonprofit entities licensed in the following radio services: Local Government, Police, Fire, Highway Maintenance, Forestry-Conservation, Public Safety, and Special Emergency Radio, or (B) to governmental entities licensed in other services.

(2) The Commission may waive or defer payment of an charge[1] in any specific instance for good cause shown, where such action would promote the public interest.

(e) Deposit of moneys in general fund; reimbursement of United States for administration of chapter

Moneys received from application fees established under this section shall be deposited in the general fund of the Treasury to reimburse the United States for amounts appropriated for use by the Commission in carrying out its functions under this chapter.

[1] So in original. Probably should be ''an application fee''.

(f) Rules and regulations

The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section.

(g) Schedule of Application Fees

Until modified pursuant to subsection (b) of this section, the Schedule of Application Fees which the Federal Communications Commission shall prescribe pursuant to subsection (a) of this section shall be as follows:

SCHEDULE OF APPLICATION FEES

Service	Fee amount
PRIVATE RADIO SERVICES	
1. Marine Coast Stations	
a. New License (per station)	$70.00
b. Modification of License (per station)	70.00
c. Renewal of License (per station)	70.00
d. Special Temporary Authority (Initial, Modifications, Extensions)	100.00
e. Assignments (per station)	70.00
f. Transfers of Control (per station)	35.00
g. Request for Waiver	
(i) Routine (per request)	105.00
(ii) Non-Routine (per rule section/per station)	105.00
2. Ship Stations	
a. New License (per application)	35.00
b. Modification of License (per application)	35.00
c. Renewal of License (per application)	35.00
d. Request for Waiver	
(i) Routine (per request)	105.00
(ii) Non-Routine (per rule section/per station)	105.00
3. Operational Fixed Microwave Stations	
a. New License (per station)	155.00
b. Modification of License (per station)	155.00
c. Renewal of License (per station)	155.00
d. Special Temporary Authority (Initial, Modifications, Extensions)	35.00
e. Assignments (per station)	155.00
f. Transfers of Control (per station)	35.00
g. Request for Waiver	
(i) Routine (per request)	105.00
(ii) Non-Routine (per rule section/per station)	105.00
4. Aviation (Ground Stations)	
a. New License (per station)	70.00
b. Modification of License (per station)	70.00
c. Renewal of License (per station)	70.00
d. Special Temporary Authority (Initial, Modifications, Extensions)	100.00
e. Assignments (per station)	70.00
f. Transfers of Control (per station)	35.00
g. Request for Waiver	
(i) Routine (per request)	105.00
(ii) Non-Routine (per rule section/per station)	105.00
5. Aircraft Stations	
a. New License (per application)	35.00
b. Modification of License (per application)	35.00
c. Renewal of License (per application)	35.00
d. Request for Waiver	
(i) Routine (per request)	105.00
(ii) Non-Routine (per rule section/per station)	105.00
6. Land Mobile Radio Stations (including Special Emergency and Public Safety Stations)	
a. New License (per call sign)	35.00
b. Modification of License (per call sign)	35.00
c. Renewal of License (per call sign)	35.00
d. Special Temporary Authority (Initial, Modifications, Extensions)	35.00
e. Assignments (per station)	35.00
f. Transfers of Control (per call sign)	35.00
g. Request for Waiver	
(i) Routine (per request)	105.00
(ii) Non-Routine (per rule section/per station)	105.00
h. Reinstatement (per call sign)	35.00
i. Specialized Mobile Radio Systems-Base Stations	
(i) New License (per call sign)	35.00
(ii) Modification of License (per call sign)	35.00
(iii) Renewal of License (per call sign)	35.00
(iv) Waiting List (annual application fee per application)	35.00
(v) Special Temporary Authority (Initial, Modifications, Extensions)	35.00
(vi) Assignments (per call sign)	35.00
(vii) Transfers of Control (per call sign)	35.00
(viii) Request for Waiver	
(1) Routine (per request)	105.00
(2) Non-Routine (per rule section/per station)	105.00
(ix) Reinstatements (per call sign)	35.00
j. Private Carrier Licenses	
(i) New License (per call sign)	35.00
(ii) Modification of License (per call sign)	35.00
(iii) Renewal of License (per call sign)	35.00
(iv) Special Temporary Authority (Initial, Modifications, Extensions)	35.00
(v) Assignments (per call sign)	35.00
(vi) Transfers of Control (per call sign)	35.00
(vii) Request for Waiver	
(1) Routine (per request)	105.00
(2) Non-Routine (per rule section/per station)	105.00
(viii) Reinstatements (per call sign)	35.00
7. General Mobile Radio Service	
a. New License (per call sign)	35.00
b. Modifications of License (per call sign)	35.00
c. Renewal of License (per call sign)	35.00
d. Request for Waiver	
(i) Routine (per request)	105.00
(ii) Non-Routine (per rule section/per station)	105.00
e. Special Temporary Authority (Initial, Modifications, Extensions)	35.00
f. Transfer of control (per call sign)	35.00
8. Restricted Radiotelephone Operator Permit	35.00
9. Request for Duplicate Station License (all services)	35.00
10. Hearing (Comparative, New, and Modifications)	6,760.00
EQUIPMENT APPROVAL SERVICES/EXPERIMENTAL RADIO	
1. Certification	
a. Receivers (except TV and FM receivers)	285.00
b. All Other Devices	735.00
c. Modifications and Class II Permissive Changes	35.00
d. Request for Confidentiality	105.00
2. Type Acceptance	
a. All Devices	370.00
b. Modifications and Class II Permissive Changes	35.00
c. Request for Confidentiality	105.00
3. Type Approval (all devices)	
a. With Testing (including Major Modifications)	1,465.00

b. Without Testing (including Minor Modifications)	170.00
c. Request for Confidentiality	105.00
4. Notifications	115.00
5. Advance Approval for Subscription TV System	2,255.00
a. Request for Confidentiality	105.00
6. Assignment of Grantee Code for Equipment Identification	35.00
7. Experimental Radio Service	
a. New Construction Permit and Station Authorization (per application)	35.00
b. Modification to Existing Construction Permit and Station Authorization (per application)	35.00
c. Renewal of Station Authorization (per application)	35.00
d. Assignment or Transfer of Control (per application)	35.00
e. Special Temporary Authority (per application)	35.00
f. Additional Application Fee for Applications Containing Requests to Withhold Information From Public Inspection (per application)	35.00

MASS MEDIA SERVICES

1. Commercial TV Stations	
a. New or Major Change Construction Permits	2,535.00
b. Minor Change	565.00
c. Hearing (Major/Minor Change, Comparative New, or Comparative Renewal)	6,760.00
d. License	170.00
e. Assignment or Transfer	
(i) Long Form (Forms 314/315)	565.00
(ii) Short Form (Form 316)	80.00
f. Renewal	100.00
g. Call Sign (New or Modification)	55.00
h. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent)	100.00
i. Extension of Time to Construct or Replacement of CP	200.00
j. Permit to Deliver Programs to Foreign Broadcast Stations	55.00
k. Petition for Rulemaking for New Community of License	1,565.00
l. Ownership Report (per report)	35.00
2. Commercial Radio Stations	
a. New and Major Change Construction Permit	
(i) AM Station	2,255.00
(ii) FM Station	2,030.00
b. Minor Change	
(i) AM Station	565.00
(ii) FM Station	565.00
c. Hearing (Major/Minor Change, Comparative New, or Comparative Renewal)	6,760.00
d. License	
(i) AM	370.00
(ii) FM	115.00
(iii) AM Directional Antenna	425.00
(iv) FM Directional Antenna	355.00
(v) AM Remote Control	35.00
e. Assignment or Transfer	
(i) Long Form (Forms 314/315)	565.00
(ii) Short Form (Form 316)	80.00
f. Renewal	100.00
g. Call Sign (New or Modification)	55.00
h. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent)	100.00
i. Extension of Time to Construct or Replacement of CP	200.00
j. Permit to Deliver Programs to Foreign Broadcast Stations	55.00
k. Petition for Rulemaking for New Community of License or Higher Class Channel	1,565.00
l. Ownership Report (per report)	35.00
3. FM Translators	
a. New or Major Change Construction Permit	425.00
b. License	85.00
c. Assignment or Transfer	80.00
d. Renewal	35.00
e. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent)	100.00
4. TV Translators and LPTV Stations	
a. New or Major Change Construction Permit	425.00
b. License	85.00
c. Assignment or Transfer	80.00
d. Renewal	35.00
e. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent)	100.00
5. Auxiliary Services (Includes Remote Pickup stations, TV Auxiliary Broadcast stations, Aural Broadcast STL and Intercity Relay stations, and Low Power Auxiliary stations)	
a. Major Actions	85.00
b. Renewals	35.00
c. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent)	100.00
6. FM/TV Boosters	
a. New and Major Change Construction Permits	425.00
b. License	85.00
c. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent)	100.00
7. International Broadcast Station	
a. New Construction Permit and Facilities Change CP	1,705.00
b. License	385.00
c. Assignment or Transfer (per station)	60.00
d. Renewal	95.00
e. Frequency Assignment and Coordination (per frequency hour)	35.00
f. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent)	100.00
8. Cable Television Service	
a. Cable Television Relay Service	
(i) Construction Permit	155.00
(ii) Assignment or Transfer	155.00
(iii) Renewal	155.00
(iv) Modification	155.00
(v) Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent)	100.00
b. Cable Special Relief Petition	790.00
c. 76.12 Registration Statement (per statement)	35.00
d. Aeronautical Frequency Usage Notifications (per notice)	35.00
e. Aeronautical Frequency Usage Waivers (per waiver)	35.00
9. Direct Broadcast Satellite	
a. New or Major Change Construction Permit	
(i) Application for Authorization to Construct a Direct Broadcast Satellite	2,030.00
(ii) Issuance of Construction Permit & Launch Authority	19,710.00
(iii) License to Operate Satellite	565.00
b. Hearing (Comparative New, Major/Minor Modifications, or Comparative Renewal)	6,760.00

c. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent) 100.00

COMMON CARRIER SERVICES

1. All Common Carrier Services
   a. Hearing (Comparative New or Major/Minor Modifications) 6,760.00
   b. Development Authority . . . Same application fee as regular authority in service unless otherwise indicated
   c. Formal Complaints and Pole Attachment Complaints Filing Fee 120.00
   d. Proceeding under section 1008(b) of this title 5,000
2. Domestic Public Land Mobile Stations (includes Base, Dispatch, Control & Repeater Stations)
   a. New or Additional Facility (per transmitter) 230.00
   b. Major Modifications (per transmitter) 230.00
   c. Fill In Transmitters (per transmitter) 230.00
   d. Major Amendment to a Pending Application (per transmitter) 230.00
   e. Assignment or Transfer
      (i) First Call Sign on Application 230.00
      (ii) Each Additional Call Sign 35.00
   f. Partial Assignment (per call sign) 230.00
   g. Renewal (per call sign) 35.00
   h. Minor Modification (per transmitter) 35.00
   i. Special Temporary Authority (per frequency/per location) 200.00
   j. Extension of Time to Construct (per application) 35.00
   k. Notice of Completion of Construction (per application) 35.00
   l. Auxiliary Test Station (per transmitter) 200.00
   m. Subsidiary Communications Service (per request) 100.00
   n. Reinstatement (per application) 35.00
   o. Combining Call Signs (per call sign) 200.00
   p. Standby Transmitter (per transmitter/per location) 200.00
   q. 900 MHz Nationwide Paging
      (i) Renewal
         (1) Network Organizer 35.00
         (2) Network Operator (per operator/per city) 35.00
   r. Air-Ground Individual License (per station)
      (i) Initial License 35.00
      (ii) Renewal of License 35.00
      (iii) Modification of License 35.00
3. Cellular Systems (per system)
   a. New or Additional Facilities 230.00
   b. Major Modification 230.00
   c. Minor Modification 60.00
   d. Assignment or Transfer (including partial) 230.00
   e. License to Cover Construction
      (i) Initial License for Wireline Carrier 595.00
      (ii) Subsequent License for Wireline Carrier 60.00
      (iii) License for Nonwireline Carrier 60.00
      (iv) Fill In License (all carriers) 60.00
   f. Renewal 35.00
   g. Extension of Time to Complete Construction 35.00
   h. Special Temporary Authority (per system) 200.00
   i. Combining Cellular Geographic Service Areas (per system) 50.00
4. Rural Radio (includes Central Office, Interoffice, or Relay Facilities)
   a. New or Additional Facility (per transmitter) 105.00
   b. Major Modification (per transmitter) 105.00
   c. Major Amendment to Pending Application (per transmitter) 105.00
   d. Minor Modification (per transmitter) 35.00
   e. Assignments or Transfers
      (i) First Call Sign on Application 105.00
      (ii) Each Additional Call Sign 35.00
      (iii) Partial Assignment (per call sign) 105.00
   f. Renewal (per call sign) 35.00
   g. Extension of Time to Complete Construction (per application) 35.00
   h. Notice of Completion of Construction (per application) 35.00
   i. Special Temporary Authority (per frequency/per location) 200.00
   j. Reinstatement (per application) 35.00
   k. Combining Call Signs (per call sign) 200.00
   l. Auxiliary Test Station (per transmitter) 200.00
   m. Standby Transmitter (per transmitter/per location) 200.00
5. Offshore Radio Service (Mobile, Subscriber, and Central Stations; fees would also apply to any expansion of this service into coastal waters other than the Gulf of Mexico)
   a. New or Additional Facility (per transmitter) 105.00
   b. Major Modifications (per transmitter) 105.00
   c. Fill In Transmitters (per transmitter) 105.00
   d. Major Amendment to Pending Application (per transmitter) 105.00
   e. Minor Modification (per transmitter) 35.00
   f. Assignment or Transfer
      (i) Each Additional Call Sign 35.00
      (ii) Partial Assignment (per call sign) 105.00
   g. Renewal (per call sign) 35.00
   h. Extension of Time to Complete Construction (per application) 35.00
   i. Reinstatement (per application) 35.00
   j. Notice of Completion of Construction (per application) 35.00
   k. Special Temporary Authority (per frequency/per location) 200.00
   l. Combining Call Signs (per call sign) 200.00
   m. Auxiliary Test Station (per transmitter) 200.00
   n. Standby Transmitter (per transmitter/per location) 200.00
6. Point-to-Point Microwave and Local Television Radio Service
   a. Conditional License (per station) 155.00
   b. Major Modification of Conditional License or License Authorization (per station) 155.00
   c. Certification of Completion of Construction (per station) 155.00
   d. Renewal (per licensed station) 155.00
   e. Assignment or Transfer
      (i) First Station on Application 55.00
      (ii) Each Additional Station 35.00
   f. Extension of Construction Authorization (per station) 55.00
   g. Special Temporary Authority or Request for Waiver of Prior Construction Authorization (per request) 70.00
7. Multipoint Distribution Service (including multichannel MDS)
   a. Conditional License (per station) 155.00
   b. Major Modification of Conditional License or License Authorization (per station) 155.00
   c. Certification of Completion of Construction (per channel) 455.00
   d. Renewal (per licensed station) 155.00
   e. Assignment or Transfer
      (i) First Station on Application 55.00

(ii) Each Additional Station	35.00
f. Extension of Construction Authorization (per station)	110.00
g. Special Temporary Authority or Request for Waiver of Prior Construction Authorization (per request)	70.00
8. Digital Electronic Message Service	
a. Conditional License (per nodal station)	155.00
b. Modification of Conditional License or License Authorization (per nodal station)	155.00
c. Certification of Completion of Construction (per nodal station)	155.00
d. Renewal (per licensed nodal station)	155.00
e. Assignment or Transfer	
(i) First Station on Application	55.00
(ii) Each Additional Station	35.00
f. Extension of Construction Authorization (per station)	55.00
g. Special Temporary Authority or Request for Waiver of Prior Construction Authorization (per request)	70.00
9. International Fixed Public Radio (Public and Control Stations)	
a. Initial Construction Permit (per station)	510.00
b. Assignment or Transfer (per application)	510.00
c. Renewal (per license)	370.00
d. Modification (per station)	370.00
e. Extension of Construction Authorization (per station)	185.00
f. Special Temporary Authority or Request for Waiver (per request)	185.00
10. Fixed Satellite Transmit/Receive Earth Stations	
a. Initial Application (per station)	1,525.00
b. Modification of License (per station)	105.00
c. Assignment or Transfer	
(i) First Station on Application	300.00
(ii) Each Additional Station	100.00
d. Developmental Station (per station)	1,000.00
e. Renewal of License (per station)	105.00
f. Special Temporary Authority or Waivers of Prior Construction Authorization (per request)	105.00
g. Amendment of Application (per station)	105.00
h. Extension of Construction Permit (per station)	105.00
11. Small Transmit/Receive Earth Stations (2 meters or less and operating in the 4/6 GHz frequency band)	
a. Lead Application	3,380.00
b. Routine Application (per station)	35.00
c. Modification of License (per station)	105.00
d. Assignment or Transfer	
(i) First Station on Application	300.00
(ii) Each Additional Station	35.00
e. Developmental Station (per station)	1,000.00
f. Renewal of License (per station)	105.00
g. Special Temporary Authority or Waivers of Prior Construction Authorization (per request)	105.00
h. Amendment of Application (per station)	105.00
i. Extension of Construction Permit (per station)	105.00
12. Receive Only Earth Stations	
a. Initial Application for Registration	230.00
b. Modification of License or Registration (per station)	105.00
c. Assignment or Transfer	
(i) First Station on Application	300.00
(ii) Each Additional Station	100.00
d. Renewal of License (per station)	105.00
e. Amendment of Application (per station)	105.00
f. Extension of Construction Permit (per station)	105.00
g. Waivers (per request)	105.00
13. Very Small Aperture Terminal (VSAT) Systems	
a. Initial Application (per system)	5,630.00
b. Modification of License (per system)	105.00
c. Assignment or Transfer of System	1,505.00
d. Developmental Station	1,000.00
e. Renewal of License (per system)	105.00
f. Special Temporary Authority or Waivers of Prior Construction Authorization (per request)	105.00
g. Amendment of Application (per system)	105.00
h. Extension of Construction Permit (per system)	105.00
14. Mobile Satellite Earth Stations	
a. Initial Application of Blanket Authorization	5,630.00
b. Initial Application for Individual Earth Station	1,350.00
c. Modification of License (per system)	105.00
d. Assignment or Transfer (per system)	1,505.00
e. Developmental Station	1,000.00
f. Renewal of License (per system)	105.00
g. Special Temporary Authority or Waivers of Prior Construction Authorization (per request)	105.00
h. Amendment of Application (per system)	105.00
i. Extension of Construction Permit (per system)	105.00
15. Radio determination Satellite Earth Stations	
a. Initial Application of Blanket Authorization	5,630.00
b. Initial Application for Individual Earth Station	1,350.00
c. Modification of License (per system)	105.00
d. Assignment or Transfer (per system)	1,505.00
e. Developmental Station	1,000.00
f. Renewal of License (per system)	105.00
g. Special Temporary Authority or Waivers of Prior Construction Authorization (per request)	105.00
h. Amendment of Application (per system)	105.00
i. Extension of Construction Permit (per system)	105.00
16. Space Stations	
a. Application for Authority to Construct	2,030.00
b. Application for Authority to Launch & Operate	
(i) Initial Application	70,000.00
(ii) Replacement Satellite	70,000.00
c. Assignment or Transfer (per satellite)	5,000.00
d. Modification	5,000.00
e. Special Temporary Authority or Waiver of Prior Construction Authorization (per request)	500.00
f. Amendment of Application	1,000.00
g. Extension of Construction Permit/Launch Authorization (per request)	500.00
17. Section 214 Applications	
a. Overseas Cable Construction	9,125.00
b. Cable Landing License	
(i) Common Carrier	1,025.00
(ii) Non-Common Carrier	10,150.00
c. Domestic Cable Construction	610.00
d. All Other 214 Applications	610.00
e. Special Temporary Authority (all services)	610.00
f. Assignments or Transfers (all services)	610.00

18. Recognized Private Operating Status (per application)	610.00
19. Telephone Equipment Registration	155.00
20. Tariff Filings	
a. Filing Fee	490.00
b. Special Permission Filing (per filing)	490.00
21. Accounting and Audits	
a. Field Audit	62,290.00
b. Review of Attest Audit	34,000.00
c. Review of Depreciation Update Study (Single State)	20,685.00
(i) Each Additional State	680.00
d. Interpretation of Accounting Rules (per request)	2,885.00
e. Petition for Waiver (per petition)	4,660.00
22. Low-Earth Orbit Satellite Systems	
a. Application for Authority to Construct (per system of technology identical satellites)	6,000.00
b. Application for Authority to Launch and Operate (per system of technologically identical satellites)	210,000.00
c. Assignment or Transfer (per request)	6,000.00
d. Modification (per request)	15,000.00
e. Special Temporary Authority or Waiver of Prior Construction Authorization (per request)	1,500.00
f. Amendment of Application (per request)	3,000.00
g. Extension of Construction Permit/Launch Authorization (per request)	1,500.00

MISCELLANEOUS APPLICATION FEES

1. International Telecommunications Settlements Administrative Fee for Collections (per line item)	2.00
2. Radio Operator Examinations	
a. Commercial Radio Operator Examination	35.00
b. Renewal of Commercial Radio Operator License, Permit, or Certificate	35.00
c. Duplicate or Replacement Commercial Radio Operator License, Permit, or Certificate	35.00
3. Ship Inspections	
a. Inspection of Oceangoing Vessels Under Title III, Part II of the Communications Act (per inspection)	620.00
b. Inspection of Passenger Vessels Under Title III, Part III of the Communications Act (per inspection)	320.00
c. Inspection of Vessels Under the Great Lakes Agreement (per inspection)	75.00
d. Inspection of Foreign Vessels Under the Safety of Life at Sea (SOLAS) Convention (per inspection)	540.00
e. Temporary Waiver for Compulsorily Equipped Vessel	60.00

(June 19, 1934, ch. 652, title I, § 8, as added Pub. L. 99–272, title V, § 5002(e), Apr. 7, 1986, 100 Stat. 118; amended Pub. L. 100–594, § 5, Nov. 3, 1988, 102 Stat. 3021; Pub. L. 101–239, title III, § 3001(a), (b), Dec. 19, 1989, 103 Stat. 2124, 2131; Pub. L. 102–538, title II, § 209, Oct. 27, 1992, 106 Stat. 3544; Pub. L. 103–66, title VI, § 6003(a)(2), Aug. 10, 1993, 107 Stat. 401; Pub. L. 103–414, title III, §§ 302, 303(a)(3), (4), Oct. 25, 1994, 108 Stat. 4294.)

REFERENCES IN TEXT

Parts II and III of title III of the Communications Act, referred to in subsec. (g), mean parts II and III of title III of the Communications Act of 1934 which are classified to parts II (§ 351 et seq.) and III (§ 381 et seq.), respectively, of subchapter III of this chapter.

AMENDMENTS

1994—Subsec. (d)(2). Pub. L. 103–414, § 303(a)(3), substituted ''payment of an'' for ''payment of a''.

Subsec. (g). Pub. L. 103–414, § 303(a)(4), substituted ''Additional Application Fee'' for ''Additional Charge'' in item 7.f. under heading ''EQUIPMENT APPROVAL SERVICES/EXPERIMENTAL RADIO'' in Schedule of Application Fees.

Pub. L. 103–414, § 302, added item 1.d. under heading ''COMMON CARRIER SERVICES'' in Schedule of Application Fees.

1993—Pub. L. 103–66, § 6003(a)(2)(A), substituted ''Application fees'' for ''Charges'' as section catchline.

Subsecs. (a) to (e). Pub. L. 103–66, § 6003(a)(2)(B)–(D), substituted ''application fees'' for ''charges'' and ''Schedule of Application Fees'' for ''Schedule of Charges'' wherever appearing, and substituted ''application fee'' for ''charge'' in subsec. (c).

Subsec. (g). Pub. L. 103–66, § 6003(a)(2)(D), in text substituted ''Schedule of Application Fees'' for ''Schedule of Charges''.

Pub. L. 103–66, § 6003(a)(2)(E), which directed amendment of schedule by substituting ''SCHEDULE OF APPLICATION FEES'' for ''SCHEDULE OF CHARGES'', ''APPLICATION FEES'' for ''CHARGES'', ''application fee'' for ''charge'', and ''Application fees'' for ''Charges'' was executed by substituting ''SCHEDULE OF APPLICATION FEES'' for ''SCHEDULE OF CHARGES'' in heading, ''MISCELLANEOUS APPLICATION FEES'' for ''MISCELLANEOUS CHARGES'' in last subheading, and ''application fee'' for ''charge'' in two places in text of schedule, to reflect probable intent of Congress.

1992—Subsec. (g). Pub. L. 102–538 in Schedule of Charges added twenty-second category, relating to Low-Earth Orbit Satellite Systems, under heading ''COMMON CARRIER SERVICES'', and substituted ''75.00'' for ''360.00'' in item 3.c., relating to inspection of vessels under the Great Lakes Agreement, under heading ''MISCELLANEOUS CHARGES''.

1989—Subsec. (a). Pub. L. 101–239, § 3001(b)(1), struck out at end ''The Schedule of Charges established under this subsection shall be implemented not later than 360 days after April 7, 1986.''

Subsec. (b)(1). Pub. L. 101–239, § 3001(b)(2), substituted ''October 1, 1991'' for ''April 1, 1987''.

Subsec. (d)(1). Pub. L. 101–239, § 3001(b)(3), substituted ''(A) to governmental entities and nonprofit entities licensed in the following radio services:'' for ''to the following radio services:'' and inserted ''(B)'' after ''Emergency Radio, or''.

Subsec. (g). Pub. L. 101–239, § 3001(a), added subsec. (g).

1988—Subsec. (b)(1). Pub. L. 100–594 substituted ''two years after April 1, 1987,'' for ''two years after April 7, 1986,''.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 3001(c) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section] shall take effect on the date of enactment of this Act [Dec. 19, 1989], and the Schedule of Charges required by the amendment made by subsection (a) of this section shall be implemented not later than 150 days after the date of enactment of this Act.''

SCHEDULE OF CHARGES

Section 5002(f) of Pub. L. 99–272 established the Schedule of Charges which the Federal Communications Commission is required to prescribe pursuant to subsec. (a) of this section. See subsec. (g) of this section as added by Pub. L. 101–239.

§ 159. Regulatory fees

(a) General authority

(1) Recovery of costs

The Commission, in accordance with this section, shall assess and collect regulatory fees to recover the costs of the following regu-

latory activities of the Commission: enforcement activities, policy and rulemaking activities, user information services, and international activities.

(2) Fees contingent on appropriations

The fees described in paragraph (1) of this subsection shall be collected only if, and only in the total amounts, required in Appropriations Acts.

(b) Establishment and adjustment of regulatory fees

(1) In general

The fees assessed under subsection (a) of this section shall—

(A) be derived by determining the full-time equivalent number of employees performing the activities described in subsection (a) of this section within the Private Radio Bureau, Mass Media Bureau, Common Carrier Bureau, and other offices of the Commission, adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities, including such factors as service area coverage, shared use versus exclusive use, and other factors that the Commission determines are necessary in the public interest;

(B) be established at amounts that will result in collection, during each fiscal year, of an amount that can reasonably be expected to equal the amount appropriated for such fiscal year for the performance of the activities described in subsection (a) of this section; and

(C) until adjusted or amended by the Commission pursuant to paragraph (2) or (3), be the fees established by the Schedule of Regulatory Fees in subsection (g) of this section.

(2) Mandatory adjustment of schedule

For any fiscal year after fiscal year 1994, the Commission shall, by rule, revise the Schedule of Regulatory Fees by proportionate increases or decreases to reflect, in accordance with paragraph (1)(B), changes in the amount appropriated for the performance of the activities described in subsection (a) of this section for such fiscal year. Such proportionate increases or decreases shall—

(A) be adjusted to reflect, within the overall amounts described in appropriations Acts under the authority of paragraph (1)(A), unexpected increases or decreases in the number of licensees or units subject to payment of such fees; and

(B) be established at amounts that will result in collection of an aggregate amount of fees pursuant to this section that can reasonably be expected to equal the aggregate amount of fees that are required to be collected by appropriations Acts pursuant to paragraph (1)(B).

Increases or decreases in fees made by adjustments pursuant to this paragraph shall not be subject to judicial review. In making adjustments pursuant to this paragraph the Commission may round such fees to the nearest $5 in the case of fees under $1,000, or to the nearest $25 in the case of fees of $1,000 or more.

(3) Permitted amendments

In addition to the adjustments required by paragraph (2), the Commission shall, by regulation, amend the Schedule of Regulatory Fees if the Commission determines that the Schedule requires amendment to comply with the requirements of paragraph (1)(A). In making such amendments, the Commission shall add, delete, or reclassify services in the Schedule to reflect additions, deletions, or changes in the nature of its services as a consequence of Commission rulemaking proceedings or changes in law. Increases or decreases in fees made by amendments pursuant to this paragraph shall not be subject to judicial review.

(4) Notice to Congress

The Commission shall—

(A) transmit to the Congress notification of any adjustment made pursuant to paragraph (2) immediately upon the adoption of such adjustment; and

(B) transmit to the Congress notification of any amendment made pursuant to paragraph (3) not later than 90 days before the effective date of such amendment.

(c) Enforcement

(1) Penalties for late payment

The Commission shall prescribe by regulation an additional charge which shall be assessed as a penalty for late payment of fees required by subsection (a) of this section. Such penalty shall be 25 percent of the amount of the fee which was not paid in a timely manner.

(2) Dismissal of applications for filings

The Commission may dismiss any application or other filing for failure to pay in a timely manner any fee or penalty under this section.

(3) Revocations

In addition to or in lieu of the penalties and dismissals authorized by paragraphs (1) and (2), the Commission may revoke any instrument of authorization held by any entity that has failed to make payment of a regulatory fee assessed pursuant to this section. Such revocation action may be taken by the Commission after notice of the Commission's intent to take such action is sent to the licensee by registered mail, return receipt requested, at the licensee's last known address. The notice will provide the licensee at least 30 days to either pay the fee or show cause why the fee does not apply to the licensee or should otherwise be waived or payment deferred. A hearing is not required under this subsection unless the licensee's response presents a substantial and material question of fact. In any case where a hearing is conducted pursuant to this section, the hearing shall be based on written evidence only, and the burden of proceeding with the introduction of evidence and the burden of proof shall be on the licensee. Unless the licensee substantially prevails in the hearing, the Commission may assess the licensee for the costs of such hearing. Any Commission order adopted pursuant to this subsection shall determine the amount due, if any, and provide the licensee with at least 30 days to pay that

amount or have its authorization revoked. No order of revocation under this subsection shall become final until the licensee has exhausted its right to judicial review of such order under section 402(b)(5) of this title.

(d) Waiver, reduction, and deferment

The Commission may waive, reduce, or defer payment of a fee in any specific instance for good cause shown, where such action would promote the public interest.

(e) Deposit of collections

Moneys received from fees established under this section shall be deposited as an offsetting collection in, and credited to, the account providing appropriations to carry out the functions of the Commission.

(f) Regulations

(1) In general

The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section.

(2) Installment payments

Such rules and regulations shall permit payment by installments in the case of fees in large amounts, and in the case of fees in small amounts, shall require the payment of the fee in advance for a number of years not to exceed the term of the license held by the payor.

(g) Schedule

Until amended by the Commission pursuant to subsection (b) of this section, the Schedule of Regulatory Fees which the Federal Communications Commission shall, subject to subsection (a)(2) of this section, assess and collect shall be as follows:

SCHEDULE OF REGULATORY FEES

Bureau/Category	Annual Regulatory Fee
Private Radio Bureau	
Exclusive use services (per license)	
Land Mobile (above 470 MHz, Base Station and SMRS) (47 C.F.R. Part 90)	$16
Microwave (47 C.F.R. Part 94)	16
Interactive Video Data Service (47 C.F.R. Part 95)	16
Shared use services (per license unless otherwise noted)	7
Amateur vanity call-signs	7
Mass Media Bureau (per license)	
AM radio (47 C.F.R. Part 73)	
Class D Daytime	250
Class A Fulltime	900
Class B Fulltime	500
Class C Fulltime	200
Construction permits	100
FM radio (47 C.F.R. Part 73)	
Classes C, C1, C2, B	900
Classes A, B1, C3	600
Construction permits	500
TV (47 C.F.R. Part 73)	
VHF Commercial	
Markets 1 thru 10	18,000
Markets 11 thru 25	16,000
Markets 26 thru 50	12,000
Markets 51 thru 100	8,000
Remaining Markets	5,000
Construction permits	4,000
UHF Commercial	
Markets 1 thru 10	14,400
Markets 11 thru 25	12,800
Markets 26 thru 50	9,600
Markets 51 thru 100	6,400
Remaining Markets	4,000
Construction permits	3,200
Low Power TV, TV Translator, and TV Booster (47 C.F.R. Part 74)	135
Broadcast Auxiliary (47 C.F.R. Part 74)	25
International (HF) Broadcast (47 C.F.R. Part 73)	200
Cable Antenna Relay Service (47 C.F.R. Part 78)	220
Cable Television System (per 1,000 subscribers) (47 C.F.R. Part 76)	370
Common Carrier Bureau	
Radio Facilities	
Cellular Radio (per 1,000 subscribers) (47 C.F.R. Part 22)	60
Personal Communications (per 1,000 subscribers) (47 C.F.R.)	60
Space Station (per operational station in geosynchronous orbit) (47 C.F.R. Part 25)	65,000
Space Station (per system in low-earth orbit) (47 C.F.R. Part 25)	90,000
Public Mobile (per 1,000 subscribers) (47 C.F.R. Part 22)	60
Domestic Public Fixed (per call sign) (47 C.F.R. Part 21)	55
International Public Fixed (per call sign) (47 C.F.R. Part 23)	110
Earth Stations (47 C.F.R. Part 25)	
VSAT and equivalent C-Band antennas (per 100 antennas)	6
Mobile satellite earth stations (per 100 antennas)	6
Earth station antennas	
Less than 9 meters (per 100 antennas)	6
9 Meters or more	
Transmit/Receive and Transmit Only (per meter)	85
Receive only (per meter)	55
Carriers	
Inter-Exchange Carrier (per 1,000 presubscribed access lines)	60
Local Exchange Carrier (per 1,000 access lines)	60
Competitive access provider (per 1,000 subscribers)	60
International circuits (per 100 active 64KB circuit or equivalent)	220

(h) Exceptions

The charges established under this section shall not be applicable to (1) governmental entities or nonprofit entities; or (2) to amateur radio operator licenses under part 97 of the Commission's regulations (47 C.F.R. Part 97).

(i) Accounting system

The Commission shall develop accounting systems necessary to making the adjustments authorized by subsection (b)(3) of this section. In the Commission's annual report, the Commission shall prepare an analysis of its progress in

developing such systems and shall afford interested persons the opportunity to submit comments concerning the allocation of the costs of performing the functions described in subsection (a) of this section among the services in the Schedule.

(June 19, 1934, ch. 652, title I, § 9, as added Pub. L. 103–66, title VI, § 6003(a)(1), Aug. 10, 1993, 107 Stat. 397; amended Pub. L. 103–121, title I, Oct. 27, 1993, 107 Stat. 1167; Pub. L. 103–414, title III, § 303(a)(5), (6), Oct. 25, 1994, 108 Stat. 4294.)

AMENDMENTS

1994—Subsec. (f). Pub. L. 103–414, § 303(a)(5), designated second sentence of par. (1) as par. (2) and inserted par. (2) heading.

Subsec. (g). Pub. L. 103–414, § 303(a)(6), inserted ''95'' after ''(47 C.F.R. Part'' in item pertaining to Interactive Video Data Service under Private Radio Bureau in Schedule of Regulatory Fees.

1993—Subsec. (a). Pub. L. 103–121 designated existing provisions as par. (1), inserted heading, and added par. (2).

§ 160. Competition in provision of telecommunications service

(a) Regulatory flexibility

Notwithstanding section 332(c)(1)(A) of this title, the Commission shall forbear from applying any regulation or any provision of this chapter to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications 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 telecommunications carrier or telecommunications 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 provision or regulation is consistent with the public interest.

(b) Competitive effect to be weighed

In making the determination under subsection (a)(3) of this section, the Commission shall consider whether forbearance from enforcing the provision or regulation 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) Petition for forbearance

Any telecommunications carrier, or class of telecommunications carriers, may submit a petition to the Commission requesting that the Commission exercise the authority granted under this section with respect to that carrier or those carriers, or any service offered by that carrier or carriers. Any such petition shall be deemed granted if the Commission does not deny the petition for failure to meet the requirements for forbearance under subsection (a) of this section within one year after the Commission receives it, unless the one-year period is extended by the Commission. The Commission may extend the initial one-year period by an additional 90 days if the Commission finds that an extension is necessary to meet the requirements of subsection (a) of this section. The Commission may grant or deny a petition in whole or in part and shall explain its decision in writing.

(d) Limitation

Except as provided in section 251(f) of this title, the Commission may not forbear from applying the requirements of section 251(c) or 271 of this title under subsection (a) of this section until it determines that those requirements have been fully implemented.

(e) State enforcement after Commission forbearance

A State commission may not continue to apply or enforce any provision of this chapter that the Commission has determined to forbear from applying under subsection (a) of this section.

(June 19, 1934, ch. 652, title I, § 10, as added Pub. L. 104–104, title IV, § 401, Feb. 8, 1996, 110 Stat. 128.)

§ 161. Regulatory reform

(a) Biennial review of regulations

In every even-numbered year (beginning with 1998), the Commission—

(1) shall review all regulations issued under this chapter in effect at the time of the review that apply to the operations or activities of any provider of telecommunications service; and

(2) shall determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service.

(b) Effect of determination

The Commission shall repeal or modify any regulation it determines to be no longer necessary in the public interest.

(June 19, 1934, ch. 652, title I, § 11, as added Pub. L. 104–104, title IV, § 402(a), Feb. 8, 1996, 110 Stat. 129.)

SUBCHAPTER II—COMMON CARRIERS

PART I—COMMON CARRIER REGULATION

§ 201. Service and charges

(a) It shall be the duty of every common carrier engaged in interstate or foreign communication by wire or radio to furnish such communication service upon reasonable request therefor; and, in accordance with the orders of the Commission, in cases where the Commission, after opportunity for hearing, finds such action necessary or desirable in the public interest, to establish physical connections with other carriers, to establish through routes and charges applicable thereto and the divisions of such

charges, and to establish and provide facilities and regulations for operating such through routes.

(b) All charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful: *Provided*, That communications by wire or radio subject to this chapter may be classified into day, night, repeated, unrepeated, letter, commercial, press, Government, and such other classes as the Commission may decide to be just and reasonable, and different charges may be made for the different classes of communications: *Provided further*, That nothing in this chapter or in any other provision of law shall be construed to prevent a common carrier subject to this chapter from entering into or operating under any contract with any common carrier not subject to this chapter, for the exchange of their services, if the Commission is of the opinion that such contract is not contrary to the public interest: *Provided further*, That nothing in this chapter or in any other provision of law shall prevent a common carrier subject to this chapter from furnishing reports of positions of ships at sea to newspapers of general circulation, either at a nominal charge or without charge, provided the name of such common carrier is displayed along with such ship position reports. The Commission may prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this chapter.

(June 19, 1934, ch. 652, title II, §201, 48 Stat. 1070; May 31, 1938, ch. 296, 52 Stat. 588.)

REFERENCES IN TEXT

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

AMENDMENTS

1938—Subsec. (b). Act May 31, 1938, inserted proviso relating to reports of positions of ships at sea.

TELEPHONE RATES FOR MEMBERS OF ARMED FORCES DEPLOYED ABROAD

Pub. L. 109–459, §2, Dec. 22, 2006, 120 Stat. 3399, provided that:

''(a) IN GENERAL.—The Federal Communications Commission shall take such action as may be necessary to reduce the cost of calling home for Armed Forces personnel who are stationed outside the United States under official military orders or deployed outside the United States in support of military operations, training exercises, or other purposes as approved by the Secretary of Defense, including the reduction of such costs through the waiver of government fees, assessments, or other charges for such calls. The Commission may not regulate rates in order to carry out this section.

''(b) FACTORS TO CONSIDER.—In taking the action described in subsection (a), the Commission, in coordination with the Department of Defense and the Department of State, shall—

''(1) evaluate and analyze the costs to Armed Forces personnel of such telephone calls to and from American military bases abroad;

''(2) evaluate methods of reducing the rates imposed on such calls, including deployment of new technology such as voice over Internet protocol or other Internet protocol technology;

''(3) encourage telecommunications carriers (as defined in section 3(44) of the Communications Act of 1934 (47 U.S.C. 153(44))) to adopt flexible billing procedures and policies for Armed Forces personnel and their dependents for telephone calls to and from such Armed Forces personnel; and

''(4) seek agreements with foreign governments to reduce international surcharges on such telephone calls.

''(c) DEFINITIONS.—In this section:

''(1) ARMED FORCES.—The term 'Armed Forces' has the meaning given that term by section 2101(2) of title 5, United States Code.

''(2) MILITARY BASE.—The term 'military base' includes official duty stations to include vessels, whether such vessels are in port or underway outside of the United States.''

Pub. L. 102–538, title II, §213, Oct. 27, 1992, 106 Stat. 3545, which required the Federal Communications Commission to make efforts to reduce telephone rates for Armed Forces personnel in certain countries, was repealed by Pub. L. 109–459, §3, Dec. 22, 2006, 120 Stat. 3400.

§202. Discriminations and preferences

(a) Charges, services, etc.

It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.

(b) Charges or services included

Charges or services, whenever referred to in this chapter, include charges for, or services in connection with, the use of common carrier lines of communication, whether derived from wire or radio facilities, in chain broadcasting or incidental to radio communication of any kind.

(c) Penalty

Any carrier who knowingly violates the provisions of this section shall forfeit to the United States the sum of $6,000 for each such offense and $300 for each and every day of the continuance of such offense.

(June 19, 1934, ch. 652, title II, §202, 48 Stat. 1070; Pub. L. 86–751, Sept. 13, 1960, 74 Stat. 888; Pub. L. 101–239, title III, §3002(a), Dec. 19, 1989, 103 Stat. 2131.)

AMENDMENTS

1989—Subsec. (c). Pub. L. 101–239 substituted ''$6,000'' for ''$500'' and ''$300'' for ''$25''.

1960—Subsec. (b). Pub. L. 86–751 substituted ''common carrier lines of communication, whether derived from wire or radio facilities,'' for ''wires''.

§203. Schedules of charges

(a) Filing; public display

Every common carrier, except connecting carriers, shall, within such reasonable time as the Commission shall designate, file with the Commission and print and keep open for public inspection schedules showing all charges for itself and its connecting carriers for interstate and

foreign wire or radio communication between the different points on its own system, and between points on its own system and points on the system of its connecting carriers or points on the system of any other carrier subject to this chapter when a through route has been established, whether such charges are joint or separate, and showing the classifications, practices, and regulations affecting such charges. Such schedules shall contain such other information, and be printed in such form, and be posted and kept open for public inspection in such places, as the Commission may by regulation require, and each such schedule shall give notice of its effective date; and such common carrier shall furnish such schedules to each of its connecting carriers, and such connecting carriers shall keep such schedules open for inspection in such public places as the Commission may require.

(b) Changes in schedule; discretion of Commission to modify requirements

(1) No change shall be made in the charges, classifications, regulations, or practices which have been so filed and published except after one hundred and twenty days notice to the Commission and to the public, which shall be published in such form and contain such information as the Commission may by regulations prescribe.

(2) The Commission may, in its discretion and for good cause shown, modify any requirement made by or under the authority of this section either in particular instances or by general order applicable to special circumstances or conditions except that the Commission may not require the notice period specified in paragraph (1) to be more than one hundred and twenty days.

(c) Overcharges and rebates

No carrier, unless otherwise provided by or under authority of this chapter, shall engage or participate in such communication unless schedules have been filed and published in accordance with the provisions of this chapter and with the regulations made thereunder; and no carrier shall (1) charge, demand, collect, or receive a greater or less or different compensation for such communication, or for any service in connection therewith, between the points named in any such schedule than the charges specified in the schedule then in effect, or (2) refund or remit by any means or device any portion of the charges so specified, or (3) extend to any person any privileges or facilities in such communication, or employ or enforce any classifications, regulations, or practices affecting such charges, except as specified in such schedule.

(d) Rejection or refusal

The Commission may reject and refuse to file any schedule entered for filing which does not provide and give lawful notice of its effective date. Any schedule so rejected by the Commission shall be void and its use shall be unlawful.

(e) Penalty for violations

In case of failure or refusal on the part of any carrier to comply with the provisions of this section or of any regulation or order made by the Commission thereunder, such carrier shall forfeit to the United States the sum of $6,000 for each such offense, and $300 for each and every day of the continuance of such offense.

(June 19, 1934, ch. 652, title II, § 203, 48 Stat. 1070; Pub. L. 94–376, § 1, Aug. 4, 1976, 90 Stat. 1080; Pub. L. 101–239, title III, § 3002(b), Dec. 19, 1989, 103 Stat. 2131; Pub. L. 101–396, § 7, Sept. 28, 1990, 104 Stat. 850.)

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–396 substituted ''one hundred and twenty days'' for ''ninety days'' in pars. (1) and (2).

1989—Subsec. (e). Pub. L. 101–239 substituted ''$6,000'' for ''$500'' and ''$300'' for ''$25''.

1976—Subsec. (b). Pub. L. 94–376 designated existing provisions as par. (1), substituted ''after ninety days notice'' for ''after thirty days' notice'', and struck out provision that the Commission may, in its discretion and for good cause shown, modify the requirements made by or under authority of this section in particular instances or by a general order applicable to special circumstances or conditions, and added par. (2).

§ 204. Hearings on new charges; suspension pending hearing; refunds; duration of hearing; appeal of order concluding hearing

(a)(1) Whenever there is filed with the Commission any new or revised charge, classification, regulation, or practice, the Commission may either upon complaint or upon its own initiative without complaint, upon reasonable notice, enter upon a hearing concerning the lawfulness thereof; and pending such hearing and the decision thereon the Commission, upon delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such charge, classification, regulation, or practice, in whole or in part but not for a longer period than five months beyond the time when it would otherwise go into effect; and after full hearing the Commission may make such order with reference thereto as would be proper in a proceeding initiated after such charge, classification, regulation, or practice had become effective. If the proceeding has not been concluded and an order made within the period of the suspension, the proposed new or revised charge, classification, regulation, or practice shall go into effect at the end of such period; but in case of a proposed charge for a new service or a revised charge, the Commission may by order require the interested carrier or carriers to keep accurate account of all amounts received by reason of such charge for a new service or revised charge, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require the interested carrier or carriers to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such charge for a new service or revised charges as by its decision shall be found not justified. At any hearing involving a new or revised charge, or a proposed new or revised charge, the burden of proof to show that the new or revised charge, or proposed charge, is just and reasonable shall be upon the carrier, and the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.

(2)(A) Except as provided in subparagraph (B), the Commission shall, with respect to any hearing under this section, issue an order concluding such hearing within 5 months after the date that the charge, classification, regulation, or practice subject to the hearing becomes effective.

(B) The Commission shall, with respect to any such hearing initiated prior to November 3, 1988, issue an order concluding the hearing not later than 12 months after November 3, 1988.

(C) Any order concluding a hearing under this section shall be a final order and may be appealed under section 402(a) of this title.

(3) A local exchange carrier may file with the Commission a new or revised charge, classification, regulation, or practice on a streamlined basis. Any such charge, classification, regulation, or practice shall be deemed lawful and shall be effective 7 days (in the case of a reduction in rates) or 15 days (in the case of an increase in rates) after the date on which it is filed with the Commission unless the Commission takes action under paragraph (1) before the end of that 7-day or 15-day period, as is appropriate.

(b) Notwithstanding the provisions of subsection (a) of this section, the Commission may allow part of a charge, classification, regulation, or practice to go into effect, based upon a written showing by the carrier or carriers affected, and an opportunity for written comment thereon by affected persons, that such partial authorization is just, fair, and reasonable. Additionally, or in combination with a partial authorization, the Commission, upon a similar showing, may allow all or part of a charge, classification, regulation, or practice to go into effect on a temporary basis pending further order of the Commission. Authorizations of temporary new or increased charges may include an accounting order of the type provided for in subsection (a) of this section.

(June 19, 1934, ch. 652, title II, §204, 48 Stat. 1071; Pub. L. 94–376, §2, Aug. 4, 1976, 90 Stat. 1080; Pub. L. 100–594, §8(b), Nov. 3, 1988, 102 Stat. 3023; Pub. L. 102–538, title II, §203, Oct. 27, 1992, 106 Stat. 3542; Pub. L. 104–104, title IV, §402(b)(1)(A), Feb. 8, 1996, 110 Stat. 129.)

AMENDMENTS

1996—Subsec. (a)(2)(A). Pub. L. 104–104, §402(b)(1)(A)(i), (ii), substituted ''such hearing within 5 months'' for ''such hearing within 12 months'' and struck out before period at end '', or within 15 months after such date if the hearing raises questions of fact of such extraordinary complexity that the questions cannot be resolved within 12 months''.

Subsec. (a)(3). Pub. L. 104–104, §402(b)(1)(A)(iii), added par. (3).

1992—Subsec. (a)(1). Pub. L. 102–538 substituted ''a revised charge'' for ''an increased charge'' after ''a proposed charge for a new service or'', ''or revised'' for ''or increased'' before ''charge, specifying by whom and in whose behalf'', ''revised charges'' for ''increased charges'' before ''as by its decision shall be found not justified'', ''new or revised charge, or a proposed new or revised charge'' for ''charge increased, or sought to be increased'' before '', burden of proof to show'', and ''new or revised charge'' for ''increased charge'' before '', or proposed charge, is just and reasonable''.

1988—Subsec. (a). Pub. L. 100–594 designated existing provisions as par. (1) and added par. (2).

1976—Subsec. (a). Pub. L. 94–376 designated existing provisions as subsec. (a), substituted ''any new or revised charge'' for ''any new charge'', ''in whole or in part but not for a longer period than five months'' for ''but not for a longer period than three months'', ''after such charge, classification, regulation, or practice had become effective'' for ''after it had become effective'', ''the proposed new or revised charge'' for ''the proposed change of charge'', ''but in case of a proposed charge for a new service or an increased charge'' for ''but in case of a proposed increased charge'', ''by reason of such charge for a new service or increased charge'' for ''by reason of such increase'', ''such portion of such charge for a new service or increased charges'' for ''such portion of such increased charges'', ''burden of proof to show that the increased charge, or proposed charge'' for ''burden of proof to show that the increased charge, or proposed increased charge'', and struck out ''after the organization of the Commission'' before ''the burden of proof.''

Subsec. (b). Pub. L. 94–376 added subsec. (b).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 402(b)(4) of Pub. L. 104–104 provided that: ''The amendments made by paragraph (1) of this subsection [amending this section and section 208 of this title] shall apply with respect to any charge, classification, regulation, or practice filed on or after one year after the date of enactment of this Act [Feb. 8, 1996].''

FORBEARANCE AUTHORITY NOT LIMITED

Section 402(b)(3) of Pub. L. 104–104 provided that: ''Nothing in this subsection [amending this section and section 208 of this title and enacting provisions set out as notes under this section and section 214 of this title] shall be construed to limit the authority of the Commission to waive, modify, or forbear from applying any of the requirements to which reference is made in paragraph (1) [amending this section and section 208 of this title] under any other provision of this Act [see Short Title of 1996 Amendment note set out under section 609 of this title] or other law.''

§205. Commission authorized to prescribe just and reasonable charges; penalties for violations

(a) Whenever, after full opportunity for hearing, upon a complaint or under an order for investigation and hearing made by the Commission on its own initiative, the Commission shall be of opinion that any charge, classification, regulation, or practice of any carrier or carriers is or will be in violation of any of the provisions of this chapter, the Commission is authorized and empowered to determine and prescribe what will be the just and reasonable charge or the maximum or minimum, or maximum and minimum, charge or charges to be thereafter observed, and what classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent that the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any charge other than the charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed.

(b) Any carrier, any officer, representative, or agent of a carrier, or any receiver, trustee, lessee, or agent of either of them, who knowingly fails or neglects to obey any order made under the provisions of this section shall forfeit to the United States the sum of $12,000 for each offense.

Every distinct violation shall be a separate offense, and in case of continuing violation each day shall be deemed a separate offense.

(June 19, 1934, ch. 652, title II, § 205, 48 Stat. 1072; Pub. L. 101–239, title III, § 3002(c), Dec. 19, 1989, 103 Stat. 2131.)

AMENDMENTS

1989—Subsec. (b). Pub. L. 101–239 substituted ''$12,000'' for ''$1,000''.

§ 206. Carriers' liability for damages

In case any common carrier shall do, or cause or permit to be done, any act, matter, or thing in this chapter prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this chapter required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this chapter, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

(June 19, 1934, ch. 652, title II, § 206, 48 Stat. 1072.)

§ 207. Recovery of damages

Any person claiming to be damaged by any common carrier subject to the provisions of this chapter may either make complaint to the Commission as hereinafter provided for, or may bring suit for the recovery of the damages for which such common carrier may be liable under the provisions of this chapter, in any district court of the United States of competent jurisdiction; but such person shall not have the right to pursue both such remedies.

(June 19, 1934, ch. 652, title II, § 207, 48 Stat. 1073.)

§ 208. Complaints to Commission; investigations; duration of investigation; appeal of order concluding investigation

(a) Any person, any body politic, or municipal organization, or State commission, complaining of anything done or omitted to be done by any common carrier subject to this chapter, in contravention of the provisions thereof, may apply to said Commission by petition which shall briefly state the facts, whereupon a statement of the complaint thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time to be specified by the Commission. If such common carrier within the time specified shall make reparation for the injury alleged to have been caused, the common carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier or carriers shall not satisfy the complaint within the time specified or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper. No complaint shall at any time be dismissed because of the absence of direct damage to the complaint.

(b)(1) Except as provided in paragraph (2), the Commission shall, with respect to any investigation under this section of the lawfulness of a charge, classification, regulation, or practice, issue an order concluding such investigation within 5 months after the date on which the complaint was filed.

(2) The Commission shall, with respect to any such investigation initiated prior to November 3, 1988, issue an order concluding the investigation not later than 12 months after November 3, 1988.

(3) Any order concluding an investigation under paragraph (1) or (2) shall be a final order and may be appealed under section 402(a) of this title.

(June 19, 1934, ch. 652, title II, § 208, 48 Stat. 1073; Pub. L. 100–594, § 8(c), Nov. 3, 1988, 102 Stat. 3023; Pub. L. 104–104, title IV, § 402(b)(1)(B), Feb. 8, 1996, 110 Stat. 129.)

AMENDMENTS

1996—Subsec. (b)(1). Pub. L. 104–104 substituted ''such investigation within 5 months'' for ''such investigation within 12 months'' and struck out before period at end '', or within 15 months after such date if the investigation raises questions of fact of such extraordinary complexity that the questions cannot be resolved within 12 months''.

1988—Pub. L. 100–594 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–104 applicable with respect to any charge, classification, regulation, or practice filed on or after one year after Feb. 8, 1996, see section 402(b)(4) of Pub. L. 104–104, set out as a note under section 204 of this title.

FORBEARANCE AUTHORITY NOT LIMITED

Nothing in amendment by Pub. L. 104–104 to be construed to limit authority of Commission to waive, modify, or forbear from applying certain requirements, see section 402(b)(3) of Pub. L. 104–104, set out as a note under section 204 of this title.

§ 209. Orders for payment of money

If, after hearing on a complaint, the Commission shall determine that any party complainant is entitled to an award of damages under the provisions of this chapter, the Commission shall make an order directing the carrier to pay to the complainant the sum to which he is entitled on or before a day named.

(June 19, 1934, ch. 652, title II, § 209, 48 Stat. 1073.)

§ 210. Franks and passes; free service to governmental agencies in connection with national defense

(a) Nothing in this chapter or in any other provision of law shall be construed to prohibit common carriers from issuing or giving franks to, or exchanging franks with each other for the use of, their officers, agents, employees, and their families, or, subject to such rules as the Commission may prescribe, from issuing, giving, or exchanging franks and passes to or with other common carriers not subject to the provisions of this chapter, for the use of their officers, agents, employees, and their families. The term ''employees'', as used in this section, shall include furloughed, pensioned, and superannuated employees.

(b) Nothing in this chapter or in any other provision of law shall be construed to prohibit common carriers from rendering to any agency of the Government free service in connection with the preparation for the national defense: *Provided*, That such free service may be rendered only in accordance with such rules and regulations as the Commission may prescribe therefor.

(June 19, 1934, ch. 652, title II, §210, 48 Stat. 1073; June 25, 1940, ch. 422, 54 Stat. 570.)

AMENDMENTS

1940—Act June 25, 1940, designated existing provisions as subsec. (a) and added subsec. (b).

§211. Contracts of carriers; filing with Commission

(a) Every carrier subject to this chapter shall file with the Commission copies of all contracts, agreements, or arrangements with other carriers, or with common carriers not subject to the provisions of this chapter, in relation to any traffic affected by the provisions of this chapter to which it may be a party.

(b) The Commission shall have authority to require the filing of any other contracts of any carrier, and shall also have authority to exempt any carrier from submitting copies of such minor contracts as the Commission may determine.

(June 19, 1934, ch. 652, title II, §211, 48 Stat. 1073.)

§212. Interlocking directorates; officials dealing in securities

It shall be unlawful for any person to hold the position of officer or director of more than one carrier subject to this chapter, unless such holding shall have been authorized by order of the Commission, upon due showing in form and manner prescribed by the Commission, that neither public nor private interests will be adversely affected thereby: *Provided*, That the Commission may authorize persons to hold the position of officer or director in more than one such carrier, without regard to the requirements of this section, where it has found that one of the two or more carriers directly or indirectly owns more than 50 per centum of the stock of the other or others, or that 50 per centum or more of the stock of all such carriers is directly or indirectly owned by the same person. After this section takes effect it shall be unlawful for any officer or director of any carrier subject to this chapter to receive for his own benefit directly or indirectly, any money or thing of value in respect of negotiation, hypothecation, or sale of any securities issued or to be issued by such carrier, or to share in any of the proceeds thereof, or to participate in the making or paying of any dividends of such carriers from any funds properly included in capital account.

(June 19, 1934, ch. 652, title II, §212, 48 Stat. 1074; Aug. 2, 1956, ch. 874, §1, 70 Stat. 931; Pub. L. 103–414, title III, §304(a)(2), Oct. 25, 1994, 108 Stat. 4296.)

AMENDMENTS

1994—Pub. L. 103–414 substituted ''It shall'' for ''After sixty days from June 19, 1934, it shall''.

1956—Act Aug. 2, 1956, inserted proviso that Commission may authorize persons to hold position of officer or director in more than one carrier, where carrier owns more than 50 percent of the stock of the other carriers, or that 50 percent or more of the stock of all such carriers is owned by the same person, struck out ''such'' before ''carrier'' in sentence after proviso, inserted ''subject to this chapter'' after that word, and substituted ''carriers'' for ''carrier'' toward end of said sentence.

§213. Valuation of property of carrier

(a) Hearing

The Commission may from time to time, as may be necessary for the proper administration of this chapter, and after opportunity for hearing, make a valuation of all or of any part of the property owned or used by any carrier subject to this chapter, as of such date as the Commission may fix.

(b) Inventory

The Commission may at any time require any such carrier to file with the Commission an inventory of all or of any part of the property owned or used by said carrier, which inventory shall show the units of said property classified in such detail, and in such manner, as the Commission shall direct, and shall show the estimated cost of reproduction new of said units, and their reproduction cost new less depreciation, as of such date as the Commission may direct; and such carrier shall file such inventory within such reasonable time as the Commission by order shall require.

(c) Original cost

The Commission may at any time require any such carrier to file with the Commission a statement showing the original cost at the time of dedication to the public use of all or of any part of the property owned or used by said carrier. For the showing of such original cost said property shall be classified, and the original cost shall be defined, in such manner as the Commission may prescribe; and if any part of such cost cannot be determined from accounting or other records, the portion of the property for which such cost cannot be determined shall be reported to the Commission; and, if the Commission shall so direct, the original cost thereof shall be estimated in such manner as the Commission may prescribe. If the carrier owning the property at the time such original cost is reported shall have paid more or less than the original cost to acquire the same, the amount of such cost of acquisition, and any facts which the Commission may require in connection therewith, shall be reported with such original cost. The report made by a carrier under this subsection shall show the source or sources from which the original cost reported was obtained, and such other information as to the manner in which the report was prepared, as the Commission shall require.

(d) Easement, license or franchise

Nothing shall be included in the original cost reported for the property of any carrier under subsection (c) of this section on account of any easement, license, or franchise granted by the United States or by any State or political sub-

division thereof, beyond the reasonable necessary expense lawfully incurred in obtaining such easement, license, or franchise from the public authority aforesaid, which expense shall be reported separately from all other costs in such detail as the Commission may require; and nothing shall be included in any valuation of the property of any carrier made by the Commission on account of any such easement, license, or franchise, beyond such reasonable necessary expense lawfully incurred as aforesaid.

(e) Improvements; changes in condition

The Commission shall keep itself informed of all new construction, extensions, improvements, retirements, or other changes in the condition, quantity, use, and classification of the property of common carriers, and of the cost of all additions and betterments thereto and of all changes in the investment therein, and may keep itself informed of current changes in costs and values of carrier properties.

(f) Additional information; access to records and data

For the purpose of enabling the Commission to make a valuation of any of the property of any such carrier, or to find the original cost of such property, or to find any other facts concerning the same which are required for use by the Commission, it shall be the duty of each such carrier to furnish to the Commission, within such reasonable time as the Commission may order, any information with respect thereto which the Commission may by order require, including copies of maps, contracts, reports of engineers, and other data, records, and papers, and to grant to all agents of the Commission free access to its property and its accounts, records, and memoranda whenever and wherever requested by any such duly authorized agent, and to cooperate with and aid the Commission in the work of making any such valuation or finding in such manner and to such extent as the Commission may require and direct, and all rules and regulations made by the Commission for the purpose of administering this section shall have the full force and effect of law. Unless otherwise ordered by the Commission, with the reasons therefor, the records and data of the Commission shall be open to the inspection and examination of the public. The Commission, in making any such valuation, shall be free to adopt any method of valuation which shall be lawful.

(g) State commissions

Nothing in this section shall impair or diminish the powers of any State commission.

(June 19, 1934, ch. 652, title II, § 213, 48 Stat. 1074; Pub. L. 103–414, title III, § 304(a)(3), Oct. 25, 1994, 108 Stat. 4296.)

AMENDMENTS

1994—Subsecs. (g), (h). Pub. L. 103–414 redesignated subsec. (h) as (g) and struck out former subsec. (g) which read as follows: ''Notwithstanding any provision of this chapter the Interstate Commerce Commission, if requested to do so by the Commission, shall complete, at the earliest practicable date, such valuations of properties of carriers subject to this chapter as are now in progress, and shall thereafter transfer to the Commission the records relating thereto.''

§ 214. Extension of lines or discontinuance of service; certificate of public convenience and necessity

(a) Exceptions; temporary or emergency service or discontinuance of service; changes in plant, operation or equipment

No carrier shall undertake the construction of a new line or of an extension of any line, or shall acquire or operate any line, or extension thereof, or shall engage in transmission over or by means of such additional or extended line, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line: *Provided*, That no such certificate shall be required under this section for the construction, acquisition, or operation of (1) a line within a single State unless such line constitutes part of an interstate line, (2) local, branch, or terminal lines not exceeding ten miles in length, or (3) any line acquired under section 221 of this title: *Provided further*, That the Commission may, upon appropriate request being made, authorize temporary or emergency service, or the supplementing of existing facilities, without regard to the provisions of this section. No carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby; except that the Commission may, upon appropriate request being made, authorize temporary or emergency discontinuance, reduction, or impairment of service, or partial discontinuance, reduction, or impairment of service, without regard to the provisions of this section. As used in this section the term ''line'' means any channel of communication established by the use of appropriate equipment, other than a channel of communication established by the interconnection of two or more existing channels: *Provided, however*, That nothing in this section shall be construed to require a certificate or other authorization from the Commission for any installation, replacement, or other changes in plant, operation, or equipment, other than new construction, which will not impair the adequacy or quality of service provided.

(b) Notification of Secretary of Defense, Secretary of State, and State Governor

Upon receipt of an application for any such certificate, the Commission shall cause notice thereof to be given to, and shall cause a copy of such application to be filed with, the Secretary of Defense, the Secretary of State (with respect to such applications involving service to foreign points), and the Governor of each State in which such line is proposed to be constructed, extended, acquired, or operated, or in which such discontinuance, reduction, or impairment of service is proposed, with the right to those notified to be heard; and the Commission may require such published notice as it shall determine.

(c) Approval or disapproval; injunction

The Commission shall have power to issue such certificate as applied for, or to refuse to issue it, or to issue it for a portion or portions of a line, or extension thereof, or discontinuance, reduction, or impairment of service, described in the application, or for the partial exercise only of such right or privilege, and may attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require. After issuance of such certificate, and not before, the carrier may, without securing approval other than such certificate, comply with the terms and conditions contained in or attached to the issuance of such certificate and proceed with the construction, extension, acquisition, operation, or discontinuance, reduction, or impairment of service covered thereby. Any construction, extension, acquisition, operation, discontinuance, reduction, or impairment of service contrary to the provisions of this section may be enjoined by any court of competent jurisdiction at the suit of the United States, the Commission, the State commission, any State affected, or any party in interest.

(d) Order of Commission; hearing; penalty

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 subsection shall forfeit to the United States $1,200 for each day during which such refusal or neglect continues.

(e) Provision of universal service

(1) Eligible telecommunications carriers

A common carrier designated as an eligible telecommunications carrier under paragraph (2), (3), or (6) shall be eligible to receive universal service support in accordance with section 254 of this title and shall, throughout the service area for which the designation is received—

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c) of this title, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges therefor using media of general distribution.

(2) Designation of eligible telecommunications carriers

A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

(3) Designation of eligible telecommunications carriers for unserved areas

If no common carrier will provide the services that are supported by Federal universal service support mechanisms under section 254(c) of this title to an unserved community or any portion thereof that requests such service, the Commission, with respect to interstate services or an area served by a common carrier to which paragraph (6) applies, or a State commission, with respect to intrastate services, shall determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof and shall order such carrier or carriers to provide such service for that unserved community or portion thereof. Any carrier or carriers ordered to provide such service under this paragraph shall meet the requirements of paragraph (1) and shall be designated as an eligible telecommunications carrier for that community or portion thereof.

(4) Relinquishment of universal service

A State commission (or the Commission in the case of a common carrier designated under paragraph (6)) shall permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier. An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one eligible telecommunications carrier shall give advance notice to the State commission (or the Commission in the case of a common carrier designated under paragraph (6)) of such relinquishment. Prior to permitting a telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one eligible telecommunications carrier, the State commission (or the Commission in the case of a common carrier designated under paragraph (6)) shall require the remaining eligible telecommunications carrier or carriers to ensure that all customers served

by the relinquishing carrier will continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier. The State commission (or the Commission in the case of a common carrier designated under paragraph (6)) shall establish a time, not to exceed one year after the State commission (or the Commission in the case of a common carrier designated under paragraph (6)) approves such relinquishment under this paragraph, within which such purchase or construction shall be completed.

(5) "Service area" defined

The term ''service area'' means a geographic area established by a State commission (or the Commission under paragraph (6)) 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) of this title, establish a different definition of service area for such company.

(6) Common carriers not subject to State commission jurisdiction

In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable Federal and State law. Upon request and consistent with the public interest, convenience and necessity, the Commission may, with respect to an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated under this paragraph, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest.

(June 19, 1934, ch. 652, title II, § 214, 48 Stat. 1075; Mar. 6, 1943, ch. 10, §§ 2–5, 57 Stat. 11; Pub. L. 93–506, § 1, Nov. 30, 1974, 88 Stat. 1577; Pub. L. 101–239, title III, § 3002(d), Dec. 19, 1989, 103 Stat. 2131; Pub. L. 103–414, title III, § 304(a)(4), Oct. 25, 1994, 108 Stat. 4296; Pub. L. 104–104, title I, § 102(a), Feb. 8, 1996, 110 Stat. 80; Pub. L. 105–125, § 1, Dec. 1, 1997, 111 Stat. 2540.)

AMENDMENTS

1997—Subsec. (e)(1). Pub. L. 105–125, § 1(1), substituted ''(2), (3), or (6)'' for ''(2) or (3)''.

Subsec. (e)(3). Pub. L. 105–125, § 1(2), substituted ''interstate services or an area served by a common carrier to which paragraph (6) applies'' for ''interstate services''.

Subsec. (e)(4). Pub. L. 105–125, § 1(3), inserted ''(or the Commission in the case of a common carrier designated under paragraph (6))'' after ''State commission'' wherever appearing.

Subsec. (e)(5). Pub. L. 105–125, § 1(4), inserted ''(or the Commission under paragraph (6))'' after ''State commission''.

Subsec. (e)(6). Pub. L. 105–125, § 1(5), added par. (6).

1996—Subsec. (e). Pub. L. 104–104 added subsec. (e).

1994—Subsec. (a). Pub. L. 103–414 substituted ''section 221'' for ''section 221 or 222''.

1989—Subsec. (d). Pub. L. 101–239 substituted ''$1,200'' for ''$100''.

1974—Subsec. (b). Pub. L. 93–506 substituted ''the Secretary of Defense, the Secretary of State (with respect to such applications involving service to foreign points),'' for ''the Secretary of the Army, the Secretary of the Navy,''.

1943—Subsec. (a). Act Mar. 6, 1943, § 2, among other changes inserted all after ''no carrier shall discontinue'', etc.

Subsec. (b). Act Mar. 6, 1943, § 3, among other changes provided notice should be filed with Secretary of War and the Secretary of the Navy.

Subsec. (c). Act Mar. 6, 1943, § 4, extended provisions to include discontinuance, reduction, or impairment of service.

Subsec. (d). Act Mar. 6, 1943, § 5, amended first sentence.

EXTENSION OF LINES; ARMIS REPORTS

Section 402(b)(2) of Pub. L. 104–104 provided that: ''The Commission shall permit any common carrier—

''(A) to be exempt from the requirements of section 214 of the Communications Act of 1934 [47 U.S.C. 214] for the extension of any line; and

''(B) to file cost allocation manuals and ARMIS reports annually, to the extent such carrier is required to file such manuals or reports.''

§ 215. Examination of transactions relating to furnishing of services, equipment, etc.; reports to Congress

(a) Access to records and documents

The Commission shall examine into transactions entered into by any common carrier which relate to the furnishing of equipment, supplies, research, services, finances, credit, or personnel to such carrier and/or which may affect the charges made or to be made and/or the services rendered or to be rendered by such carrier, in wire or radio communication subject to this chapter, and shall report to the Congress whether any such transactions have affected or are likely to affect adversely the ability of the carrier to render adequate service to the public, or may result in any undue or unreasonable increase in charges or in the maintenance of undue or unreasonable charges for such service; and in order to fully examine into such transactions the Commission shall have access to and the right of inspection and examination of all accounts, records, and memoranda, including all documents, papers, and correspondence now or hereafter existing, of persons furnishing such equipment, supplies, research, services, finances, credit, or personnel. The Commission shall include in its report its recommendations for necessary legislation in connection with such transactions, and shall report specifically whether in its opinion legislation should be enacted (1) authorizing the Commission to declare any such transactions void or to permit such transactions to be carried out subject to such modification of their terms and conditions as the Commission shall deem desirable in the public interest; and/

or (2) subjecting such transactions to the approval of the Commission where the person furnishing or seeking to furnish the equipment, supplies, research, services, finances, credit, or personnel is a person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such carrier; and/or (3) authorizing the Commission to require that all or any transactions of carriers involving the furnishing of equipment, supplies, research, services, finances, credit, or personnel to such carrier be upon competitive bids on such terms and conditions and subject to such regulations as it shall prescribe as necessary in the public interest.

(b) Wire telephone and telegraph services

The Commission shall investigate the methods by which and the extent to which wire telephone companies are furnishing wire telegraph service and wire telegraph companies are furnishing wire telephone service, and shall report its findings to Congress, together with its recommendations as to whether additional legislation on this subject is desirable.

(c) Exclusive dealing contracts

The Commission shall examine all contracts of common carriers subject to this chapter which prevent the other party thereto from dealing with another common carrier subject to this chapter, and shall report its findings to Congress, together with its recommendations as to whether additional legislation on this subject is desirable.

(June 19, 1934, ch. 652, title II, §215, 48 Stat. 1076.)

§216. Receivers and trustees; application of chapter

The provisions of this chapter shall apply to all receivers and operating trustees of carriers subject to this chapter to the same extent that it applies to carriers.

(June 19, 1934, ch. 652, title II, §216, 48 Stat. 1077.)

§217. Agents' acts and omissions; liability of carrier

In construing and enforcing the provisions of this chapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier or user, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or user as well as that of the person.

(June 19, 1934, ch. 652, title II, §217, 48 Stat. 1077.)

§218. Management of business; inquiries by Commission

The Commission may inquire into the management of the business of all carriers subject to this chapter, and shall keep itself informed as to the manner and method in which the same is conducted and as to technical developments and improvements in wire and radio communication and radio transmission of energy to the end that the benefits of new inventions and developments may be made available to the people of the United States. The Commission may obtain from such carriers and from persons directly or indirectly controlling or controlled by, or under direct or indirect common control with, such carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created.

(June 19, 1934, ch. 652, title II, §218, 48 Stat. 1077.)

§219. Reports by carriers; contents and requirements generally

(a) The Commission is authorized to require annual reports from all carriers subject to this chapter, and from persons directly or indirectly controlling or controlled by, or under direct or indirect common control with any such carrier, to prescribe the manner in which such reports shall be made, and to require from such persons specific answers to all questions upon which the Commission may need information. Except as otherwise required by the Commission, such annual reports shall show in detail the amount of capital stock issued, the amount and privileges of each class of stock, the amounts paid therefor, and the manner of payment for the same; the dividends paid and the surplus fund, if any; the number of stockholders (and the names of the thirty largest holders of each class of stock and the amount held by each); the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipment; the number of employees and the salaries paid each class; the names of all officers and directors, and the amount of salary, bonus, and all other compensation paid to each; the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance sheet. Such reports shall also contain such information in relation to charges or regulations concerning charges, or agreements, arrangements, or contracts affecting the same, as the Commission may require.

(b) Such reports shall be for such twelve months' period as the Commission shall designate and shall be filed with the Commission at its office in Washington within three months after the close of the year for which the report is made, unless additional time is granted in any case by the Commission; and if any person subject to the provisions of this section shall fail to make and file said annual reports within the time above specified, or within the time extended by the Commission, for making and filing the same, or shall fail to make specific answer to any question authorized by the provisions of this section within thirty days from the time it is lawfully required so to do, such person shall forfeit to the United States the sum of $1,200 for each and every day it shall continue to be in default with respect thereto. The Commission may by general or special orders require any such carriers to file monthly reports of earnings and expenses and to file periodical and/or special reports concerning any matters with respect to which the Commission is authorized

or required by law to act. If any such carrier shall fail to make and file any such periodical or special report within the time fixed by the Commission, it shall be subject to the forfeitures above provided.

(June 19, 1934, ch. 652, title II, § 219, 48 Stat. 1077; Aug. 2, 1956, ch. 874, § 2, 70 Stat. 931; Pub. L. 87–444, §§ 1, 2, Apr. 27, 1962, 76 Stat. 63; Pub. L. 101–239, title III, § 3002(e), Dec. 19, 1989, 103 Stat. 2131.)

AMENDMENTS

1989—Subsec. (b). Pub. L. 101–239 substituted ''$1,200'' for ''$100''.

1962—Subsec. (a). Pub. L. 87–444, § 1, struck out ''under oath'' after ''require annual report''.

Subsec. (b). Pub. L. 87–444, § 2, struck out provisions that the periodical or special reports be under oath whenever the Commission so required.

1956—Subsec. (a). Act Aug. 2, 1956, substituted ''Except as otherwise required by the Commission, such'' for ''Such'' at beginning of second sentence.

§ 220. Accounts, records, and memoranda

(a) Forms

(1) The Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to this chapter, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of moneys.

(2) The Commission shall, by rule, prescribe a uniform system of accounts for use by telephone companies. Such uniform system shall require that each common carrier shall maintain a system of accounting methods, procedures, and techniques (including accounts and supporting records and memoranda) which shall ensure a proper allocation of all costs to and among telecommunications services, facilities, and products (and to and among classes of such services, facilities, and products) which are developed, manufactured, or offered by such common carrier.

(b) Depreciation charges

The Commission may prescribe, for such carriers as it determines to be appropriate, the classes of property for which depreciation charges may be properly included under operating expenses, and the percentages of depreciation which shall be charged with respect to each of such classes of property, classifying the carriers as it may deem proper for this purpose. The Commission may, when it deems necessary, modify the classes and percentages so prescribed. Such carriers shall not, after the Commission has prescribed the classes of property for which depreciation charges may be included, charge to operating expenses any depreciation charges on classes of property other than those prescribed by the Commission, or after the Commission has prescribed percentages of depreciation, charge with respect to any class of property a percentage of depreciation other than that prescribed therefor by the Commission. No such carrier shall in any case include in any form under its operating or other expenses any depreciation or other charge or expenditure included elsewhere as a depreciation charge or otherwise under its operating or other expenses.

(c) Access to information; burden of proof; use of independent auditors

The Commission shall at all times have access to and the right of inspection and examination of all accounts, records, and memoranda, including all documents, papers, and correspondence now or hereafter existing, and kept or required to be kept by such carriers, and the provisions of this section respecting the preservation and destruction of books, papers, and documents shall apply thereto. The burden of proof to justify every accounting entry questioned by the Commission shall be on the person making, authorizing, or requiring such entry and the Commission may suspend a charge or credit pending submission of proof by such person. Any provision of law prohibiting the disclosure of the contents of messages or communications shall not be deemed to prohibit the disclosure of any matter in accordance with the provisions of this section. The Commission may obtain the services of any person licensed to provide public accounting services under the law of any State to assist with, or conduct, audits under this section. While so employed or engaged in conducting an audit for the Commission under this section, any such person shall have the powers granted the Commission under this subsection and shall be subject to subsection (f) of this section in the same manner as if that person were an employee of the Commission.

(d) Penalty for failure to comply

In case of failure or refusal on the part of any such carrier to keep such accounts, records, and memoranda on the books and in the manner prescribed by the Commission, or to submit such accounts, records, memoranda, documents, papers, and correspondence as are kept to the inspection of the Commission or any of its authorized agents, such carrier shall forfeit to the United States the sum of $6,000 for each day of the continuance of each such offense.

(e) False entry; destruction; penalty

Any person who shall willfully make any false entry in the accounts of any book of accounts or in any record or memoranda kept by any such carrier, or who shall willfully destroy, mutilate, alter, or by any other means or device falsify any such account, record, or memoranda, or who shall willfully neglect or fail to make full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of the carrier, shall be deemed guilty of a misdemeanor, and shall be subject, upon conviction, to a fine of not less than $1,000 nor more than $5,000 or imprisonment for a term of not less than one year nor more than three years, or both such fine and imprisonment: *Provided*, That the Commission may in its discretion issue orders specifying such operating, accounting, or financial papers, records, books, blanks, or documents which may, after a reasonable time, be destroyed, and prescribing the length of time such books, papers, or documents shall be preserved.

(f) Confidentiality of information

No member, officer, or employee of the Commission shall divulge any fact or information which may come to his knowledge during the

course of examination of books or other accounts, as hereinbefore provided, except insofar as he may be directed by the Commission or by a court.

(g) Use of other forms; alterations in prescribed forms

After the Commission has prescribed the forms and manner of keeping of accounts, records, and memoranda to be kept by any person as herein provided, it shall be unlawful for such person to keep any other accounts, records, or memoranda than those so prescribed or such as may be approved by the Commission or to keep the accounts in any other manner than that prescribed or approved by the Commission. Notice of alterations by the Commission in the required manner or form of keeping accounts shall be given to such persons by the Commission at least six months before the same are to take effect.

(h) Exemption; regulation by State commission

The Commission may classify carriers subject to this chapter and prescribe different requirements under this section for different classes of carriers, and may, if it deems such action consistent with the public interest, except the carriers of any particular class or classes in any State from any of the requirements under this section in cases where such carriers are subject to State commission regulation with respect to matters to which this section relates.

(i) Consultation with State commissions

The Commission, before prescribing any requirements as to accounts, records, or memoranda, shall notify each State commission having jurisdiction with respect to any carrier involved, and shall give reasonable opportunity to each such commission to present its views, and shall receive and consider such views and recommendations.

(j) Report to Congress on need for further legislation

The Commission shall investigate and report to Congress as to the need for legislation to define further or harmonize the powers of the Commission and of State commissions with respect to matters to which this section relates.

(June 19, 1934, ch. 652, title II, § 220, 48 Stat. 1078; Pub. L. 101–239, title III, § 3002(f), Dec. 19, 1989, 103 Stat. 2131; Pub. L. 103–414, title III, §§ 303(a)(7), (8), 304(a)(5), Oct. 25, 1994, 108 Stat. 4294, 4296; Pub. L. 104–104, title IV, § 403(d), (e), Feb. 8, 1996, 110 Stat. 130.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–104, § 403(d), substituted ''may prescribe, for such carriers as it determines to be appropriate,'' for ''shall prescribe for such carriers''.

Subsec. (c). Pub. L. 104–104, § 403(e), inserted at end ''The Commission may obtain the services of any person licensed to provide public accounting services under the law of any State to assist with, or conduct, audits under this section. While so employed or engaged in conducting an audit for the Commission under this section, any such person shall have the powers granted the Commission under this subsection and shall be subject to subsection (f) of this section in the same manner as if that person were an employee of the Commission.''

1994—Subsec. (a). Pub. L. 103–414, § 303(a)(7), designated existing provisions as par. (1) and added par. (2).

Subsec. (b). Pub. L. 103–414, § 304(a)(5), struck out '', as soon as practicable,'' after ''The Commission shall''.

Pub. L. 103–414, § 303(a)(8), substituted ''classes'' for ''clasess'' after ''prescribed the'' in third sentence.

1989—Subsec. (d). Pub. L. 101–239 substituted ''$6,000'' for ''$500''.

§ 221. Consolidations and mergers of telephone companies

(a) Repealed. Pub. L. 104–104, title VI, § 601(b)(2), Feb. 8, 1996, 110 Stat. 143

(b) State jurisdiction over services

Subject to the provisions of sections 225 and 301 of this title, nothing in this chapter shall be construed to apply, or to give the Commission jurisdiction, with respect to charges, classifications, practices, services, facilities, or regulations for or in connection with wire, mobile, or point-to-point radio telephone exchange service, or any combination thereof, even though a portion of such exchange service constitutes interstate or foreign communication, in any case where such matters are subject to regulation by a State commission or by local governmental authority.

(c) Determination of property used in interstate toll service

For the purpose of administering this chapter as to carriers engaged in wire telephone communication, the Commission may classify the property of any such carrier used for wire telephone communication, and determine what property of said carrier shall be considered as used in interstate or foreign telephone toll service. Such classification shall be made after hearing, upon notice to the carrier, the State commission (or the Governor, if the State has no State commission) of any State in which the property of said carrier is located, and such other persons as the Commission may prescribe.

(d) Valuation of property

In making a valuation of the property of any wire telephone carrier the Commission, after making the classification authorized in this section, may in its discretion value only that part of the property of such carrier determined to be used in interstate or foreign telephone toll service.

(June 19, 1934, ch. 652, title II, § 221, 48 Stat. 1080; Apr. 27, 1954, ch. 175, § 4, 68 Stat. 64; Aug. 2, 1956, ch. 874, § 3, 70 Stat. 932; Pub. L. 101–336, title IV, § 401(b)(2), July 26, 1990, 104 Stat. 369; Pub. L. 104–104, title VI, § 601(b)(2), Feb. 8, 1996, 110 Stat. 143.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–104 struck out subsec. (a) relating to notification of State Governor and State commission, public hearing, and certification.

1990—Subsec. (b). Pub. L. 101–336 substituted ''sections 225 and 301'' for ''section 301''.

1956—Subsec. (a). Act Aug. 2, 1956, inserted provisions relating to submission of comments by parties and required a public hearing upon request, in lieu of former provisions requiring hearing upon application.

1954—Subsec. (b). Act Apr. 27, 1954, included mobile or point-to-point radio telephone exchange service within

exclusions provided for in such subsection, where it is subject to regulation by a State commission or by local governmental authority, and made it clear that the Commission retains its licensing authority over the radio stations that might be involved in such service.

§ 222. Privacy of customer information

(a) In general

Every telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to, other telecommunication carriers, equipment manufacturers, and customers, including telecommunication carriers reselling telecommunications services provided by a telecommunications carrier.

(b) Confidentiality of carrier information

A telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose, and shall not use such information for its own marketing efforts.

(c) Confidentiality of customer proprietary network information

(1) Privacy requirements for telecommunications carriers

Except as required by law or with the approval of the customer, a telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service shall only use, disclose, or permit access to individually identifiable customer proprietary network information in its provision of (A) the telecommunications service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories.

(2) Disclosure on request by customers

A telecommunications carrier shall disclose customer proprietary network information, upon affirmative written request by the customer, to any person designated by the customer.

(3) Aggregate customer information

A telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service may use, disclose, or permit access to aggregate customer information other than for the purposes described in paragraph (1). A local exchange carrier may use, disclose, or permit access to aggregate customer information other than for purposes described in paragraph (1) only if it provides such aggregate information to other carriers or persons on reasonable and nondiscriminatory terms and conditions upon reasonable request therefor.

(d) Exceptions

Nothing in this section prohibits a telecommunications carrier from using, disclosing, or permitting access to customer proprietary network information obtained from its customers, either directly or indirectly through its agents—

(1) to initiate, render, bill, and collect for telecommunications services;

(2) to protect the rights or property of the carrier, or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services;

(3) to provide any inbound telemarketing, referral, or administrative services to the customer for the duration of the call, if such call was initiated by the customer and the customer approves of the use of such information to provide such service; and

(4) to provide call location information concerning the user of a commercial mobile service (as such term is defined in section 332(d) of this title)—

(A) to a public safety answering point, emergency medical service provider or emergency dispatch provider, public safety, fire service, or law enforcement official, or hospital emergency or trauma care facility, in order to respond to the user's call for emergency services;

(B) to inform the user's legal guardian or members of the user's immediate family of the user's location in an emergency situation that involves the risk of death or serious physical harm; or

(C) to providers of information or database management services solely for purposes of assisting in the delivery of emergency services in response to an emergency.

(e) Subscriber list information

Notwithstanding subsections (b), (c), and (d) of this section, a telecommunications carrier that provides telephone exchange service shall provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format.

(f) Authority to use wireless location information

For purposes of subsection (c)(1) of this section, without the express prior authorization of the customer, a customer shall not be considered to have approved the use or disclosure of or access to—

(1) call location information concerning the user of a commercial mobile service (as such term is defined in section 332(d) of this title), other than in accordance with subsection (d)(4) of this section; or

(2) automatic crash notification information to any person other than for use in the operation of an automatic crash notification system.

(g) Subscriber listed and unlisted information for emergency services

Notwithstanding subsections (b), (c), and (d) of this section, a telecommunications carrier that provides telephone exchange service shall provide information described in subsection (i)(3)(A)[1] of this section (including information pertaining to subscribers whose information is unlisted or unpublished) that is in its possession

[1] So in original. Probably should be subsection ''(h)(3)(A)''.

or control (including information pertaining to subscribers of other carriers) on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions to providers of emergency services, and providers of emergency support services, solely for purposes of delivering or assisting in the delivery of emergency services.

(h) Definitions

As used in this section:

(1) Customer proprietary network information

The term ''customer proprietary network information'' means—

(A) information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and

(B) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier;

except that such term does not include subscriber list information.

(2) Aggregate information

The term ''aggregate customer information'' means collective data that relates to a group or category of services or customers, from which individual customer identities and characteristics have been removed.

(3) Subscriber list information

The term ''subscriber list information'' means any information—

(A) identifying the listed names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses, or classifications; and

(B) that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format.

(4) Public safety answering point

The term ''public safety answering point'' means a facility that has been designated to receive emergency calls and route them to emergency service personnel.

(5) Emergency services

The term ''emergency services'' means 9–1–1 emergency services and emergency notification services.

(6) Emergency notification services

The term ''emergency notification services'' means services that notify the public of an emergency.

(7) Emergency support services

The term ''emergency support services'' means information or data base management services used in support of emergency services.

(June 19, 1934, ch. 652, title II, § 222, as added Pub. L. 104–104, title VII, § 702, Feb. 8, 1996, 110 Stat. 148; amended Pub. L. 106–81, § 5, Oct. 26, 1999, 113 Stat. 1288.)

PRIOR PROVISIONS

A prior section 222, act June 19, 1934, ch. 652, title II, § 222, as added Mar. 6, 1943, ch. 10, § 1, 57 Stat. 5; amended July 12, 1960, Pub. L. 86–624, § 36, 74 Stat. 421; Nov. 30, 1974, Pub. L. 93–506, § 2, 88 Stat. 1577; Dec. 24, 1980, Pub. L. 96–590, 94 Stat. 3414; Dec. 29, 1981, Pub. L. 97–130, § 2, 95 Stat. 1687, related to competition among record carriers, prior to repeal by Pub. L. 103–414, title III, § 304(a)(6), Oct. 25, 1994, 108 Stat. 4297.

AMENDMENTS

1999—Subsec. (d)(4). Pub. L. 106–81, § 5(1), added par. (4).

Subsecs. (f), (g). Pub. L. 106–81, § 5(2), added subsecs. (f) and (g). Former subsec. (f) redesignated (h).

Subsec. (h). Pub. L. 106–81, § 5(2)–(4), redesignated subsec. (f) as (h), inserted ''location,'' after ''destination,'' in par. (1)(A), and added pars. (4) to (7).

§ 223. Obscene or harassing telephone calls in the District of Columbia or in interstate or foreign communications

(a) Prohibited acts generally

Whoever—

(1) in interstate or foreign communications—

(A) by means of a telecommunications device knowingly—

(i) makes, creates, or solicits, and

(ii) initiates the transmission of,

any comment, request, suggestion, proposal, image, or other communication which is obscene or child pornography, with intent to annoy, abuse, threaten, or harass another person;

(B) by means of a telecommunications device knowingly—

(i) makes, creates, or solicits, and

(ii) initiates the transmission of,

any comment, request, suggestion, proposal, image, or other communication which is obscene or child pornography, knowing that the recipient of the communication is under 18 years of age, regardless of whether the maker of such communication placed the call or initiated the communication;

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

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

(E) 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 telecommunications facility under his control to be used for any activity prohibited by paragraph (1) with the intent that it be used for such activity,

shall be fined under title 18 or imprisoned not more than two years, or both.

(b) Prohibited acts for commercial purposes; defense to prosecution

(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

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

shall be fined in accordance with title 18 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

(B) permits any telephone facility under such person's control to be used for an activity prohibited by subparagraph (A), shall be fined not more than $50,000 or imprisoned not more than six months, 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 $50,000 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 $50,000 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) Restriction on access to subscribers by common carriers; judicial remedies respecting restrictions

(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) of this section from the telephone 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 communications that communications provided by that provider are communications specified in subsection (b) of this section, 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 restrict access to communications described in subsection (b) of this section.

(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) Sending or displaying offensive material to persons under 18

Whoever—

(1) in interstate or foreign communications knowingly—

(A) uses an interactive computer service to send to a specific person or persons under 18 years of age, or

(B) uses any interactive computer service to display in a manner available to a person under 18 years of age,

any comment, request, suggestion, proposal, image, or other communication that is obscene or child pornography, regardless of whether the user of such service placed the call or initiated the communication; or

(2) knowingly permits any telecommunications facility under such person's control to be used for an activity prohibited by paragraph (1) with the intent that it be used for such activity,

shall be fined under title 18 or imprisoned not more than two years, or both.

(e) Defenses

In addition to any other defenses available by law:

(1) No person shall be held to have violated subsection (a) or (d) of this section solely for

providing access or connection to or from a facility, system, or network not under that person's control, including transmission, downloading, intermediate storage, access software, or other related capabilities that are incidental to providing such access or connection that does not include the creation of the content of the communication.

(2) The defenses provided by paragraph (1) of this subsection shall not be applicable to a person who is a conspirator with an entity actively involved in the creation or knowing distribution of communications that violate this section, or who knowingly advertises the availability of such communications.

(3) The defenses provided in paragraph (1) of this subsection shall not be applicable to a person who provides access or connection to a facility, system, or network engaged in the violation of this section that is owned or controlled by such person.

(4) No employer shall be held liable under this section for the actions of an employee or agent unless the employee's or agent's conduct is within the scope of his or her employment or agency and the employer (A) having knowledge of such conduct, authorizes or ratifies such conduct, or (B) recklessly disregards such conduct.

(5) It is a defense to a prosecution under subsection (a)(1)(B) or (d) of this section, or under subsection (a)(2) of this section with respect to the use of a facility for an activity under subsection (a)(1)(B) of this section that a person—

(A) has taken, in good faith, reasonable, effective, and appropriate actions under the circumstances to restrict or prevent access by minors to a communication specified in such subsections, which may involve any appropriate measures to restrict minors from such communications, including any method which is feasible under available technology; or

(B) has restricted access to such communication by requiring use of a verified credit card, debit account, adult access code, or adult personal identification number.

(6) The Commission may describe measures which are reasonable, effective, and appropriate to restrict access to prohibited communications under subsection (d) of this section. Nothing in this section authorizes the Commission to enforce, or is intended to provide the Commission with the authority to approve, sanction, or permit, the use of such measures. The Commission shall have no enforcement authority over the failure to utilize such measures. The Commission shall not endorse specific products relating to such measures. The use of such measures shall be admitted as evidence of good faith efforts for purposes of paragraph (5) in any action arising under subsection (d) of this section. Nothing in this section shall be construed to treat interactive computer services as common carriers or telecommunications carriers.

(f) Violations of law required; commercial entities, nonprofit libraries, or institutions of higher education

(1) No cause of action may be brought in any court or administrative agency against any person on account of any activity that is not in violation of any law punishable by criminal or civil penalty, and that 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.

(2) No State or local government may impose any liability for commercial activities or actions by commercial entities, nonprofit libraries, or institutions of higher education in connection with an activity or action described in subsection (a)(2) or (d) of this section that is inconsistent with the treatment of those activities or actions 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 rights, duties or obligations on the provision of interstate services. Nothing in this subsection shall preclude any State or local government from governing conduct not covered by this section.

(g) Application and enforcement of other Federal law

Nothing in subsection (a), (d), (e), or (f) of this section or in the defenses to prosecution under subsection (a) or (d) of this section shall be construed to affect or limit the application or enforcement of any other Federal law.

(h) Definitions

For purposes of this section—

(1) The use of the term ''telecommunications device'' in this section—

(A) shall not impose new obligations on broadcasting station licensees and cable operators covered by obscenity and indecency provisions elsewhere in this chapter;

(B) does not include an interactive computer service; and

(C) in the case of subparagraph (C) of subsection (a)(1) of this section, includes any device or software that can be used to originate telecommunications or other types of communications that are transmitted, in whole or in part, by the Internet (as such term is defined in section 1104[1] of the Internet Tax Freedom Act (47 U.S.C. 151 note)).

(2) The term ''interactive computer service'' has the meaning provided in section 230(f)(2) of this title.

(3) The term ''access software'' means software (including client or server software) or enabling tools that do not create or provide the content of the communication but that allow a user to do any one or more of the following:

(A) filter, screen, allow, or disallow content;

(B) pick, choose, analyze, or digest content; or

(C) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.

[1] See References in Text note below.

(4) The term ''institution of higher education'' has the meaning provided in section 1001 of title 20.

(5) The term ''library'' means a library eligible for participation in State-based plans for funds under title III of the Library Services and Construction Act (20 U.S.C. 355e et seq.).

(June 19, 1934, ch. 652, title II, § 223, as added Pub. L. 90–299, § 1, May 3, 1968, 82 Stat. 112; amended Pub. L. 98–214, § 8(a), (b), Dec. 8, 1983, 97 Stat. 1469, 1470; Pub. L. 100–297, title VI, § 6101, Apr. 28, 1988, 102 Stat. 424; Pub. L. 100–690, title VII, § 7524, Nov. 18, 1988, 102 Stat. 4502; Pub. L. 101–166, title V, § 521(1), Nov. 21, 1989, 103 Stat. 1192; Pub. L. 103–414, title III, § 303(a)(9), Oct. 25, 1994, 108 Stat. 4294; Pub. L. 104–104, title V, § 502, Feb. 8, 1996, 110 Stat. 133; Pub. L. 105–244, title I, § 102(a)(14), Oct. 7, 1998, 112 Stat. 1621; Pub. L. 105–277, div. C, title XIV, § 1404(b), Oct. 21, 1998, 112 Stat. 2681–739; Pub. L. 108–21, title VI, § 603, Apr. 30, 2003, 117 Stat. 687; Pub. L. 109–162, title I, § 113(a), Jan. 5, 2006, 119 Stat. 2987.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (b)(6), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Section 1104 of the Internet Tax Freedom Act, referred to in subsec. (h)(1)(C), is section 1104 of title XI of div. C of Pub. L. 105–277, which is set out in a note under section 151 of this title. The term ''Internet'' is defined in section 1105 of Pub. L. 105–277, which is set out in the same note under section 151 of this title.

The Library Services and Construction Act, referred to in subsec. (h)(5), is act June 19, 1956, ch. 407, 70 Stat. 293, as amended. Title III of the Act was classified generally to subchapter III (§ 355e et seq.) of chapter 16 of Title 20, Education, and was repealed by Pub. L. 104–208, div. A, title I, § 101(e) [title VII, § 708(a)], Sept. 30, 1996, 110 Stat. 3009–233, 3009–312.

AMENDMENTS

2006—Subsec. (h)(1)(C). Pub. L. 109–162 added subpar. (C).

2003—Subsec. (a)(1)(A). Pub. L. 108–21, § 603(1)(A), substituted ''or child pornography'' for '', lewd, lascivious, filthy, or indecent'' in concluding provisions.

Subsec. (a)(1)(B). Pub. L. 108–21, § 603(1)(B), substituted ''child pornography'' for ''indecent'' in concluding provisions.

Subsec. (d)(1). Pub. L. 108–21, § 603(2), substituted ''is obscene or child pornography'' for '', in context, depicts or describes, in terms patently offensive as measured by contemporary community standards, sexual or excretory activities or organs'' in concluding provisions.

1998—Subsec. (h)(2). Pub. L. 105–277 substituted ''230(f)(2)'' for ''230(e)(2)''.

Subsec. (h)(4). Pub. L. 105–244, which directed amendment of section 223(h)(4) of the Telecommunications Act of 1934 (47 U.S.C. 223(h)(4)) by substituting ''section 1001'' for ''section 1141'', was executed to this section, which is section 223 of the Communications Act of 1934, to reflect the probable intent of Congress.

1996—Subsec. (a). Pub. L. 104–104, § 502(1), added subsec. (a) and struck out former subsec. (a) which read as follows: ''Whoever—

''(1) in the District of Columbia or in interstate or foreign communication by means of telephone—

''(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;

''(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

''(2) knowingly permits any telephone facility under his control to be used for any purpose prohibited by this section,

shall be fined not more than $50,000 or imprisoned not more than six months, or both.''

Subsecs. (d) to (h). Pub. L. 104–104, § 502(2), added subsecs. (d) to (h).

1994—Subsec. (b)(3). Pub. L. 103–414 substituted ''defendant restricted access'' for ''defendant restrict access''.

1989—Subsecs. (b), (c). Pub. L. 101–166 added subsecs. (b) and (c) and struck out former subsec. (b) which read as follows:

''(1) Whoever knowingly—

''(A) in the District of Columbia or in interstate or foreign communication, 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

''(B) permits any telephone facility under such person's control to be used for an activity prohibited by clause (i);

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

''(2) Whoever knowingly—

''(A) in the District of Columbia or in interstate or foreign communication, by means of telephone, makes (directly or by recording device) any indecent communication for commercial purposes to any person, regardless of whether the maker of such communication placed the call; or

''(B) permits any telephone facility under such person's control to be used for an activity prohibited by clause (i),

shall be fined not more than $50,000 or imprisoned not more than six months, or both.''

1988—Subsec. (b). Pub. L. 100–690 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

''(1) Whoever knowingly—

''(A) in the District of Columbia or in interstate or foreign communication, by means of telephone, makes (directly or by recording device) any obscene or indecent communication for commercial purposes to any person, regardless of whether the maker of such communication placed the call; or

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

shall be fined not more than $50,000 or imprisoned not more than six months, or both.

''(2) In addition to the penalties under paragraph (1), whoever, in the District of Columbia or in interstate or foreign communication, intentionally violates paragraph (1)(A) or (1)(B) shall be subject to a fine of not more than $50,000 for each violation. For purposes of this paragraph, each day of violation shall constitute a separate violation.

''(3)(A) In addition to the penalties under paragraphs (1) and (2), whoever, in the District of Columbia or in interstate or foreign communication, violates paragraph (1)(A) or (1)(B) shall be subject to a civil fine of not more than $50,000 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 a 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.

''(4) 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)(A) or (1)(B). An injunction may be granted in accordance with the Federal Rules of Civil Procedure.''

Pub. L. 100–297, in par. (1)(A), struck out ''under eighteen years of age or to any other person without that person's consent'' after ''to any person'', redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''It is a defense to a prosecution under this subsection that the defendant restricted access to the prohibited communication to persons eighteen years of age or older in accordance with procedures which the Commission shall prescribe by regulation.'', redesignated par. (4) as (3) and substituted ''under paragraphs (1) and (2)'' for ''under paragraphs (1) and (3)'', and redesignated par. (5) as (4).

1983—Subsec. (a). Pub. L. 98–214, § 8(a)(1), (2), designated existing provisions as subsec. (a) and substituted ''$50,000'' for ''$500'' in provisions after par. (2).

Subsec. (a)(2). Pub. L. 98–214, § 8(b), inserted ''facility'' after ''telephone''.

Subsec. (b). Pub. L. 98–214, § 8(a)(3), added subsec. (b).

EFFECTIVE DATE OF 1998 AMENDMENTS

Pub. L. 105–277, div. C, title XIV, § 1406, Oct. 21, 1998, 112 Stat. 2681–741, provided that: ''This title [enacting section 231 of this title, amending this section and section 230 of this title, and enacting provisions set out as notes under sections 231 and 609 of this title] and the amendments made by this title shall take effect 30 days after the date of enactment of this Act [Oct. 21, 1998].''

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of Title 20, Education.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–166 effective 120 days after Nov. 21, 1989, see section 521(3) of Pub. L. 101–166, set out as a note under section 152 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–297 effective July 1, 1988, see section 6303 of Pub. L. 100–297, set out as a note under section 1071 of Title 20, Education.

CONSTRUCTION OF 2006 AMENDMENT

Pub. L. 109–162, title I, § 113(b), Jan. 5, 2006, 119 Stat. 2987, provided that: ''This section [amending this section] and the amendment made by this section may not be construed to affect the meaning given the term 'telecommunications device' in section 223(h)(1) of the Communications Act of 1934 [47 U.S.C. 223(h)(1)], as in effect before the date of the enactment of this section [Jan. 5, 2006].''

EXPEDITED REVIEW

Section 561 of title V of Pub. L. 104–104 provided that:

''(a) THREE-JUDGE DISTRICT COURT HEARING.—Notwithstanding any other provision of law, any civil action challenging the constitutionality, on its face, of this title [see Short Title of 1996 Amendment note set out under section 609 of this title] or any amendment made by this title, or any provision thereof, shall be heard by a district court of 3 judges convened pursuant to the provisions of section 2284 of title 28, United States Code.

''(b) APPELLATE REVIEW.—Notwithstanding any other provision of law, an interlocutory or final judgment, decree, or order of the court of 3 judges in an action under subsection (a) holding this title or an amendment made by this title, or any provision thereof, unconstitutional shall be reviewable as a matter of right by direct appeal to the Supreme Court. Any such appeal shall be filed not more than 20 days after entry of such judgment, decree, or order.''

REGULATIONS; DISPOSITION OF COMPLAINTS PENDING ON DECEMBER 8, 1983

Section 8(c), (d) of Pub. L. 98–214 provided that:

''(c) The Federal Communications Commission shall issue regulations pursuant to section 223(b)(2) of the Communications Act of 1934 (as added by subsection (a) of this section) [subsec. (b)(2) of this section] not later than one hundred and eighty days after the date of the enactment of this Act [Dec. 8, 1983].

''(d) The Commission shall act on all complaints alleging violation of section 223 of the Communications Act of 1934 [this section] which are pending on the date of the enactment of this Act [Dec. 8, 1983] within ninety days of such date of enactment.''

§ 224. Pole attachments

(a) Definitions

As used in this section:

(1) The term ''utility'' means any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications. 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 or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility.

(5) For purposes of this section, the term ''telecommunications carrier'' (as defined in section 153 of this title) does not include any incumbent local exchange carrier as defined in section 251(h) of this title.

(b) Authority of Commission to regulate rates, terms, and conditions; enforcement powers; promulgation of regulations

(1) Subject to the provisions of subsection (c) 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 this title.

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

(c) State regulatory authority over rates, terms, and conditions; preemption; certification; circumstances constituting State regulation

(1) Nothing in this section shall be construed to apply to, or to give the Commission jurisdiction with respect to rates, terms, and conditions, or access to poles, ducts, conduits, and rights-of-way as provided in subsection (f) of this section, 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 the services offered via such attachments, 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) Determination of just and reasonable rates; "usable space" defined

(1) For purposes of subsection (b) 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.

(3) This subsection shall apply to the rate for any pole attachment used by a cable television system solely to provide cable service. Until the effective date of the regulations required under subsection (e) of this section, this subsection shall also apply to the rate for any pole attachment used by a cable system or any telecommunications carrier (to the extent such carrier is not a party to a pole attachment agreement) to provide any telecommunications service.

(e) Regulations governing charges; apportionment of costs of providing space

(1) The Commission shall, no later than 2 years after February 8, 1996, prescribe regulations in accordance with this subsection to govern the charges for pole attachments used by telecommunications carriers to provide telecommunications services, when the parties fail to resolve a dispute over such charges. Such regulations shall ensure that a utility charges just, reasonable, and nondiscriminatory rates for pole attachments.

(2) A utility shall apportion the cost of providing space on a pole, duct, conduit, or right-of-way other than the usable space among entities so that such apportionment equals two-thirds of the costs of providing space other than the usable space that would be allocated to such entity under an equal apportionment of such costs among all attaching entities.

(3) A utility shall apportion the cost of providing usable space among all entities according to the percentage of usable space required for each entity.

(4) The regulations required under paragraph (1) shall become effective 5 years after February 8, 1996. Any increase in the rates for pole attachments that result from the adoption of the regulations required by this subsection shall be phased in equal annual increments over a period of 5 years beginning on the effective date of such regulations.

(f) Nondiscriminatory access

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

(2) Notwithstanding paragraph (1), a utility providing electric service may deny a cable television system or any telecommunications carrier access to its poles, ducts, conduits, or rights-of-way, on a non-discriminatory[1] basis where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes.

(g) Imputation to costs of pole attachment rate

A utility that engages in the provision of telecommunications services or cable services shall impute to its costs of providing such services (and charge any affiliate, subsidiary, or associate company engaged in the provision of such services) an equal amount to the pole attachment rate for which such company would be liable under this section.

(h) Modification or alteration of pole, duct, conduit, or right-of-way

Whenever the owner of a pole, duct, conduit, or right-of-way intends to modify or alter such pole, duct, conduit, or right-of-way, the owner shall provide written notification of such action to any entity that has obtained an attachment to such conduit or right-of-way so that such entity may have a reasonable opportunity to add to or modify its existing attachment. Any entity that adds to or modifies its existing attachment after receiving such notification shall bear a proportionate share of the costs incurred by the owner in making such pole, duct, conduit, or right-of-way accessible.

(i) Costs of rearranging or replacing attachment

An entity that obtains an attachment to a pole, conduit, or right-of-way shall not be required to bear any of the costs of rearranging or replacing its attachment, if such rearrangement or replacement is required as a result of an additional attachment or the modification of an existing attachment sought by any other entity (including the owner of such pole, duct, conduit, or right-of-way).

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[1] So in original. Probably should be ''nondiscriminatory''.

(June 19, 1934, ch. 652, title II, §224, as added Pub. L. 95–234, §6, Feb. 21, 1978, 92 Stat. 35; amended Pub. L. 97–259, title I, §106, Sept. 13, 1982, 96 Stat. 1091; Pub. L. 98–549, §4, Oct. 30, 1984, 98 Stat. 2801; Pub. L. 103–414, title III, §304(a)(7), Oct. 25, 1994, 108 Stat. 4297; Pub. L. 104–104, title VII, §703, Feb. 8, 1996, 110 Stat. 149.)

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–104, §703(1), inserted first sentence and struck out former first sentence which read as follows: ''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.''

Subsec. (a)(4). Pub. L. 104–104, §703(2), inserted ''or provider of telecommunications service'' after ''system''.

Subsec. (a)(5). Pub. L. 104–104, §703(3), added par. (5).

Subsec. (c)(1). Pub. L. 104–104, §703(4), inserted '', or access to poles, ducts, conduits, and rights-of-way as provided in subsection (f) of this section,'' after ''conditions''.

Subsec. (c)(2)(B). Pub. L. 104–104, §703(5), substituted ''the services offered via such attachments'' for ''cable television services''.

Subsec. (d)(3). Pub. L. 104–104, §703(6), added par. (3).

Subsecs. (e) to (i). Pub. L. 104–104, §703(7), added subsecs. (e) to (i).

1994—Subsec. (b)(2). Pub. L. 103–414 substituted ''The Commission'' for ''Within 180 days from February 21, 1978, the Commission''.

1984—Subsec. (c)(3). Pub. L. 98–549 added par. (3).

1982—Subsec. (e). Pub. L. 97–259 struck out subsec. (e) which provided that, upon expiration of 5-year period that began on Feb. 21, 1978, provisions of subsec. (d) of this section would cease to have any effect.

EFFECTIVE DATE OF 1984 AMENDMENT

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

EFFECTIVE DATE

Section effective on thirtieth day after Feb. 21, 1978, see section 7 of Pub. L. 95–234, set out as an Effective Date of 1978 Amendment note under section 152 of this title.

§225. Telecommunications services for hearing-impaired and speech-impaired individuals

(a) Definitions

As used in this section—

(1) Common carrier or carrier

The term ''common carrier'' or ''carrier'' includes any common carrier engaged in interstate communication by wire or radio as defined in section 153 of this title and any common carrier engaged in intrastate communication by wire or radio, notwithstanding sections 152(b) and 221(b) of this title.

(2) TDD

The term ''TDD'' means a Telecommunications Device for the Deaf, which is a machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system.

(3) Telecommunications relay services

The term ''telecommunications relay services'' means telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a TDD or other nonvoice terminal device and an individual who does not use such a device.

(b) Availability of telecommunications relay services

(1) In general

In order to carry out the purposes established under section 151 of this title, to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation, the Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.

(2) Use of general authority and remedies

For the purposes of administering and enforcing the provisions of this section and the regulations prescribed thereunder, the Commission shall have the same authority, power, and functions with respect to common carriers engaged in intrastate communication as the Commission has in administering and enforcing the provisions of this subchapter with respect to any common carrier engaged in interstate communication. Any violation of this section by any common carrier engaged in intrastate communication shall be subject to the same remedies, penalties, and procedures as are applicable to a violation of this chapter by a common carrier engaged in interstate communication.

(c) Provision of services

Each common carrier providing telephone voice transmission services shall, not later than 3 years after July 26, 1990, provide in compliance with the regulations prescribed under this section, throughout the area in which it offers service, telecommunications relay services, individually, through designees, through a competitively selected vendor, or in concert with other carriers. A common carrier shall be considered to be in compliance with such regulations—

(1) with respect to intrastate telecommunications relay services in any State that does not have a certified program under subsection (f) of this section and with respect to interstate telecommunications relay services, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the Commission's regulations under subsection (d) of this section; or

(2) with respect to intrastate telecommunications relay services in any State that has a certified program under subsection (f) of this

section for such State, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the program certified under subsection (f) of this section for such State.

(d) Regulations

(1) In general

The Commission shall, not later than 1 year after July 26, 1990, prescribe regulations to implement this section, including regulations that—

(A) establish functional requirements, guidelines, and operations procedures for telecommunications relay services;

(B) establish minimum standards that shall be met in carrying out subsection (c) of this section;

(C) require that telecommunications relay services operate every day for 24 hours per day;

(D) require that users of telecommunications relay services pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination;

(E) prohibit relay operators from failing to fulfill the obligations of common carriers by refusing calls or limiting the length of calls that use telecommunications relay services;

(F) prohibit relay operators from disclosing the content of any relayed conversation and from keeping records of the content of any such conversation beyond the duration of the call; and

(G) prohibit relay operators from intentionally altering a relayed conversation.

(2) Technology

The Commission shall ensure that regulations prescribed to implement this section encourage, consistent with section 157(a) of this title, the use of existing technology and do not discourage or impair the development of improved technology.

(3) Jurisdictional separation of costs

(A) In general

Consistent with the provisions of section 410 of this title, the Commission shall prescribe regulations governing the jurisdictional separation of costs for the services provided pursuant to this section.

(B) Recovering costs

Such regulations shall generally provide that costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction. In a State that has a certified program under subsection (f) of this section, a State commission shall permit a common carrier to recover the costs incurred in providing intrastate telecommunications relay services by a method consistent with the requirements of this section.

(e) Enforcement

(1) In general

Subject to subsections (f) and (g) of this section, the Commission shall enforce this section.

(2) Complaint

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.

(f) Certification

(1) State documentation

Any State desiring to establish a State program under this section shall submit documentation to the Commission that describes the program of such State for implementing intrastate telecommunications relay services and the procedures and remedies available for enforcing any requirements imposed by the State program.

(2) Requirements for certification

After review of such documentation, the Commission shall certify the State program if the Commission determines that—

(A) the program makes available to hearing-impaired and speech-impaired individuals, either directly, through designees, through a competitively selected vendor, or through regulation of intrastate common carriers, intrastate telecommunications relay services in such State in a manner that meets or exceeds the requirements of regulations prescribed by the Commission under subsection (d) of this section; and

(B) the program makes available adequate procedures and remedies for enforcing the requirements of the State program.

(3) Method of funding

Except as provided in subsection (d) of this section, the Commission shall not refuse to certify a State program based solely on the method such State will implement for funding intrastate telecommunication relay services.

(4) Suspension or revocation of certification

The Commission may suspend or revoke such certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted. In a State whose program has been suspended or revoked, the Commission shall take such steps as may be necessary, consistent with this section, to ensure continuity of telecommunications relay services.

(g) Complaint

(1) Referral of complaint

If a complaint to the Commission alleges a violation of this section with respect to intrastate telecommunications relay services within a State and certification of the program of such State under subsection (f) of this section is in effect, the Commission shall refer such complaint to such State.

(2) Jurisdiction of Commission

After referring a complaint to a State under paragraph (1), the Commission shall exercise jurisdiction over such complaint only if—

(A) final action under such State program has not been taken on such complaint by such State—

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

(ii) within a shorter period as prescribed by the regulations of such State; or

(B) the Commission determines that such State program is no longer qualified for certification under subsection (f) of this section.

(June 19, 1934, ch. 652, title II, § 225, as added Pub. L. 101–336, title IV, § 401(a), July 26, 1990, 104 Stat. 366; amended Pub. L. 104–104, § 3(d)(1), Feb. 8, 1996, 110 Stat. 61.)

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–104 substituted ''section 153'' for ''section 153(h)''.

§ 226. Telephone operator services

(a) Definitions

As used in this section—

(1) The term ''access code'' means a sequence of numbers that, when dialed, connect the caller to the provider of operator services associated with that sequence.

(2) The term ''aggregator'' means any person that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises, for interstate telephone calls using a provider of operator services.

(3) The term ''call splashing'' means the transfer of a telephone call from one provider of operator services to another such provider in such a manner that the subsequent provider is unable or unwilling to determine the location of the origination of the call and, because of such inability or unwillingness, is prevented from billing the call on the basis of such location.

(4) The term ''consumer'' means a person initiating any interstate telephone call using operator services.

(5) The term ''equal access'' has the meaning given that term in Appendix B of the Modification of Final Judgment entered August 24, 1982, in United States v. Western Electric, Civil Action No. 82–0192 (United States District Court, District of Columbia), as amended by the Court in its orders issued prior to October 17, 1990.

(6) The term ''equal access code'' means an access code that allows the public to obtain an equal access connection to the carrier associated with that code.

(7) The term ''operator services'' means any interstate telecommunications service initiated from an aggregator location that includes, as a component, any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an interstate telephone call through a method other than—

(A) automatic completion with billing to the telephone from which the call originated; or

(B) completion through an access code used by the consumer, with billing to an account previously established with the carrier by the consumer.

(8) The term ''presubscribed provider of operator services'' means the interstate provider of operator services to which the consumer is connected when the consumer places a call using a provider of operator services without dialing an access code.

(9) The term ''provider of operator services'' means any common carrier that provides operator services or any other person determined by the Commission to be providing operator services.

(b) Requirements for providers of operator services

(1) In general

Beginning not later than 90 days after October 17, 1990, each provider of operator services shall, at a minimum—

(A) identify itself, audibly and distinctly, to the consumer at the beginning of each telephone call and before the consumer incurs any charge for the call;

(B) permit the consumer to terminate the telephone call at no charge before the call is connected;

(C) disclose immediately to the consumer, upon request and at no charge to the consumer—

(i) a quote of its rates or charges for the call;

(ii) the methods by which such rates or charges will be collected; and

(iii) the methods by which complaints concerning such rates, charges, or collection practices will be resolved;

(D) ensure, by contract or tariff, that each aggregator for which such provider is the presubscribed provider of operator services is in compliance with the requirements of subsection (c) of this section and, if applicable, subsection (e)(1) of this section;

(E) withhold payment (on a location-by-location basis) of any compensation, including commissions, to aggregators if such provider reasonably believes that the aggregator (i) is blocking access by means of ''950'' or ''800'' numbers to interstate common carriers in violation of subsection (c)(1)(B) of this section or (ii) is blocking access to equal access codes in violation of rules the Commission may prescribe under subsection (e)(1) of this section;

(F) not bill for unanswered telephone calls in areas where equal access is available;

(G) not knowingly bill for unanswered telephone calls where equal access is not available;

(H) not engage in call splashing, unless the consumer requests to be transferred to another provider of operator services, the consumer is informed prior to incurring any charges that the rates for the call may not reflect the rates from the actual originating location of the call, and the consumer then consents to be transferred; and

(I) except as provided in subparagraph (H), not bill for a call that does not reflect the location of the origination of the call.

(2) Additional requirements for first 3 years

In addition to meeting the requirements of paragraph (1), during the 3-year period begin-

ning on the date that is 90 days after October 17, 1990, each presubscribed provider of operator services shall identify itself audibly and distinctly to the consumer, not only as required in paragraph (1)(A), but also for a second time before connecting the call and before the consumer incurs any charge.

(c) Requirements for aggregators

(1) In general

Each aggregator, beginning not later than 90 days after October 17, 1990, shall—

(A) post on or near the telephone instrument, in plain view of consumers—

(i) the name, address, and toll-free telephone number of the provider of operator services;

(ii) a written disclosure that the rates for all operator-assisted calls are available on request, and that consumers have a right to obtain access to the interstate common carrier of their choice and may contact their preferred interstate common carriers for information on accessing that carrier's service using that telephone; and

(iii) the name and address of the enforcement division of the Common Carrier Bureau of the Commission, to which the consumer may direct complaints regarding operator services;

(B) ensure that each of its telephones presubscribed to a provider of operator services allows the consumer to use ''800'' and ''950'' access code numbers to obtain access to the provider of operator services desired by the consumer; and

(C) ensure that no charge by the aggregator to the consumer for using an ''800'' or ''950'' access code number, or any other access code number, is greater than the amount the aggregator charges for calls placed using the presubscribed provider of operator services.

(2) Effect of State law or regulation

The requirements of paragraph (1)(A) shall not apply to an aggregator in any case in which State law or State regulation requires the aggregator to take actions that are substantially the same as those required in paragraph (1)(A).

(d) General rulemaking required

(1) Rulemaking proceeding

The Commission shall conduct a rulemaking proceeding pursuant to this subchapter to prescribe regulations to—

(A) protect consumers from unfair and deceptive practices relating to their use of operator services to place interstate telephone calls; and

(B) ensure that consumers have the opportunity to make informed choices in making such calls.

(2) Contents of regulations

The regulations prescribed under this section shall—

(A) contain provisions to implement each of the requirements of this section, other than the requirements established by the rulemaking under subsection (e) of this section on access and compensation; and

(B) contain such other provisions as the Commission determines necessary to carry out this section and the purposes and policies of this section.

(3) Additional requirements to be implemented by regulations

The regulations prescribed under this section shall, at a minimum—

(A) establish minimum standards for providers of operator services and aggregators to use in the routing and handling of emergency telephone calls; and

(B) establish a policy for requiring providers of operator services to make public information about recent changes in operator services and choices available to consumers in that market.

(e) Separate rulemaking on access and compensation

(1) Access

The Commission,[1] shall require—

(A) that each aggregator ensure within a reasonable time that each of its telephones presubscribed to a provider of operator services allows the consumer to obtain access to the provider of operator services desired by the consumer through the use of an equal access code; or

(B) that all providers of operator services, within a reasonable time, make available to their customers a ''950'' or ''800'' access code number for use in making operator services calls from anywhere in the United States; or

(C) that the requirements described under both subparagraphs (A) and (B) apply.

(2) Compensation

The Commission shall consider the need to prescribe compensation (other than advance payment by consumers) for owners of competitive public pay telephones for calls routed to providers of operator services that are other than the presubscribed provider of operator services for such telephones. Within 9 months after October 17, 1990, the Commission shall reach a final decision on whether to prescribe such compensation.

(f) Technological capability of equipment

Any equipment and software manufactured or imported more than 18 months after October 17, 1990, and installed by any aggregator shall be technologically capable of providing consumers with access to interstate providers of operator services through the use of equal access codes.

(g) Fraud

In any proceeding to carry out the provisions of this section, the Commission shall require such actions or measures as are necessary to ensure that aggregators are not exposed to undue risk of fraud.

(h) Determinations of rate compliance

(1) Filing of informational tariff

(A) In general

Each provider of operator services shall file, within 90 days after October 17, 1990, and

[1] So in original. The comma probably should not appear.

shall maintain, update regularly, and keep open for public inspection, an informational tariff specifying rates, terms, and conditions, and including commissions, surcharges, any fees which are collected from consumers, and reasonable estimates of the amount of traffic priced at each rate, with respect to calls for which operator services are provided. Any changes in such rates, terms, or conditions shall be filed no later than the first day on which the changed rates, terms, or conditions are in effect.

(B) Waiver authority

The Commission may, after 4 years following October 17, 1990, waive the requirements of this paragraph only if—

(i) the findings and conclusions of the Commission in the final report issued under paragraph (3)(B)(iii) state that the regulatory objectives specified in subsection (d)(1)(A) and (B) of this section have been achieved; and

(ii) the Commission determines that such waiver will not adversely affect the continued achievement of such regulatory objectives.

(2) Review of informational tariffs

If the rates and charges filed by any provider of operator services under paragraph (1) appear upon review by the Commission to be unjust or unreasonable, the Commission may require such provider of operator services to do either or both of the following:

(A) demonstrate that its rates and charges are just and reasonable, and

(B) announce that its rates are available on request at the beginning of each call.

(3) Proceeding required

(A) In general

Within 60 days after October 17, 1990, the Commission shall initiate a proceeding to determine whether the regulatory objectives specified in subsection (d)(1)(A) and (B) of this section are being achieved. The proceeding shall—

(i) monitor operator service rates;

(ii) determine the extent to which offerings made by providers of operator services are improvements, in terms of service quality, price, innovation, and other factors, over those available before the entry of new providers of operator services into the market;

(iii) report on (in the aggregate and by individual provider) operator service rates, incidence of service complaints, and service offerings;

(iv) consider the effect that commissions and surcharges, billing and validation costs, and other costs of doing business have on the overall rates charged to consumers; and

(v) monitor compliance with the provisions of this section, including the periodic placement of telephone calls from aggregator locations.

(B) Reports

(i) The Commission shall, during the pendency of such proceeding and not later than 5 months after its commencement, provide the Congress with an interim report on the Commission's activities and progress to date.

(ii) Not later than 11 months after the commencement of such proceeding, the Commission shall report to the Congress on its interim findings as a result of the proceeding.

(iii) Not later than 23 months after the commencement of such proceeding, the Commission shall submit a final report to the Congress on its findings and conclusions.

(4) Implementing regulations

(A) In general

Unless the Commission makes the determination described in subparagraph (B), the Commission shall, within 180 days after submission of the report required under paragraph (3)(B)(iii), complete a rulemaking proceeding pursuant to this subchapter to establish regulations for implementing the requirements of this subchapter (and paragraphs (1) and (2) of this subsection) that rates and charges for operator services be just and reasonable. Such regulations shall include limitations on the amount of commissions or any other compensation given to aggregators by providers of operator service.

(B) Limitation

The requirement of subparagraph (A) shall not apply if, on the basis of the proceeding under paragraph (3)(A), the Commission makes (and includes in the report required by paragraph (3)(B)(iii)) a factual determination that market forces are securing rates and charges that are just and reasonable, as evidenced by rate levels, costs, complaints, service quality, and other relevant factors.

(i) Statutory construction

Nothing in this section shall be construed to alter the obligations, powers, or duties of common carriers or the Commission under the other sections of this chapter.

(June 19, 1934, ch. 652, title II, §226, as added Pub. L. 101–435, §3, Oct. 17, 1990, 104 Stat. 987; amended Pub. L. 101–555, §4, Nov. 15, 1990, 104 Stat. 2760; Pub. L. 102–538, title II, §207, Oct. 27, 1992, 106 Stat. 3543; Pub. L. 103–414, title III, §§303(a)(10), 304(a)(8), Oct. 25, 1994, 108 Stat. 4294, 4297.)

AMENDMENTS

1994—Subsec. (d)(2) to (4). Pub. L. 103–414, §303(a)(10), redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out heading and text of former par. (2). Text read as follows: ''The Commission shall initiate the proceeding required under paragraph (1) within 60 days after October 17, 1990, and shall prescribe regulations pursuant to the proceeding not later than 210 days after October 17, 1990. Such regulations shall take effect not later than 45 days after the date the regulations are prescribed.''

Subsec. (e)(1). Pub. L. 103–414, §304(a)(8), struck out ''within 9 months after October 17, 1990,'' after ''The Commission,'' in introductory provisions.

1992—Subsec. (d)(4)(A). Pub. L. 102–538 inserted ''and aggregators'' after ''operator services''.

1990—Subsec. (b)(1). Pub. L. 101–555, §4(a), substituted ''90 days'' for ''30 days''.

Subsec. (b)(1)(J). Pub. L. 101–555, §4(b), struck out subpar. (J) which read as follows: ''not bill an inter-

exchange telephone call to a billing card number which—

"(i) is issued by another provider of operator services, and

"(ii) permits the identification of the other provider,

unless the call is billed at a rate not greater than the other provider's rate for the call, the consumer requests a special service that is not available under tariff from the other provider, or the consumer expressly consents to a rate greater than the other provider's rate."

Subsecs. (b)(2), (c)(1), (h)(1)(A). Pub. L. 101–555, § 4(a), substituted "90 days" for "30 days".

CONGRESSIONAL FINDINGS

Section 2 of Pub. L. 101–435 provided that: "The Congress finds that—

"(1) the divestiture of AT&T and decisions allowing open entry for competitors in the telephone marketplace produced a variety of new services and many new providers of existing telephone services;

"(2) the growth of competition in the telecommunications market makes it essential to ensure that safeguards are in place to assure fairness for consumers and service providers alike;

"(3) a variety of providers of operator services now compete to win contracts to provide operator services to hotels, hospitals, airports, and other aggregators of telephone business from consumers;

"(4) the mere existence of a variety of service providers in the operator services marketplace is significant in making that market competitive only when consumers are able to make informed choices from among those service providers;

"(5) however, often consumers have no choices in selecting a provider of operator services, and often attempts by consumers to reach their preferred long distance carrier by using a telephone billing card, credit card, or prearranged access code number are blocked;

"(6) a number of State regulatory authorities have taken action to protect consumers using intrastate operator services;

"(7) from January 1988 through February 1990, the Federal Communications Commission received over 4,000 complaints from consumers about operator services;

"(8) those consumers have complained that they are denied access to the interexchange carrier of their choice, that they are deceived about the identity of the company providing operator services for their calls and the rates being charged, that they lack information on what they can do to complain about unfair treatment by an operator service provider, and that they are, accordingly, being deprived of the free choice essential to the operation of a competitive market;

"(9) the Commission has testified that its actions have been insufficient to correct the problems in the operator services industry to date; and

"(10) a combination of industry self-regulation and government regulation is required to ensure that competitive operator services are provided in a fair and reasonable manner."

§ 227. Restrictions on use of telephone equipment

(a) Definitions

As used in this section—

(1) The term "automatic telephone dialing system" means equipment which has the capacity—

(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and

(B) to dial such numbers.

(2) The term "established business relationship", for purposes only of subsection (b)(1)(C)(i) of this section, shall have the meaning given the term in section 64.1200 of title 47, Code of Federal Regulations, as in effect on January 1, 2003, except that—

(A) such term shall include a relationship between a person or entity and a business subscriber subject to the same terms applicable under such section to a relationship between a person or entity and a residential subscriber; and

(B) an established business relationship shall be subject to any time limitation established pursuant to paragraph (2)(G)).[1]

(3) The term "telephone facsimile machine" means equipment which has the capacity (A) to transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line, or (B) to transcribe text or images (or both) from an electronic signal received over a regular telephone line onto paper.

(4) The term "telephone solicitation" means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person, but such term does not include a call or message (A) to any person with that person's prior express invitation or permission, (B) to any person with whom the caller has an established business relationship, or (C) by a tax exempt nonprofit organization.

(5) The term "unsolicited advertisement" means any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission, in writing or otherwise.

(b) Restrictions on use of automated telephone equipment

(1) Prohibitions

It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States—

(A) to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice—

(i) to any emergency telephone line (including any "911" line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency);

(ii) to the telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment; or

(iii) to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call;

[1] So in original. Second closing parenthesis probably should not appear.

(B) to initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call is initiated for emergency purposes or is exempted by rule or order by the Commission under paragraph (2)(B);

(C) to use any telephone facsimile machine, computer, or other device to send, to a telephone facsimile machine, an unsolicited advertisement, unless—

(i) the unsolicited advertisement is from a sender with an established business relationship with the recipient;

(ii) the sender obtained the number of the telephone facsimile machine through—

(I) the voluntary communication of such number, within the context of such established business relationship, from the recipient of the unsolicited advertisement, or

(II) a directory, advertisement, or site on the Internet to which the recipient voluntarily agreed to make available its facsimile number for public distribution,

except that this clause shall not apply in the case of an unsolicited advertisement that is sent based on an established business relationship with the recipient that was in existence before July 9, 2005, if the sender possessed the facsimile machine number of the recipient before July 9, 2005; and

(iii) the unsolicited advertisement contains a notice meeting the requirements under paragraph (2)(D),

except that the exception under clauses (i) and (ii) shall not apply with respect to an unsolicited advertisement sent to a telephone facsimile machine by a sender to whom a request has been made not to send future unsolicited advertisements to such telephone facsimile machine that complies with the requirements under paragraph (2)(E); or

(D) to use an automatic telephone dialing system in such a way that two or more telephone lines of a multi-line business are engaged simultaneously.

(2) Regulations; exemptions and other provisions

The Commission shall prescribe regulations to implement the requirements of this subsection. In implementing the requirements of this subsection, the Commission—

(A) shall consider prescribing regulations to allow businesses to avoid receiving calls made using an artificial or prerecorded voice to which they have not given their prior express consent;

(B) may, by rule or order, exempt from the requirements of paragraph (1)(B) of this subsection, subject to such conditions as the Commission may prescribe—

(i) calls that are not made for a commercial purpose; and

(ii) such classes or categories of calls made for commercial purposes as the Commission determines—

(I) will not adversely affect the privacy rights that this section is intended to protect; and

(II) do not include the transmission of any unsolicited advertisement;

(C) may, by rule or order, exempt from the requirements of paragraph (1)(A)(iii) of this subsection calls to a telephone number assigned to a cellular telephone service that are not charged to the called party, subject to such conditions as the Commission may prescribe as necessary in the interest of the privacy rights this section is intended to protect;

(D) shall provide that a notice contained in an unsolicited advertisement complies with the requirements under this subparagraph only if—

(i) the notice is clear and conspicuous and on the first page of the unsolicited advertisement;

(ii) the notice states that the recipient may make a request to the sender of the unsolicited advertisement not to send any future unsolicited advertisements to a telephone facsimile machine or machines and that failure to comply, within the shortest reasonable time, as determined by the Commission, with such a request meeting the requirements under subparagraph (E) is unlawful;

(iii) the notice sets forth the requirements for a request under subparagraph (E);

(iv) the notice includes—

(I) a domestic contact telephone and facsimile machine number for the recipient to transmit such a request to the sender; and

(II) a cost-free mechanism for a recipient to transmit a request pursuant to such notice to the sender of the unsolicited advertisement; the Commission shall by rule require the sender to provide such a mechanism and may, in the discretion of the Commission and subject to such conditions as the Commission may prescribe, exempt certain classes of small business senders, but only if the Commission determines that the costs to such class are unduly burdensome given the revenues generated by such small businesses;

(v) the telephone and facsimile machine numbers and the cost-free mechanism set forth pursuant to clause (iv) permit an individual or business to make such a request at any time on any day of the week; and

(vi) the notice complies with the requirements of subsection (d) of this section;

(E) shall provide, by rule, that a request not to send future unsolicited advertisements to a telephone facsimile machine complies with the requirements under this subparagraph only if—

(i) the request identifies the telephone number or numbers of the telephone facsimile machine or machines to which the request relates;

(ii) the request is made to the telephone or facsimile number of the sender of such an unsolicited advertisement provided pursuant to subparagraph (D)(iv) or by any other method of communication as determined by the Commission; and

(iii) the person making the request has not, subsequent to such request, provided express invitation or permission to the sender, in writing or otherwise, to send such advertisements to such person at such telephone facsimile machine;

(F) may, in the discretion of the Commission and subject to such conditions as the Commission may prescribe, allow professional or trade associations that are tax-exempt nonprofit organizations to send unsolicited advertisements to their members in furtherance of the association's tax-exempt purpose that do not contain the notice required by paragraph (1)(C)(iii), except that the Commission may take action under this subparagraph only—

(i) by regulation issued after public notice and opportunity for public comment; and

(ii) if the Commission determines that such notice required by paragraph (1)(C)(iii) is not necessary to protect the ability of the members of such associations to stop such associations from sending any future unsolicited advertisements; and

(G)(i) may, consistent with clause (ii), limit the duration of the existence of an established business relationship, however, before establishing any such limits, the Commission shall—

(I) determine whether the existence of the exception under paragraph (1)(C) relating to an established business relationship has resulted in a significant number of complaints to the Commission regarding the sending of unsolicited advertisements to telephone facsimile machines;

(II) determine whether a significant number of any such complaints involve unsolicited advertisements that were sent on the basis of an established business relationship that was longer in duration than the Commission believes is consistent with the reasonable expectations of consumers;

(III) evaluate the costs to senders of demonstrating the existence of an established business relationship within a specified period of time and the benefits to recipients of establishing a limitation on such established business relationship; and

(IV) determine whether with respect to small businesses, the costs would not be unduly burdensome; and

(ii) may not commence a proceeding to determine whether to limit the duration of the existence of an established business relationship before the expiration of the 3-month period that begins on July 9, 2005.

(3) Private right of action

A person or entity may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of that State—

(A) an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation,

(B) an action to recover for actual monetary loss from such a violation, or to receive $500 in damages for each such violation, whichever is greater, or

(C) both such actions.

If the court finds that the defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B) of this paragraph.

(c) Protection of subscriber privacy rights

(1) Rulemaking proceeding required

Within 120 days after December 20, 1991, the Commission shall initiate a rulemaking proceeding concerning the need to protect residential telephone subscribers' privacy rights to avoid receiving telephone solicitations to which they object. The proceeding shall—

(A) compare and evaluate alternative methods and procedures (including the use of electronic databases, telephone network technologies, special directory markings, industry-based or company-specific ''do not call'' systems, and any other alternatives, individually or in combination) for their effectiveness in protecting such privacy rights, and in terms of their cost and other advantages and disadvantages;

(B) evaluate the categories of public and private entities that would have the capacity to establish and administer such methods and procedures;

(C) consider whether different methods and procedures may apply for local telephone solicitations, such as local telephone solicitations of small businesses or holders of second class mail permits;

(D) consider whether there is a need for additional Commission authority to further restrict telephone solicitations, including those calls exempted under subsection (a)(3) of this section, and, if such a finding is made and supported by the record, propose specific restrictions to the Congress; and

(E) develop proposed regulations to implement the methods and procedures that the Commission determines are most effective and efficient to accomplish the purposes of this section.

(2) Regulations

Not later than 9 months after December 20, 1991, the Commission shall conclude the rulemaking proceeding initiated under paragraph (1) and shall prescribe regulations to implement methods and procedures for protecting the privacy rights described in such paragraph in an efficient, effective, and economic manner and without the imposition of any additional charge to telephone subscribers.

(3) Use of database permitted

The regulations required by paragraph (2) may require the establishment and operation

of a single national database to compile a list of telephone numbers of residential subscribers who object to receiving telephone solicitations, and to make that compiled list and parts thereof available for purchase. If the Commission determines to require such a database, such regulations shall—

(A) specify a method by which the Commission will select an entity to administer such database;

(B) require each common carrier providing telephone exchange service, in accordance with regulations prescribed by the Commission, to inform subscribers for telephone exchange service of the opportunity to provide notification, in accordance with regulations established under this paragraph, that such subscriber objects to receiving telephone solicitations;

(C) specify the methods by which each telephone subscriber shall be informed, by the common carrier that provides local exchange service to that subscriber, of (i) the subscriber's right to give or revoke a notification of an objection under subparagraph (A), and (ii) the methods by which such right may be exercised by the subscriber;

(D) specify the methods by which such objections shall be collected and added to the database;

(E) prohibit any residential subscriber from being charged for giving or revoking such notification or for being included in a database compiled under this section;

(F) prohibit any person from making or transmitting a telephone solicitation to the telephone number of any subscriber included in such database;

(G) specify (i) the methods by which any person desiring to make or transmit telephone solicitations will obtain access to the database, by area code or local exchange prefix, as required to avoid calling the telephone numbers of subscribers included in such database; and (ii) the costs to be recovered from such persons;

(H) specify the methods for recovering, from persons accessing such database, the costs involved in identifying, collecting, updating, disseminating, and selling, and other activities relating to, the operations of the database that are incurred by the entities carrying out those activities;

(I) specify the frequency with which such database will be updated and specify the method by which such updating will take effect for purposes of compliance with the regulations prescribed under this subsection;

(J) be designed to enable States to use the database mechanism selected by the Commission for purposes of administering or enforcing State law;

(K) prohibit the use of such database for any purpose other than compliance with the requirements of this section and any such State law and specify methods for protection of the privacy rights of persons whose numbers are included in such database; and

(L) require each common carrier providing services to any person for the purpose of making telephone solicitations to notify such person of the requirements of this section and the regulations thereunder.

(4) Considerations required for use of database method

If the Commission determines to require the database mechanism described in paragraph (3), the Commission shall—

(A) in developing procedures for gaining access to the database, consider the different needs of telemarketers conducting business on a national, regional, State, or local level;

(B) develop a fee schedule or price structure for recouping the cost of such database that recognizes such differences and—

(i) reflect the relative costs of providing a national, regional, State, or local list of phone numbers of subscribers who object to receiving telephone solicitations;

(ii) reflect the relative costs of providing such lists on paper or electronic media; and

(iii) not place an unreasonable financial burden on small businesses; and

(C) consider (i) whether the needs of telemarketers operating on a local basis could be met through special markings of area white pages directories, and (ii) if such directories are needed as an adjunct to database lists prepared by area code and local exchange prefix.

(5) Private right of action

A person who has received more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the regulations prescribed under this subsection may, if otherwise permitted by the laws or rules of court of a State bring in an appropriate court of that State—

(A) an action based on a violation of the regulations prescribed under this subsection to enjoin such violation,

(B) an action to recover for actual monetary loss from such a violation, or to receive up to $500 in damages for each such violation, whichever is greater, or

(C) both such actions.

It shall be an affirmative defense in any action brought under this paragraph that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of the regulations prescribed under this subsection. If the court finds that the defendant willfully or knowingly violated the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B) of this paragraph.

(6) Relation to subsection (b)

The provisions of this subsection shall not be construed to permit a communication prohibited by subsection (b) of this section.

(d) Technical and procedural standards

(1) Prohibition

It shall be unlawful for any person within the United States—

(A) to initiate any communication using a telephone facsimile machine, or to make any telephone call using any automatic telephone dialing system, that does not comply with the technical and procedural standards prescribed under this subsection, or to use any telephone facsimile machine or automatic telephone dialing system in a manner that does not comply with such standards; or

(B) to use a computer or other electronic device to send any message via a telephone facsimile machine unless such person clearly marks, in a margin at the top or bottom of each transmitted page of the message or on the first page of the transmission, the date and time it is sent and an identification of the business, other entity, or individual sending the message and the telephone number of the sending machine or of such business, other entity, or individual.

(2) Telephone facsimile machines

The Commission shall revise the regulations setting technical and procedural standards for telephone facsimile machines to require that any such machine which is manufactured after one year after December 20, 1991, clearly marks, in a margin at the top or bottom of each transmitted page or on the first page of each transmission, the date and time sent, an identification of the business, other entity, or individual sending the message, and the telephone number of the sending machine or of such business, other entity, or individual.

(3) Artificial or prerecorded voice systems

The Commission shall prescribe technical and procedural standards for systems that are used to transmit any artificial or prerecorded voice message via telephone. Such standards shall require that—

(A) all artificial or prerecorded telephone messages (i) shall, at the beginning of the message, state clearly the identity of the business, individual, or other entity initiating the call, and (ii) shall, during or after the message, state clearly the telephone number or address of such business, other entity, or individual; and

(B) any such system will automatically release the called party's line within 5 seconds of the time notification is transmitted to the system that the called party has hung up, to allow the called party's line to be used to make or receive other calls.

(e) Effect on State law

(1) State law not preempted

Except for the standards prescribed under subsection (d) of this section and subject to paragraph (2) of this subsection, nothing in this section or in the regulations prescribed under this section shall preempt any State law that imposes more restrictive intrastate requirements or regulations on, or which prohibits—

(A) the use of telephone facsimile machines or other electronic devices to send unsolicited advertisements;

(B) the use of automatic telephone dialing systems;

(C) the use of artificial or prerecorded voice messages; or

(D) the making of telephone solicitations.

(2) State use of databases

If, pursuant to subsection (c)(3) of this section, the Commission requires the establishment of a single national database of telephone numbers of subscribers who object to receiving telephone solicitations, a State or local authority may not, in its regulation of telephone solicitations, require the use of any database, list, or listing system that does not include the part of such single national database that relates to such State.

(f) Actions by States

(1) Authority of States

Whenever the attorney general of a State, or an official or agency designated by a State, has reason to believe that any person has engaged or is engaging in a pattern or practice of telephone calls or other transmissions to residents of that State in violation of this section or the regulations prescribed under this section, the State may bring a civil action on behalf of its residents to enjoin such calls, an action to recover for actual monetary loss or receive $500 in damages for each violation, or both such actions. If the court finds the defendant willfully or knowingly violated such regulations, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under the preceding sentence.

(2) Exclusive jurisdiction of Federal courts

The district courts of the United States, the United States courts of any territory, and the District Court of the United States for the District of Columbia shall have exclusive jurisdiction over all civil actions brought under this subsection. Upon proper application, such courts shall also have jurisdiction to issue writs of mandamus, or orders affording like relief, commanding the defendant to comply with the provisions of this section or regulations prescribed under this section, including the requirement that the defendant take such action as is necessary to remove the danger of such violation. Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond.

(3) Rights of Commission

The State shall serve prior written notice of any such civil action upon the Commission and provide the Commission with a copy of its complaint, except in any case where such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Commission shall have the right (A) to intervene in the action, (B) upon so intervening, to be heard on all matters arising therein, and (C) to file petitions for appeal.

(4) Venue; service of process

Any civil action brought under this subsection in a district court of the United States may be brought in the district wherein the de-

fendant is found or is an inhabitant or transacts business or wherein the violation occurred or is occurring, and process in such cases may be served in any district in which the defendant is an inhabitant or where the defendant may be found.

(5) Investigatory powers

For purposes of bringing any civil action under this subsection, nothing in this section shall prevent the attorney general of a State, or an official or agency designated by a State, from exercising the powers conferred on the attorney general or such official by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(6) Effect on State court proceedings

Nothing contained in this subsection shall be construed to prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal statute of such State.

(7) Limitation

Whenever the Commission has instituted a civil action for violation of regulations prescribed under this section, no State may, during the pendency of such action instituted by the Commission, subsequently institute a civil action against any defendant named in the Commission's complaint for any violation as alleged in the Commission's complaint.

(8) "Attorney general" defined

As used in this subsection, the term ''attorney general'' means the chief legal officer of a State.

(g) Junk fax enforcement report

The Commission shall submit an annual report to Congress regarding the enforcement during the past year of the provisions of this section relating to sending of unsolicited advertisements to telephone facsimile machines, which report shall include—

(1) the number of complaints received by the Commission during such year alleging that a consumer received an unsolicited advertisement via telephone facsimile machine in violation of the Commission's rules;

(2) the number of citations issued by the Commission pursuant to section 503 of this title during the year to enforce any law, regulation, or policy relating to sending of unsolicited advertisements to telephone facsimile machines;

(3) the number of notices of apparent liability issued by the Commission pursuant to section 503 of this title during the year to enforce any law, regulation, or policy relating to sending of unsolicited advertisements to telephone facsimile machines;

(4) for each notice referred to in paragraph (3)—

(A) the amount of the proposed forfeiture penalty involved;

(B) the person to whom the notice was issued;

(C) the length of time between the date on which the complaint was filed and the date on which the notice was issued; and

(D) the status of the proceeding;

(5) the number of final orders imposing forfeiture penalties issued pursuant to section 503 of this title during the year to enforce any law, regulation, or policy relating to sending of unsolicited advertisements to telephone facsimile machines;

(6) for each forfeiture order referred to in paragraph (5)—

(A) the amount of the penalty imposed by the order;

(B) the person to whom the order was issued;

(C) whether the forfeiture penalty has been paid; and

(D) the amount paid;

(7) for each case in which a person has failed to pay a forfeiture penalty imposed by such a final order, whether the Commission referred such matter for recovery of the penalty; and

(8) for each case in which the Commission referred such an order for recovery—

(A) the number of days from the date the Commission issued such order to the date of such referral;

(B) whether an action has been commenced to recover the penalty, and if so, the number of days from the date the Commission referred such order for recovery to the date of such commencement; and

(C) whether the recovery action resulted in collection of any amount, and if so, the amount collected.

(June 19, 1934, ch. 652, title II, §227, as added Pub. L. 102–243, §3(a), Dec. 20, 1991, 105 Stat. 2395; amended Pub. L. 102–556, title IV, §402, Oct. 28, 1992, 106 Stat. 4194; Pub. L. 103–414, title III, §303(a)(11), (12), Oct. 25, 1994, 108 Stat. 4294; Pub. L. 108–187, §12, Dec. 16, 2003, 117 Stat. 2717; Pub. L. 109–21, §§2(a)–(g), 3, July 9, 2005, 119 Stat. 359–362.)

AMENDMENTS

2005—Subsec. (a)(2) to (4). Pub. L. 109–21, §2(b), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively. Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 109–21, §2(b)(1), (g), redesignated par. (4) as (5) and inserted '', in writing or otherwise'' before period at end.

Subsec. (b)(1)(C). Pub. L. 109–21, §2(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''to use any telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine; or''.

Subsec. (b)(2)(D) to (G). Pub. L. 109–21, §2(c)–(f), added subpars. (D) to (G).

Subsec. (g). Pub. L. 109–21, §3, added subsec. (g).

2003—Subsec. (b)(1). Pub. L. 108–187 inserted '', or any person outside the United States if the recipient is within the United States'' after ''United States'' in introductory provisions.

1994—Subsec. (b)(2)(C). Pub. L. 103–414, §303(a)(11), substituted ''paragraph'' for ''paragraphs''.

Subsec. (e)(2). Pub. L. 103–414, §303(a)(12), substituted ''national database'' for ''national datebase'' after ''such single''.

1992—Subsec. (b)(2)(C). Pub. L. 102–556 added subpar. (C).

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–187 effective Jan. 1, 2004, see section 16 of Pub. L. 108–187, set out as an Effective Date note under section 7701 of Title 15, Commerce and Trade.

EFFECTIVE DATE; DEADLINE FOR REGULATIONS

Section 3(c) of Pub. L. 102–243, as amended by Pub. L. 102–556, title I, § 102, Oct. 28, 1992, 106 Stat. 4186, provided that:

''(1) REGULATIONS.—The Federal Communications Commission shall prescribe regulations to implement the amendments made by this section [enacting this section and amending section 152 of this title] not later than 9 months after the date of enactment of this Act [Dec. 20, 1991].

''(2) EFFECTIVE DATE.—The requirements of section 227 of the Communications Act of 1934 [this section] (as added by this section), other than the authority to prescribe regulations, shall take effect one year after the date of enactment of this Act [Dec. 20, 1991].''

REGULATIONS

Pub. L. 109–21, § 2(h), July 9, 2005, 119 Stat. 362, provided that: ''Except as provided in section 227(b)(2)(G)(ii) of the Communications Act of 1934 [47 U.S.C. 227(b)(2)(G)(ii)] (as added by subsection (f)), not later than 270 days after the date of enactment of this Act [July 9, 2005], the Federal Communications Commission shall issue regulations to implement the amendments made by this section.''

CONGRESSIONAL STATEMENT OF FINDINGS

Section 2 of Pub. L. 102–243 provided that: ''The Congress finds that:

''(1) The use of the telephone to market goods and services to the home and other businesses is now pervasive due to the increased use of cost-effective telemarketing techniques.

''(2) Over 30,000 businesses actively telemarket goods and services to business and residential customers.

''(3) More than 300,000 solicitors call more than 18,000,000 Americans every day.

''(4) Total United States sales generated through telemarketing amounted to $435,000,000,000 in 1990, a more than four-fold increase since 1984.

''(5) Unrestricted telemarketing, however, can be an intrusive invasion of privacy and, when an emergency or medical assistance telephone line is seized, a risk to public safety.

''(6) Many consumers are outraged over the proliferation of intrusive, nuisance calls to their homes from telemarketers.

''(7) Over half the States now have statutes restricting various uses of the telephone for marketing, but telemarketers can evade their prohibitions through interstate operations; therefore, Federal law is needed to control residential telemarketing practices.

''(8) The Constitution does not prohibit restrictions on commercial telemarketing solicitations.

''(9) Individuals' privacy rights, public safety interests, and commercial freedoms of speech and trade must be balanced in a way that protects the privacy of individuals and permits legitimate telemarketing practices.

''(10) Evidence compiled by the Congress indicates that residential telephone subscribers consider automated or prerecorded telephone calls, regardless of the content or the initiator of the message, to be a nuisance and an invasion of privacy.

''(11) Technologies that might allow consumers to avoid receiving such calls are not universally available, are costly, are unlikely to be enforced, or place an inordinate burden on the consumer.

''(12) Banning such automated or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call or when such calls are necessary in an emergency situation affecting the health and safety of the consumer, is the only effective means of protecting telephone consumers from this nuisance and privacy invasion.

''(13) While the evidence presented to the Congress indicates that automated or prerecorded calls are a nuisance and an invasion of privacy, regardless of the type of call, the Federal Communications Commission should have the flexibility to design different rules for those types of automated or prerecorded calls that it finds are not considered a nuisance or invasion of privacy, or for noncommercial calls, consistent with the free speech protections embodied in the First Amendment of the Constitution.

''(14) Businesses also have complained to the Congress and the Federal Communications Commission that automated or prerecorded telephone calls are a nuisance, are an invasion of privacy, and interfere with interstate commerce.

''(15) The Federal Communications Commission should consider adopting reasonable restrictions on automated or prerecorded calls to businesses as well as to the home, consistent with the constitutional protections of free speech.''

§ 228. Regulation of carrier offering of pay-per-call services

(a) Purpose

It is the purpose of this section—

(1) to put into effect a system of national regulation and review that will oversee interstate pay-per-call services; and

(2) to recognize the Commission's authority to prescribe regulations and enforcement procedures and conduct oversight to afford reasonable protection to consumers of pay-per-call services and to assure that violations of Federal law do not occur.

(b) General authority for regulations

The Commission by regulation shall, within 270 days after October 28, 1992, establish a system for oversight and regulation of pay-per-call services in order to provide for the protection of consumers in accordance with this chapter and other applicable Federal statutes and regulations. The Commission's final rules shall—

(1) include measures that provide a consumer of pay-per-call services with adequate and clear descriptions of the rights of the caller;

(2) define the obligations of common carriers with respect to the provision of pay-per-call services;

(3) include requirements on such carriers to protect against abusive practices by providers of pay-per-call services;

(4) identify procedures by which common carriers and providers of pay-per-call services may take affirmative steps to protect against nonpayment of legitimate charges; and

(5) require that any service described in subparagraphs (A) and (B) of subsection (i)(1) of this section be offered only through the use of certain telephone number prefixes and area codes.

(c) Common carrier obligations

Within 270 days after October 28, 1992, the Commission shall, by regulation, establish the following requirements for common carriers:

(1) Contractual obligations to comply

Any common carrier assigning to a provider of pay-per-call services a telephone number with a prefix or area code designated by the Commission in accordance with subsection (b)(5) of this section shall require by contract or tariff that such provider comply with the

provisions of titles II and III of the Telephone Disclosure and Dispute Resolution Act [15 U.S.C. 5711 et seq.; 5721 et seq.] and the regulations prescribed by the Federal Trade Commission pursuant to those titles.

(2) Information availability

A common carrier that by tariff or contract assigns a telephone number with a prefix or area code designated by the Commission in accordance with subsection (b)(5) of this section to a provider of a pay-per-call service shall make readily available on request to Federal and State agencies and other interested persons—

(A) a list of the telephone numbers for each of the pay-per-call services it carries;

(B) a short description of each such service;

(C) a statement of the total cost or the cost per minute and any other fees for each such service;

(D) a statement of the pay-per-call service's name, business address, and business telephone; and

(E) such other information as the Commission considers necessary for the enforcement of this section and other applicable Federal statutes and regulations.

(3) Compliance procedures

A common carrier that by contract or tariff assigns a telephone number with a prefix or area code designated by the Commission in accordance with subsection (b)(5) of this section to a provider of pay-per-call services shall terminate, in accordance with procedures specified in such regulations, the offering of a pay-per-call service of a provider if the carrier knows or reasonably should know that such service is not provided in compliance with title II or III of the Telephone Disclosure and Dispute Resolution Act [15 U.S.C. 5711 et seq.; 5721 et seq.] or the regulations prescribed by the Federal Trade Commission pursuant to such titles.

(4) Subscriber disconnection prohibited

A common carrier shall not disconnect or interrupt a subscriber's local exchange telephone service or long distance telephone service because of nonpayment of charges for any pay-per-call service.

(5) Blocking and presubscription

A common carrier that provides local exchange service shall—

(A) offer telephone subscribers (where technically feasible) the option of blocking access from their telephone number to all, or to certain specific, prefixes or area codes used by pay-per-call services, which option—

(i) shall be offered at no charge (I) to all subscribers for a period of 60 days after the issuance of the regulations under subsection (b) of this section, and (II) to any subscriber who subscribes to a new telephone number until 60 days after the time the new telephone number is effective; and

(ii) shall otherwise be offered at a reasonable fee; and

(B) offer telephone subscribers (where the Commission determines it is technically and economically feasible), in combination with the blocking option described under subparagraph (A), the option of presubscribing to or blocking only specific pay-per-call services for a reasonable one-time charge.

The regulations prescribed under subparagraph (A)(i) of this paragraph may permit the costs of such blocking to be recovered by contract or tariff, but such costs may not be recovered from local or long-distance ratepayers. Nothing in this subsection precludes a common carrier from filing its rates and regulations regarding blocking and presubscription in its interstate tariffs.

(6) Verification of charitable status

A common carrier that assigns by contract or tariff a telephone number with a prefix or area code designated by the Commission in accordance with subsection (b)(5) of this section to a provider of pay-per-call services that the carrier knows or reasonably should know is engaged in soliciting charitable contributions shall obtain from such provider proof of the tax exempt status of any person or organization for which contributions are solicited.

(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—

(i) the calling party has a written agreement (including an agreement transmitted through electronic medium) that meets the requirements of paragraph (8); or

(ii) the calling party is charged for the information in accordance with paragraph (9);

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

(8) Subscription agreements for billing for information provided via toll-free calls

(A) In general

For purposes of paragraph (7)(C)(i), a written subscription does not meet the requirements of this paragraph unless the agreement specifies the material terms and conditions under which the information is offered and includes—

(i) the rate at which charges are assessed for the information;

(ii) the information provider's name;

(iii) the information provider's business address;

(iv) the information provider's regular business telephone number;

(v) the information provider's agreement to notify the subscriber at least one billing cycle in advance of all future changes in the rates charged for the information; and

(vi) the subscriber's choice of payment method, which may be by direct remit, debit, prepaid account, phone bill, or credit or calling card.

(B) Billing arrangements

If a subscriber elects, pursuant to subparagraph (A)(vi), to pay by means of a phone bill—

(i) the agreement shall clearly explain that the subscriber will be assessed for calls made to the information service from the subscriber's phone line;

(ii) the phone bill shall include, in prominent type, the following disclaimer:

''Common carriers may not disconnect local or long distance telephone service for failure to pay disputed charges for information services.''; and

(iii) the phone bill shall clearly list the 800 number dialed.

(C) Use of PINs to prevent unauthorized use

A written agreement does not meet the requirements of this paragraph unless it—

(i) includes a unique personal identification number or other subscriber-specific identifier and requires a subscriber to use this number or identifier to obtain access to the information provided and includes instructions on its use; and

(ii) assures that any charges for services accessed by use of the subscriber's personal identification number or subscriber-specific identifier be assessed to subscriber's source of payment elected pursuant to subparagraph (A)(vi).

(D) Exceptions

Notwithstanding paragraph (7)(C), a written agreement that meets the requirements of this paragraph is not required—

(i) for calls utilizing telecommunications devices for the deaf;

(ii) for directory services provided by a common carrier or its affiliate or by a local exchange carrier or its affiliate; or

(iii) for any purchase of goods or of services that are not information services.

(E) Termination of service

On receipt by a common carrier of a complaint by any person that an information provider is in violation of the provisions of this section, a carrier shall—

(i) promptly investigate the complaint; and

(ii) if the carrier reasonably determines that the complaint is valid, it may terminate the provision of service to an information provider unless the provider supplies evidence of a written agreement that meets the requirements of this section.

(F) Treatment of remedies

The remedies provided in this paragraph are in addition to any other remedies that are available under subchapter V of this chapter.

(9) Charges by credit, prepaid, debit, charge, or calling card in absence of agreement

For purposes of paragraph (7)(C)(ii), a calling party is not charged in accordance with this paragraph unless the calling party is charged by means of a credit, prepaid, debit, charge, or calling card and the information service provider includes in response to each call an introductory disclosure message that—

(A) clearly states that there is a charge for the call;

(B) clearly states the service's total cost per minute and any other fees for the service or for any service to which the caller may be transferred;

(C) explains that the charges must be billed on either a credit, prepaid, debit, charge, or calling card;

(D) asks the caller for the card number;

(E) clearly states that charges for the call begin at the end of the introductory message; and

(F) clearly states that the caller can hang up at or before the end of the introductory message without incurring any charge whatsoever.

(10) Bypass of introductory disclosure message

The requirements of paragraph (9) shall not apply to calls from repeat callers using a bypass mechanism to avoid listening to the introductory message: *Provided*, That information providers shall disable such a bypass mechanism after the institution of any price increase and for a period of time determined to be sufficient by the Federal Trade Commission to give callers adequate and sufficient notice of a price increase.

(11) "Calling card" defined

As used in this subsection, the term ''calling card'' means an identifying number or code unique to the individual, that is issued to the individual by a common carrier and enables the individual to be charged by means of a phone bill for charges incurred independent of where the call originates.

(d) Billing and collection practices

The regulations required by this section shall require that any common carrier that by tariff or contract assigns a telephone number with a prefix or area code designated by the Commission in accordance with subsection (b)(5) of this section to a provider of a pay-per-call service and that offers billing and collection services to such provider—

(1) ensure that a subscriber is not billed—

(A) for pay-per-call services that such carrier knows or reasonably should know was provided in violation of the regulations issued pursuant to title II of the Telephone Disclosure and Dispute Resolution Act [15 U.S.C. 5711 et seq.]; or

(B) under such other circumstances as the Commission determines necessary in order to protect subscribers from abusive practices;

(2) establish a local or a toll-free telephone number to answer questions and provide information on subscribers' rights and obligations

with regard to their use of pay-per-call services and to provide to callers the name and mailing address of any provider of pay-per-call services offered by the common carrier;

(3) within 60 days after the issuance of final regulations pursuant to subsection (b) of this section, provide, either directly or through contract with any local exchange carrier that provides billing or collection services to the common carrier, to all of such common carrier's telephone subscribers, to all new subscribers, and to all subscribers requesting service at a new location, a disclosure statement that sets forth all rights and obligations of the subscriber and the carrier with respect to the use and payment for pay-per-call services, including the right of a subscriber not to be billed and the applicable blocking option; and

(4) in any billing to telephone subscribers that includes charges for any pay-per-call service—

(A) display any charges for pay-per-call services in a part of the subscriber's bill that is identified as not being related to local and long distance telephone charges;

(B) for each charge so displayed, specify, at a minimum, the type of service, the amount of the charge, and the date, time, and duration of the call; and

(C) identify the toll-free number established pursuant to paragraph (2).

(e) Liability

(1) Common carriers not liable for transmission or billing

No common carrier shall be liable for a criminal or civil sanction or penalty solely because the carrier provided transmission or billing and collection for a pay-per-call service unless the carrier knew or reasonably should have known that such service was provided in violation of a provision of, or regulation prescribed pursuant to, title II or III of the Telephone Disclosure and Dispute Resolution Act [15 U.S.C. 5711 et seq.; 5721 et seq.] or any other Federal law. This paragraph shall not prevent the Commission from imposing a sanction or penalty on a common carrier for a violation by that carrier of a regulation prescribed under this section.

(2) Civil liability

No cause of action may be brought in any court or administrative agency against any common carrier or any of its affiliates on account of any act of the carrier or affiliate to terminate any pay-per-call service in order to comply with the regulations prescribed under this section, title II or III of the Telephone Disclosure and Dispute Resolution Act [15 U.S.C. 5711 et seq.; 5721 et seq.], or any other Federal law unless the complainant demonstrates that the carrier or affiliate did not act in good faith.

(f) Special provisions

(1) Consumer refund requirements

The regulations required by subsection (d) of this section shall establish procedures, consistent with the provisions of titles II and III of the Telephone Disclosure and Dispute Resolution Act [15 U.S.C. 5711 et seq.; 5721 et seq.], to ensure that carriers and other parties providing billing and collection services with respect to pay-per-call services provide appropriate refunds to subscribers who have been billed for pay-per-call services pursuant to programs that have been found to have violated this section or such regulations, any provision of, or regulations prescribed pursuant to, title II or III of the Telephone Disclosure and Dispute Resolution Act, or any other Federal law.

(2) Recovery of costs

The regulations prescribed by the Commission under this section shall permit a common carrier to recover its cost of complying with such regulations from providers of pay-per-call services, but shall not permit such costs to be recovered from local or long distance ratepayers.

(3) Recommendations on data pay-per-call

The Commission, within one year after October 28, 1992, shall submit to the Congress the Commission's recommendations with respect to the extension of regulations under this section to persons that provide, for a per-call charge, data services that are not pay-per-call services.

(g) Effect on other law

(1) No preemption of election law

Nothing in this section shall relieve any provider of pay-per-call services, common carrier, local exchange carrier, or any other person from the obligation to comply with Federal, State, and local election statutes and regulations.

(2) Consumer protection laws

Nothing in this section shall relieve any provider of pay-per-call services, common carrier, local exchange carrier, or any other person from the obligation to comply with any Federal, State, or local statute or regulation relating to consumer protection or unfair trade.

(3) Gambling laws

Nothing in this section shall preclude any State from enforcing its statutes and regulations with regard to lotteries, wagering, betting, and other gambling activities.

(4) State authority

Nothing in this section shall preclude any State from enacting and enforcing additional and complementary oversight and regulatory systems or procedures, or both, so long as such systems and procedures govern intrastate services and do not significantly impede the enforcement of this section or other Federal statutes.

(5) Enforcement of existing regulations

Nothing in this section shall be construed to prohibit the Commission from enforcing regulations prescribed prior to October 28, 1992, in fulfilling the requirements of this section to the extent that such regulations are consistent with the provisions of this section.

(h) Effect on dial-a-porn prohibitions

Nothing in this section shall affect the provisions of section 223 of this title.

(i) "Pay-per-call services" defined

For purposes of this section—

(1) The term ''pay-per-call services'' means any service—

(A) in which any person provides or purports to provide—

(i) audio information or audio entertainment produced or packaged by such person;

(ii) access to simultaneous voice conversation services; or

(iii) any service, including the provision of a product, the charges for which are assessed on the basis of the completion of the call;

(B) for which the caller pays a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call; and

(C) which is accessed through use of a 900 telephone number or other prefix or area code designated by the Commission in accordance with subsection (b)(5) of this section.

(2) Such term does not include directory services provided by a common carrier or its affiliate or by a local exchange carrier or its affiliate, or any service for which users are assessed charges only after entering into a presubscription or comparable arrangement with the provider of such service.

(June 19, 1934, ch. 652, title II, § 228, as added Pub. L. 102–556, title I, § 101, Oct. 28, 1992, 106 Stat. 4182; amended Pub. L. 103–414, title III, § 303(a)(13), (14), Oct. 25, 1994, 108 Stat. 4294; Pub. L. 104–104, title VII, § 701(a)(1), (b)(2), Feb. 8, 1996, 110 Stat. 145, 148.)

REFERENCES IN TEXT

The Telephone Disclosure and Dispute Resolution Act, referred to in subsecs. (c)(1), (3), (d)(1)(A), (e), and (f)(1), is Pub. L. 102–556, Oct. 28, 1992, 106 Stat. 4181. Titles II and III of the Act are classified generally to subchapters I (§ 5711 et seq.) and II (§ 5721 et seq.), respectively, of chapter 83 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 5701(a) of Title 15 and Tables.

AMENDMENTS

1996—Subsec. (c)(7)(C). Pub. L. 104–104, § 701(a)(1)(A), added subpar. (C) and struck out former subpar. (C) which read as follows: ''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''.

Subsec. (c)(7)(E). Pub. L. 104–104, § 701(a)(1)(B), added subpar. (E).

Subsec. (c)(8) to (11). Pub. L. 104–104, § 701(a)(1)(C), added pars. (8) to (11).

Subsec. (i)(2). Pub. L. 104–104, § 701(b)(2), struck out ''or any service the charge for which is tariffed,'' after ''local exchange carrier or its affiliate,''.

1994—Subsec. (c)(2) to (7). Pub. L. 103–414, § 303(a)(13), redesignated par. (2), relating to compliance procedures, as (3) and pars. (3) to (6) as (4) to (7), respectively.

Subsec. (c)(7)(D). Pub. L. 103–414, § 303(a)(14), which directed substitution of ''conversation'' for ''conservation'' in par. (6)(D), was executed by making the substitution in par. (7)(D) to reflect the probable intent of Congress and the redesignation of par. (6) as (7) by Pub. L. 103–414, § 303(a)(13). See above.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 701(a)(3) of Pub. L. 104–104 provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect on the date of enactment of this Act [Feb. 8, 1996].''

REGULATIONS

Section 701(a)(2) of Pub. L. 104–104 provided that: ''The Federal Communications Commission shall revise its regulations to comply with the amendment made by paragraph (1) [amending this section] not later than 180 days after the date of enactment of this Act [Feb. 8, 1996].''

§ 229. Communications Assistance for Law Enforcement Act compliance

(a) In general

The Commission shall prescribe such rules as are necessary to implement the requirements of the Communications Assistance for Law Enforcement Act [47 U.S.C. 1001 et seq.].

(b) Systems security and integrity

The rules prescribed pursuant to subsection (a) of this section shall include rules to implement section 105 of the Communications Assistance for Law Enforcement Act [47 U.S.C. 1004] that require common carriers—

(1) to establish appropriate policies and procedures for the supervision and control of its officers and employees—

(A) to require appropriate authorization to activate interception of communications or access to call-identifying information; and

(B) to prevent any such interception or access without such authorization;

(2) to maintain secure and accurate records of any interception or access with or without such authorization; and

(3) to submit to the Commission the policies and procedures adopted to comply with the requirements established under paragraphs (1) and (2).

(c) Commission review of compliance

The Commission shall review the policies and procedures submitted under subsection (b)(3) of this section and shall order a common carrier to modify any such policy or procedure that the Commission determines does not comply with Commission regulations. The Commission shall conduct such investigations as may be necessary to insure compliance by common carriers with the requirements of the regulations prescribed under this section.

(d) Penalties

For purposes of this chapter, a violation by an officer or employee of any policy or procedure adopted by a common carrier pursuant to subsection (b) of this section, or of a rule prescribed by the Commission pursuant to subsection (a) of this section, shall be considered to be a violation by the carrier of a rule prescribed by the Commission pursuant to this chapter.

(e) Cost recovery for Communications Assistance for Law Enforcement Act compliance

(1) Petitions authorized

A common carrier may petition the Commission to adjust charges, practices, classifications, and regulations to recover costs ex-

pended for making modifications to equipment, facilities, or services pursuant to the requirements of section 103 of the Communications Assistance for Law Enforcement Act [47 U.S.C. 1002].

(2) Commission authority

The Commission may grant, with or without modification, a petition under paragraph (1) if the Commission determines that such costs are reasonable and that permitting recovery is consistent with the public interest. The Commission may, consistent with maintaining just and reasonable charges, practices, classifications, and regulations in connection with the provision of interstate or foreign communication by wire or radio by a common carrier, allow carriers to adjust such charges, practices, classifications, and regulations in order to carry out the purposes of this chapter.

(3) Joint board

The Commission shall convene a Federal-State joint board to recommend appropriate changes to part 36 of the Commission's rules with respect to recovery of costs pursuant to charges, practices, classifications, and regulations under the jurisdiction of the Commission.

(June 19, 1934, ch. 652, title II, §229, as added Pub. L. 103–414, title III, §301, Oct. 25, 1994, 108 Stat. 4292.)

REFERENCES IN TEXT

The Communications Assistance for Law Enforcement Act, referred to in subsecs. (a) and (e), is title I of Pub. L. 103–414, Oct. 25, 1994, 108 Stat. 4279, which is classified generally to subchapter I (§1001 et seq.) of chapter 9 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

§230. Protection for private blocking and screening of offensive material

(a) Findings

The Congress finds the following:

(1) The rapidly developing array of Internet and other interactive computer services available to individual Americans represent an extraordinary advance in the availability of educational and informational resources to our citizens.

(2) These services offer users a great degree of control over the information that they receive, as well as the potential for even greater control in the future as technology develops.

(3) The Internet and other interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.

(4) The Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation.

(5) Increasingly Americans are relying on interactive media for a variety of political, educational, cultural, and entertainment services.

(b) Policy

It is the policy of the United States—

(1) to promote the continued development of the Internet and other interactive computer services and other interactive media;

(2) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation;

(3) to encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet and other interactive computer services;

(4) to remove disincentives for the development and utilization of blocking and filtering technologies that empower parents to restrict their children's access to objectionable or inappropriate online material; and

(5) to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer.

(c) Protection for "Good Samaritan" blocking and screening of offensive material

(1) Treatment of publisher or speaker

No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

(2) Civil liability

No provider or user of an interactive computer service shall be held liable on account of—

(A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

(B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).[1]

(d) Obligations of interactive computer service

A provider of interactive computer service shall, at the time of entering an agreement with a customer for the provision of interactive computer service and in a manner deemed appropriate by the provider, notify such customer that parental control protections (such as computer hardware, software, or filtering services) are commercially available that may assist the customer in limiting access to material that is harmful to minors. Such notice shall identify, or provide the customer with access to information identifying, current providers of such protections.

(e) Effect on other laws

(1) No effect on criminal law

Nothing in this section shall be construed to impair the enforcement of section 223 or 231 of this title, chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of title 18, or any other Federal criminal statute.

[1] So in original. Probably should be "subparagraph (A)."

(2) No effect on intellectual property law

Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property.

(3) State law

Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section. No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.

(4) No effect on communications privacy law

Nothing in this section shall be construed to limit the application of the Electronic Communications Privacy Act of 1986 or any of the amendments made by such Act, or any similar State law.

(f) Definitions

As used in this section:

(1) Internet

The term ''Internet'' means the international computer network of both Federal and non-Federal interoperable packet switched data networks.

(2) Interactive computer service

The term ''interactive computer service'' means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

(3) Information content provider

The term ''information content provider'' means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.

(4) Access software provider

The term ''access software provider'' means a provider of software (including client or server software), or enabling tools that do any one or more of the following:

(A) filter, screen, allow, or disallow content;

(B) pick, choose, analyze, or digest content; or

(C) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.

(June 19, 1934, ch. 652, title II, § 230, as added Pub. L. 104–104, title V, § 509, Feb. 8, 1996, 110 Stat. 137; amended Pub. L. 105–277, div. C, title XIV, § 1404(a), Oct. 21, 1998, 112 Stat. 2681–739.)

REFERENCES IN TEXT

The Electronic Communications Privacy Act of 1986, referred to in subsec. (e)(4), is Pub. L. 99–508, Oct. 21, 1986, 100 Stat. 1848, as amended. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 2510 of Title 18, Crimes and Criminal Procedure, and Tables.

CODIFICATION

Section 509 of Pub. L. 104–104, which directed amendment of title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.) by adding section 230 at end, was executed by adding the section at end of part I of title II of the Act to reflect the probable intent of Congress and amendments by sections 101(a), (b), and 151(a) of Pub. L. 104–104 designating §§ 201 to 229 as part I and adding parts II (§ 251 et seq.) and III (§ 271 et seq.) to title II of the Act.

AMENDMENTS

1998—Subsec. (d). Pub. L. 105–277, § 1404(a)(3), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (d)(1). Pub. L. 105–277, § 1404(a)(1), inserted ''or 231'' after ''section 223''.

Subsecs. (e), (f). Pub. L. 105–277, § 1404(a)(2), redesignated subsecs. (d) and (e) as (e) and (f), respectively.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 effective 30 days after Oct. 21, 1998, see section 1406 of Pub. L. 105–277, set out as a note under section 223 of this title.

§ 231. Restriction of access by minors to materials commercially distributed by means of World Wide Web that are harmful to minors

(a) Requirement to restrict access

(1) Prohibited conduct

Whoever knowingly and with knowledge of the character of the material, in interstate or foreign commerce by means of the World Wide Web, makes any communication for commercial purposes that is available to any minor and that includes any material that is harmful to minors shall be fined not more than $50,000, imprisoned not more than 6 months, or both.

(2) Intentional violations

In addition to the penalties under paragraph (1), whoever intentionally violates such paragraph shall be subject to a fine of not more than $50,000 for each violation. For purposes of this paragraph, each day of violation shall constitute a separate violation.

(3) Civil penalty

In addition to the penalties under paragraphs (1) and (2), whoever violates paragraph (1) shall be subject to a civil penalty of not more than $50,000 for each violation. For purposes of this paragraph, each day of violation shall constitute a separate violation.

(b) Inapplicability of carriers and other service providers

For purposes of subsection (a) of this section, a person shall not be considered to make any communication for commercial purposes to the extent that such person is—

(1) a telecommunications carrier engaged in the provision of a telecommunications service;

(2) a person engaged in the business of providing an Internet access service;

(3) a person engaged in the business of providing an Internet information location tool; or

(4) similarly engaged in the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication made by another person, without selection or alteration of the content of the communication, except that such person's deletion of a particular communication or material made by another person in a manner consistent with subsection (c) of this section

or section 230 of this title shall not constitute such selection or alteration of the content of the communication.

(c) Affirmative defense

(1) Defense

It is an affirmative defense to prosecution under this section that the defendant, in good faith, has restricted access by minors to material that is harmful to minors—

(A) by requiring use of a credit card, debit account, adult access code, or adult personal identification number;

(B) by accepting a digital certificate that verifies age; or

(C) by any other reasonable measures that are feasible under available technology.

(2) Protection for use of defenses

No cause of action may be brought in any court or administrative agency against any person on account of any activity that is not in violation of any law punishable by criminal or civil penalty, and that the person has taken in good faith to implement a defense authorized under this subsection or otherwise to restrict or prevent the transmission of, or access to, a communication specified in this section.

(d) Privacy protection requirements

(1) Disclosure of information limited

A person making a communication described in subsection (a) of this section—

(A) shall not disclose any information collected for the purposes of restricting access to such communications to individuals 17 years of age or older without the prior written or electronic consent of—

(i) the individual concerned, if the individual is an adult; or

(ii) the individual's parent or guardian, if the individual is under 17 years of age; and

(B) shall take such actions as are necessary to prevent unauthorized access to such information by a person other than the person making such communication and the recipient of such communication.

(2) Exceptions

A person making a communication described in subsection (a) of this section may disclose such information if the disclosure is—

(A) necessary to make the communication or conduct a legitimate business activity related to making the communication; or

(B) made pursuant to a court order authorizing such disclosure.

(e) Definitions

For purposes of this subsection,[1] the following definitions shall apply:

(1) By means of the World Wide Web

The term ''by means of the World Wide Web'' means by placement of material in a computer server-based file archive so that it is publicly accessible, over the Internet, using hypertext transfer protocol or any successor protocol.

(2) Commercial purposes; engaged in the business

(A) Commercial purposes

A person shall be considered to make a communication for commercial purposes only if such person is engaged in the business of making such communications.

(B) Engaged in the business

The term ''engaged in the business'' means that the person who makes a communication, or offers to make a communication, by means of the World Wide Web, that includes any material that is harmful to minors, devotes time, attention, or labor to such activities, as a regular course of such person's trade or business, with the objective of earning a profit as a result of such activities (although it is not necessary that the person make a profit or that the making or offering to make such communications be the person's sole or principal business or source of income). A person may be considered to be engaged in the business of making, by means of the World Wide Web, communications for commercial purposes that include material that is harmful to minors, only if the person knowingly causes the material that is harmful to minors to be posted on the World Wide Web or knowingly solicits such material to be posted on the World Wide Web.

(3) Internet

The term ''Internet'' means the combination of computer facilities and electromagnetic transmission media, and related equipment and software, comprising the interconnected worldwide network of computer networks that employ the Transmission Control Protocol/Internet Protocol or any successor protocol to transmit information.

(4) Internet access service

The term ''Internet access service'' means a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information, and other services as part of a package of services offered to consumers. Such term does not include telecommunications services.

(5) Internet information location tool

The term ''Internet information location tool'' means a service that refers or links users to an online location on the World Wide Web. Such term includes directories, indices, references, pointers, and hypertext links.

(6) Material that is harmful to minors

The term ''material that is harmful to minors'' means any communication, picture, image, graphic image file, article, recording, writing, or other matter of any kind that is obscene or that—

(A) the average person, applying contemporary community standards, would find, taking the material as a whole and with respect to minors, is designed to appeal to, or is designed to pander to, the prurient interest;

(B) depicts, describes, or represents, in a manner patently offensive with respect to

[1] So in original. Probably should be ''section,''.

minors, an actual or simulated sexual act or sexual contact, an actual or simulated normal or perverted sexual act, or a lewd exhibition of the genitals or post-pubescent female breast; and

(C) taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.

(7) Minor

The term ''minor'' means any person under 17 years of age.

(June 19, 1934, ch. 652, title II, § 231, as added Pub. L. 105–277, div. C, title XIV, § 1403, Oct. 21, 1998, 112 Stat. 2681–736.)

EFFECTIVE DATE

Section effective 30 days after Oct. 21, 1998, see section 1406 of Pub. L. 105–277, set out as a note under section 223 of this title.

CONGRESSIONAL FINDINGS

Pub. L. 105–277, div. C, title XIV, § 1402, Oct. 21, 1998, 112 Stat. 2681–736, provided that: ''The Congress finds that—

''(1) while custody, care, and nurture of the child resides first with the parent, the widespread availability of the Internet presents opportunities for minors to access materials through the World Wide Web in a manner that can frustrate parental supervision or control;

''(2) the protection of the physical and psychological well-being of minors by shielding them from materials that are harmful to them is a compelling governmental interest;

''(3) to date, while the industry has developed innovative ways to help parents and educators restrict material that is harmful to minors through parental control protections and self-regulation, such efforts have not provided a national solution to the problem of minors accessing harmful material on the World Wide Web;

''(4) a prohibition on the distribution of material harmful to minors, combined with legitimate defenses, is currently the most effective and least restrictive means by which to satisfy the compelling government interest; and

''(5) notwithstanding the existence of protections that limit the distribution over the World Wide Web of material that is harmful to minors, parents, educators, and industry must continue efforts to find ways to protect children from being exposed to harmful material found on the Internet.''

STUDY BY COMMISSION ON ONLINE CHILD PROTECTION

Pub. L. 105–277, div. C, title XIV, § 1405, Oct. 21, 1998, 112 Stat. 2681–739, as amended by Pub. L. 106–113, div. B, § 1000(a)(9) [title V, § 5001(b)–(f), Nov. 29, 1999, 113 Stat. 1536, 1501A–591, 1501–592; Pub. L. 106–229, title IV, § 401, June 30, 2000, 114 Stat. 476, provided that:

''(a) ESTABLISHMENT.—There is hereby established a temporary Commission to be known as the Commission on Online Child Protection (in this section referred to as the 'Commission') for the purpose of conducting a study under this section regarding methods to help reduce access by minors to material that is harmful to minors on the Internet.

''(b) MEMBERSHIP.—The Commission shall be composed of 19 members, as follows:

''(1) INDUSTRY MEMBERS.—The Commission shall include 16 members who shall consist of representatives of—

''(A) providers of Internet filtering or blocking services or software;

''(B) Internet access services;

''(C) labeling or ratings services;

''(D) Internet portal or search services;

''(E) domain name registration services;

''(F) academic experts; and

''(G) providers that make content available over the Internet.

Of the members of the Commission by reason of this paragraph, an equal number shall be appointed by the Speaker of the House of Representatives and by the Majority Leader of the Senate. Members of the Commission appointed on or before October 31, 1999, shall remain members.

''(2) EX OFFICIO MEMBERS.—The Commission shall include the following officials:

''(A) The Assistant Secretary (or the Assistant Secretary's designee).

''(B) The Attorney General (or the Attorney General's designee).

''(C) The Chairman of the Federal Trade Commission (or the Chairman's designee).

''(3) PROHIBITION OF PAY.—Members of the Commission shall not receive any pay by reason of their membership on the Commission.

''(c) FIRST MEETING.—The Commission shall hold its first meeting not later than March 31, 2000.

''(d) CHAIRPERSON.—The chairperson of the Commission shall be elected by a vote of a majority of the members, which shall take place not later than 30 days after the first meeting of the Commission.

''(e) STUDY.—

''(1) IN GENERAL.—The Commission shall conduct a study to identify technological or other methods that—

''(A) will help reduce access by minors to material that is harmful to minors on the Internet; and

''(B) may meet the requirements for use as affirmative defenses for purposes of section 231(c) of the Communications Act of 1934 [47 U.S.C. 231(c)] (as added by this title).

''Any methods so identified shall be used as the basis for making legislative recommendations to the Congress under subsection (d)(3).

''(2) SPECIFIC METHODS.—In carrying out the study, the Commission shall identify and analyze various technological tools and methods for protecting minors from material that is harmful to minors, which shall include (without limitation)—

''(A) a common resource for parents to use to help protect minors (such as a 'one-click-away' resource);

''(B) filtering or blocking software or services;

''(C) labeling or rating systems;

''(D) age verification systems;

''(E) the establishment of a domain name for posting of any material that is harmful to minors; and

''(F) any other existing or proposed technologies or methods for reducing access by minors to such material.

''(3) ANALYSIS.—In analyzing technologies and other methods identified pursuant to paragraph (2), the Commission shall examine—

''(A) the cost of such technologies and methods;

''(B) the effects of such technologies and methods on law enforcement entities;

''(C) the effects of such technologies and methods on privacy;

''(D) the extent to which material that is harmful to minors is globally distributed and the effect of such technologies and methods on such distribution;

''(E) the accessibility of such technologies and methods to parents; and

''(F) such other factors and issues as the Commission considers relevant and appropriate.

''(f) REPORT.—Not later than 2 years after the enactment of this Act [Oct. 21, 1998], the Commission shall submit a report to the Congress containing the results of the study under this section, which shall include—

''(1) a description of the technologies and methods identified by the study and the results of the analysis of each such technology and method;

''(2) the conclusions and recommendations of the Commission regarding each such technology or method;

''(3) recommendations for legislative or administrative actions to implement the conclusions of the committee; and

''(4) a description of the technologies or methods identified by the study that may meet the requirements for use as affirmative defenses for purposes of section 231(c) of the Communications Act of 1934 [47 U.S.C. 231(c)] (as added by this title).

''(g) RULES OF THE COMMISSION.—

''(1) QUORUM.—Nine members of the Commission shall constitute a quorum for conducting the business of the Commission.

''(2) MEETINGS.—Any meetings held by the Commission shall be duly noticed at least 14 days in advance and shall be open to the public.

''(3) OPPORTUNITIES TO TESTIFY.—The Commission shall provide opportunities for representatives of the general public to testify.

''(4) ADDITIONAL RULES.—The Commission may adopt other rules as necessary to carry out this section.

''(h) GIFTS, BEQUESTS, AND DEVISES.—The Commission may accept, use, and dispose of gifts, bequests, or devises of services or property, both real (including the use of office space) and personal, for the purpose of aiding or facilitating the work of the Commission. Gifts or grants not used at the termination of the Commission shall be returned to the donor or grantee.

''(*l*)[i] TERMINATION.—The Commission shall terminate 30 days after the submission of the report under subsection (d) or November 30, 2000, whichever occurs earlier.

''(m)[j] INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commission.''

PART II—DEVELOPMENT OF COMPETITIVE MARKETS

§ 251. Interconnection

(a) General duty of telecommunications carriers

Each telecommunications carrier has the duty—

(1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers; and

(2) not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to section 255 or 256 of this title.

(b) Obligations of all local exchange carriers

Each local exchange carrier has the following duties:

(1) Resale

The duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services.

(2) Number portability

The duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.

(3) Dialing parity

The duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.

(4) Access to rights-of-way

The duty to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with section 224 of this title.

(5) Reciprocal compensation

The duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

(c) Additional obligations of incumbent local exchange carriers

In addition to the duties contained in subsection (b) of this section, each incumbent local exchange carrier has the following duties:

(1) Duty to negotiate

The duty to negotiate in good faith in accordance with section 252 of this title the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) of this section and this subsection. The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.

(2) Interconnection

The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network—

(A) for the transmission and routing of telephone exchange service and exchange access;

(B) at any technically feasible point within the carrier's network;

(C) that is at least equal in quality 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; and

(D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title.

(3) Unbundled access

The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

(4) Resale

The duty—

(A) to offer for resale at wholesale rates any telecommunications service that the

carrier provides at retail to subscribers who are not telecommunications carriers; and

(B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.

(5) Notice of changes

The duty to provide 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.

(6) Collocation

The duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations.

(d) Implementation

(1) In general

Within 6 months after February 8, 1996, the Commission shall complete all actions necessary to establish regulations to implement the requirements of this section.

(2) Access standards

In determining what network elements should be made available for purposes of subsection (c)(3) of this section, the Commission shall consider, at a minimum, whether—

(A) access to such network elements as are proprietary in nature is necessary; and

(B) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.

(3) Preservation of State access regulations

In prescribing and enforcing regulations to implement the requirements of this section, the Commission shall not preclude the enforcement of any regulation, order, or policy of a State commission that—

(A) establishes access and interconnection obligations of local exchange carriers;

(B) is consistent with the requirements of this section; and

(C) does not substantially prevent implementation of the requirements of this section and the purposes of this part.

(e) Numbering administration

(1) Commission authority and jurisdiction

The Commission shall create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis. The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States. Nothing in this paragraph shall preclude the Commission from delegating to State commissions or other entities all or any portion of such jurisdiction.

(2) Costs

The cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.

(3) Universal emergency telephone number

The Commission and any agency or entity to which the Commission has delegated authority under this subsection shall designate 9–1–1 as the universal emergency telephone number within the United States for reporting an emergency to appropriate authorities and requesting assistance. The designation shall apply to both wireline and wireless telephone service. In making the designation, the Commission (and any such agency or entity) shall provide appropriate transition periods for areas in which 9–1–1 is not in use as an emergency telephone number on October 26, 1999.

(f) Exemptions, suspensions, and modifications

(1) Exemption for certain rural telephone companies

(A) Exemption

Subsection (c) of this section shall not apply to a rural telephone company until (i) such company has received a bona fide request for interconnection, services, or network elements, and (ii) the State commission determines (under subparagraph (B)) that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 of this title (other than subsections (b)(7) and (c)(1)(D) thereof).

(B) State termination of exemption and implementation schedule

The party making a bona fide request of a rural telephone company for interconnection, services, or network elements shall submit a notice of its request to the State commission. The State commission shall conduct an inquiry for the purpose of determining whether to terminate the exemption under subparagraph (A). Within 120 days after the State commission receives notice of the request, the State commission shall terminate the exemption if the request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 of this title (other than subsections (b)(7) and (c)(1)(D) thereof). Upon termination of the exemption, a State commission shall establish an implementation schedule for compliance with the request that is consistent in time and manner with Commission regulations.

(C) Limitation on exemption

The exemption provided by this paragraph shall not apply with respect to a request under subsection (c) of this section from a cable operator providing video programming, and seeking to provide any telecommunications service, in the area in which the rural telephone company provides video programming. The limitation contained in this subparagraph shall not apply to a rural telephone company that is providing video programming on February 8, 1996.

(2) Suspensions and modifications for rural carriers

A local exchange carrier with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide may petition a State commission for a suspension or modification of the application of a requirement or requirements of subsection (b) or (c) of this section to telephone exchange service facilities specified in such petition. The State commission shall grant such petition to the extent that, and for such duration as, the State commission determines that such suspension or modification—

(A) is necessary—

(i) to avoid a significant adverse economic impact on users of telecommunications services generally;

(ii) to avoid imposing a requirement that is unduly economically burdensome; or

(iii) to avoid imposing a requirement that is technically infeasible; and

(B) is consistent with the public interest, convenience, and necessity.

The State commission shall act upon any petition filed under this paragraph within 180 days after receiving such petition. Pending such action, the State commission may suspend enforcement of the requirement or requirements to which the petition applies with respect to the petitioning carrier or carriers.

(g) Continued enforcement of exchange access and interconnection requirements

On and after February 8, 1996, each local exchange carrier, to the extent that it provides wireline services, shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding February 8, 1996, under any court order, consent decree, or regulation, order, or policy of the Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after February 8, 1996. During the period beginning on February 8, 1996, and until such restrictions and obligations are so superseded, such restrictions and obligations shall be enforceable in the same manner as regulations of the Commission.

(h) "Incumbent local exchange carrier" defined

(1) Definition

For purposes of this section, the term ''incumbent local exchange carrier'' means, with respect to an area, the local exchange carrier that—

(A) on February 8, 1996, provided telephone exchange service in such area; and

(B)(i) on February 8, 1996, was deemed to be a member of the exchange carrier association pursuant to section 69.601(b) of the Commission's regulations (47 C.F.R. 69.601(b)); or

(ii) is a person or entity that, on or after February 8, 1996, became a successor or assign of a member described in clause (i).

(2) Treatment of comparable carriers as incumbents

The Commission may, by rule, provide for the treatment of a local exchange carrier (or class or category thereof) as an incumbent local exchange carrier for purposes of this section if—

(A) such carrier occupies a position in the market for telephone exchange service within an area that is comparable to the position occupied by a carrier described in paragraph (1);

(B) such carrier has substantially replaced an incumbent local exchange carrier described in paragraph (1); and

(C) such treatment is consistent with the public interest, convenience, and necessity and the purposes of this section.

(i) Savings provision

Nothing in this section shall be construed to limit or otherwise affect the Commission's authority under section 201 of this title.

(June 19, 1934, ch. 652, title II, § 251, as added Pub. L. 104–104, title I, § 101(a), Feb. 8, 1996, 110 Stat. 61; amended Pub. L. 106–81, § 3(a), Oct. 26, 1999, 113 Stat. 1287.)

AMENDMENTS

1999—Subsec. (e)(3). Pub. L. 106–81 added par. (3).

§ 252. Procedures for negotiation, arbitration, and approval of agreements

(a) Agreements arrived at through negotiation

(1) Voluntary negotiations

Upon receiving a request for interconnection, services, or network elements pursuant to section 251 of this title, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251 of this title. The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement. The agreement, including any interconnection agreement negotiated before February 8, 1996, shall be submitted to the State commission under subsection (e) of this section.

(2) Mediation

Any party negotiating an agreement under this section may, at any point in the negotiation, ask a State commission to participate in the negotiation and to mediate any differences arising in the course of the negotiation.

(b) Agreements arrived at through compulsory arbitration

(1) Arbitration

During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

(2) Duty of petitioner

(A) A party that petitions a State commission under paragraph (1) shall, at the same time as it submits the petition, provide the State commission all relevant documentation concerning—

(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 commission under paragraph (1) shall provide a copy of the petition and any documentation to the other party or parties not later than the day on which the State commission receives the petition.

(3) Opportunity to respond

A non-petitioning party to a negotiation under this section may respond to the other party's petition and provide such additional information as it wishes within 25 days after the State commission receives the petition.

(4) Action by State commission

(A) The State commission shall limit its consideration of any petition under paragraph (1) (and any response thereto) to the issues set forth in the petition and in the response, if any, filed under paragraph (3).

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

(C) The State commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection (c) of this section upon the parties to the agreement, and shall conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section.

(5) Refusal to negotiate

The refusal of any other party to the negotiation to participate further in the negotiations, to cooperate with the State commission in carrying out its function as an arbitrator, or to continue to negotiate in good faith in the presence, or with the assistance, of the State commission shall be considered a failure to negotiate in good faith.

(c) Standards for arbitration

In resolving by arbitration under subsection (b) of this section any open issues and imposing conditions upon the parties to the agreement, a State commission shall—

(1) ensure that such resolution and conditions meet the requirements of section 251 of this title, including the regulations prescribed by the Commission pursuant to section 251 of this title;

(2) establish any rates for interconnection, services, or network elements according to subsection (d) of this section; and

(3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

(d) Pricing standards

(1) Interconnection and network element charges

Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251 of this title, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section—

(A) shall be—

(i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and

(ii) nondiscriminatory, and

(B) may include a reasonable profit.

(2) Charges for transport and termination of traffic

(A) In general

For the purposes of compliance by an incumbent local exchange carrier with section 251(b)(5) of this title, a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless—

(i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and

(ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.

(B) Rules of construction

This paragraph shall not be construed—

(i) to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements); or

(ii) to authorize the Commission or any State commission to engage in any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls, or to require carriers to maintain records with respect to the additional costs of such calls.

(3) Wholesale prices for telecommunications services

For the purposes of section 251(c)(4) of this title, a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.

(e) Approval by State commission

(1) Approval required

Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.

(2) Grounds for rejection

The State commission may only reject—

(A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) of this section if it finds that—

(i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or

(ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity; or

(B) an agreement (or any portion thereof) adopted by arbitration under subsection (b) of this section if it finds that the agreement does not meet the requirements of section 251 of this title, including the regulations prescribed by the Commission pursuant to section 251 of this title, or the standards set forth in subsection (d) of this section.

(3) Preservation of authority

Notwithstanding paragraph (2), but subject to section 253 of this title, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

(4) Schedule for decision

If the State commission does not act to approve or reject the agreement within 90 days after submission by the parties of an agreement adopted by negotiation under subsection (a) of this section, or within 30 days after submission by the parties of an agreement adopted by arbitration under subsection (b) of this section, the agreement shall be deemed approved. No State court shall have jurisdiction to review the action of a State commission in approving or rejecting an agreement under this section.

(5) Commission to act if State will not act

If a State commission fails to act to carry out its responsibility under this section in any proceeding or other matter under this section, then the Commission shall issue an order preempting the State commission'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 commission under this section with respect to the proceeding or matter and act for the State commission.

(6) Review of State commission actions

In a case in which a State fails to act as described in paragraph (5), the proceeding by the Commission under such paragraph and any judicial review of the Commission's actions shall be the exclusive remedies for a State commission's failure to act. In any case in which a State commission makes a determination under this section, any party aggrieved by such determination may bring an action in an appropriate Federal district court to determine whether the agreement or statement meets the requirements of section 251 of this title and this section.

(f) Statements of generally available terms

(1) In general

A Bell operating company may prepare and file with a State commission a statement of the terms and conditions that such company generally offers within that State to comply with the requirements of section 251 of this title and the regulations thereunder and the standards applicable under this section.

(2) State commission review

A State commission may not approve such statement unless such statement complies with subsection (d) of this section and section 251 of this title and the regulations thereunder. Except as provided in section 253 of this title, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of such statement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

(3) Schedule for review

The State commission to which a statement is submitted shall, not later than 60 days after the date of such submission—

(A) complete the review of such statement under paragraph (2) (including any reconsideration thereof), unless the submitting carrier agrees to an extension of the period for such review; or

(B) permit such statement to take effect.

(4) Authority to continue review

Paragraph (3) shall not preclude the State commission from continuing to review a statement that has been permitted to take effect under subparagraph (B) of such paragraph or from approving or disapproving such statement under paragraph (2).

(5) Duty to negotiate not affected

The submission or approval of a statement under this subsection shall not relieve a Bell operating company of its duty to negotiate the terms and conditions of an agreement under section 251 of this title.

(g) Consolidation of State proceedings

Where not inconsistent with the requirements of this chapter, a State commission may, to the

extent practical, consolidate proceedings under sections 214(e), 251(f), 253 of this title, and this section in order to reduce administrative burdens on telecommunications carriers, other parties to the proceedings, and the State commission in carrying out its responsibilities under this chapter.

(h) Filing required

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

(i) Availability to other telecommunications carriers

A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

(j) "Incumbent local exchange carrier" defined

For purposes of this section, the term ''incumbent local exchange carrier'' has the meaning provided in section 251(h) of this title.

(June 19, 1934, ch. 652, title II, § 252, as added Pub. L. 104–104, title I, § 101(a), Feb. 8, 1996, 110 Stat. 66.)

§ 253. 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 service.

(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 254 of this title, 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) State and local government authority

Nothing in this section affects the authority of a State or 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 subsection (a) or (b) of this section, the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.

(e) Commercial mobile service providers

Nothing in this section shall affect the application of section 332(c)(3) of this title to commercial mobile service providers.

(f) Rural markets

It shall not be a violation of this section for a State to require a telecommunications carrier that seeks to provide telephone exchange service or exchange access in a service area served by a rural telephone company to meet the requirements in section 214(e)(1) of this title for designation as an eligible telecommunications carrier for that area before being permitted to provide such service. This subsection shall not apply—

(1) to a service area served by a rural telephone company that has obtained an exemption, suspension, or modification of section 251(c)(4) of this title that effectively prevents a competitor from meeting the requirements of section 214(e)(1) of this title; and

(2) to a provider of commercial mobile services.

(June 19, 1934, ch. 652, title II, § 253, as added Pub. L. 104–104, title I, § 101(a), Feb. 8, 1996, 110 Stat. 70.)

§ 254. Universal service

(a) Procedures to review universal service requirements

(1) Federal-State Joint Board on universal service

Within one month after February 8, 1996, the Commission shall institute and refer to a Federal-State Joint Board under section 410(c) of this title a proceeding to recommend changes to any of its regulations in order to implement sections 214(e) of this title and this section, including the definition of the services that are supported by Federal universal service support mechanisms and a specific timetable for completion of such recommendations. In addition to the members of the Joint Board required under section 410(c) of this title, one member of such Joint Board shall be a State-appointed utility consumer advocate nominated by a national organization of State utility consumer advocates. The Joint Board shall, after notice and opportunity for public comment, make its recommendations to the Commission 9 months after February 8, 1996.

(2) Commission action

The Commission shall initiate a single proceeding to implement the recommendations from the Joint Board required by paragraph (1) and shall complete such proceeding within 15 months after February 8, 1996. The rules established by such proceeding shall include a definition of the services that are supported by Federal universal service support mechanisms and a specific timetable for implementation. Thereafter, the Commission shall complete

any proceeding to implement subsequent recommendations from any Joint Board on universal service within one year after receiving such recommendations.

(b) 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 and rates

Quality services should be available at just, reasonable, and affordable rates.

(2) Access to advanced services

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

(3) Access in rural and high cost areas

Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

(4) Equitable and nondiscriminatory contributions

All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.

(5) Specific and predictable support mechanisms

There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.

(6) Access to advanced telecommunications services for schools, health care, and libraries

Elementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services as described in subsection (h) of this section.

(7) Additional principles

Such other principles as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this chapter.

(c) Definition

(1) In general

Universal service is an evolving level of telecommunications services that the Commission shall establish periodically under this section, taking into account advances in telecommunications and information technologies and services. The Joint Board in recommending, and the Commission in establishing, the definition of the services that are supported by Federal universal service support mechanisms shall consider the extent to which such telecommunications services—

(A) are essential to education, public health, or public safety;

(B) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers;

(C) are being deployed in public telecommunications networks by telecommunications carriers; and

(D) are consistent with the public interest, convenience, and necessity.

(2) Alterations and modifications

The Joint Board may, from time to time, recommend to the Commission modifications in the definition of the services that are supported by Federal universal service support mechanisms.

(3) Special services

In addition to the services included in the definition of universal service under paragraph (1), the Commission may designate additional services for such support mechanisms for schools, libraries, and health care providers for the purposes of subsection (h) of this section.

(d) Telecommunications carrier contribution

Every telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service. The Commission may exempt a carrier or class of carriers from this requirement if the carrier's telecommunications activities are limited to such an extent that the level of such carrier's contribution to the preservation and advancement of universal service would be de minimis. Any other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires.

(e) Universal service support

After the date on which Commission regulations implementing this section take effect, only an eligible telecommunications carrier designated under section 214(e) of this title shall be eligible to receive specific Federal universal service support. A carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Any such support should be explicit and sufficient to achieve the purposes of this section.

(f) State authority

A State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service. Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State. A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and

sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms.

(g) Interexchange and interstate services

Within 6 months after February 8, 1996, the Commission shall adopt rules to require that the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas. Such rules shall also require that a provider of interstate interexchange telecommunications services shall provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State.

(h) Telecommunications services for certain providers

(1) In general

(A) Health care providers for rural areas

A telecommunications carrier shall, upon receiving a bona fide request, provide telecommunications services which are necessary for the provision of health care services in a State, including instruction relating to such services, to any public or nonprofit health care provider that serves persons who reside in rural areas in that State at rates that are reasonably comparable to rates charged for similar services in urban areas in that State. A telecommunications carrier providing service under this paragraph shall be entitled to have an amount equal to the difference, if any, between the rates for services provided to health care providers for rural areas in a State and the rates for similar services provided to other customers in comparable rural areas in that State treated as a service obligation as a part of its obligation to participate in the mechanisms to preserve and advance universal service.

(B) Educational providers and libraries

All telecommunications carriers serving a geographic area shall, upon a bona fide request for any of its services that are within the definition of universal service under subsection (c)(3) of this section, provide such services to elementary schools, secondary schools, and libraries for educational purposes at rates less than the amounts charged for similar services to other parties. The discount shall be an amount that the Commission, with respect to interstate services, and the States, with respect to intrastate services, determine is appropriate and necessary to ensure affordable access to and use of such services by such entities. A telecommunications carrier providing service under this paragraph shall—

(i) have an amount equal to the amount of the discount treated as an offset to its obligation to contribute to the mechanisms to preserve and advance universal service, or

(ii) notwithstanding the provisions of subsection (e) of this section, receive reimbursement utilizing the support mechanisms to preserve and advance universal service.

(2) Advanced services

The Commission shall establish competitively neutral rules—

(A) to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms, health care providers, and libraries; and

(B) to define the circumstances under which a telecommunications carrier may be required to connect its network to such public institutional telecommunications users.

(3) Terms and conditions

Telecommunications services and network capacity provided to a public institutional telecommunications user under this subsection may not be sold, resold, or otherwise transferred by such user in consideration for money or any other thing of value.

(4) Eligibility of users

No entity listed in this subsection shall be entitled to preferential rates or treatment as required by this subsection, if such entity operates as a for-profit business, is a school described in paragraph (7)(A) with an endowment of more than $50,000,000, or is a library or library consortium not eligible for assistance from a State library administrative agency under the Library Services and Technology Act [20 U.S.C. 9121 et seq.].

(5) Requirements for certain schools with computers having Internet access

(A) Internet safety

(i) In general

Except as provided in clause (ii), an elementary or secondary school having computers with Internet access may not receive services at discount rates under paragraph (1)(B) unless the school, school board, local educational agency, or other authority with responsibility for administration of the school—

(I) submits to the Commission the certifications described in subparagraphs (B) and (C);

(II) submits to the Commission a certification that an Internet safety policy has been adopted and implemented for the school under subsection (*l*) of this section; and

(III) ensures the use of such computers in accordance with the certifications.

(ii) Applicability

The prohibition in clause (i) shall not apply with respect to a school that receives services at discount rates under paragraph (1)(B) only for purposes other than the provision of Internet access, Internet service, or internal connections.

(iii) Public notice; hearing

An elementary or secondary school described in clause (i), or the school board,

local educational agency, or other authority with responsibility for administration of the school, shall provide reasonable public notice and hold at least one public hearing or meeting to address the proposed Internet safety policy. In the case of an elementary or secondary school other than an elementary or secondary school as defined in section 8801[1] of title 20, the notice and hearing required by this clause may be limited to those members of the public with a relationship to the school.

(B) Certification with respect to minors

A certification under this subparagraph is a certification that the school, school board, local educational agency, or other authority with responsibility for administration of the school—

(i) is enforcing a policy of Internet safety for minors that includes monitoring the online activities of minors and the operation of a technology protection measure with respect to any of its computers with Internet access that protects against access through such computers to visual depictions that are—

(I) obscene;

(II) child pornography; or

(III) harmful to minors; and

(ii) is enforcing the operation of such technology protection measure during any use of such computers by minors.

(C) Certification with respect to adults

A certification under this paragraph is a certification that the school, school board, local educational agency, or other authority with responsibility for administration of the school—

(i) is enforcing a policy of Internet safety that includes the operation of a technology protection measure with respect to any of its computers with Internet access that protects against access through such computers to visual depictions that are—

(I) obscene; or

(II) child pornography; and

(ii) is enforcing the operation of such technology protection measure during any use of such computers.

(D) Disabling during adult use

An administrator, supervisor, or other person authorized by the certifying authority under subparagraph (A)(i) may disable the technology protection measure concerned, during use by an adult, to enable access for bona fide research or other lawful purpose.

(E) Timing of implementation

(i) In general

Subject to clause (ii) in the case of any school covered by this paragraph as of the effective date of this paragraph under section 1721(h) of the Children's Internet Protection Act, the certification under subparagraphs (B) and (C) shall be made—

(I) with respect to the first program funding year under this subsection following such effective date, not later than 120 days after the beginning of such program funding year; and

(II) with respect to any subsequent program funding year, as part of the application process for such program funding year.

(ii) Process

(I) Schools with Internet safety policy and technology protection measures in place

A school covered by clause (i) that has in place an Internet safety policy and technology protection measures meeting the requirements necessary for certification under subparagraphs (B) and (C) shall certify its compliance with subparagraphs (B) and (C) during each annual program application cycle under this subsection, except that with respect to the first program funding year after the effective date of this paragraph under section 1721(h) of the Children's Internet Protection Act, the certifications shall be made not later than 120 days after the beginning of such first program funding year.

(II) Schools without Internet safety policy and technology protection measures in place

A school covered by clause (i) that does not have in place an Internet safety policy and technology protection measures meeting the requirements necessary for certification under subparagraphs (B) and (C)—

(aa) for the first program year after the effective date of this subsection in which it is applying for funds under this subsection, shall certify that it is undertaking such actions, including any necessary procurement procedures, to put in place an Internet safety policy and technology protection measures meeting the requirements necessary for certification under subparagraphs (B) and (C); and

(bb) for the second program year after the effective date of this subsection in which it is applying for funds under this subsection, shall certify that it is in compliance with subparagraphs (B) and (C).

Any school that is unable to certify compliance with such requirements in such second program year shall be ineligible for services at discount rates or funding in lieu of services at such rates under this subsection for such second year and all subsequent program years under this subsection, until such time as such school comes into compliance with this paragraph.

(III) Waivers

Any school subject to subclause (II) that cannot come into compliance with subparagraphs (B) and (C) in such second year program may seek a waiver of subclause (II)(bb) if State or local procure-

[1] See References in Text note below.

ment rules or regulations or competitive bidding requirements prevent the making of the certification otherwise required by such subclause. A school, school board, local educational agency, or other authority with responsibility for administration of the school shall notify the Commission of the applicability of such subclause to the school. Such notice shall certify that the school in question will be brought into compliance before the start of the third program year after the effective date of this subsection in which the school is applying for funds under this subsection.

(F) Noncompliance

(i) Failure to submit certification

Any school that knowingly fails to comply with the application guidelines regarding the annual submission of certification required by this paragraph shall not be eligible for services at discount rates or funding in lieu of services at such rates under this subsection.

(ii) Failure to comply with certification

Any school that knowingly fails to ensure the use of its computers in accordance with a certification under subparagraphs (B) and (C) shall reimburse any funds and discounts received under this subsection for the period covered by such certification.

(iii) Remedy of noncompliance

(I) Failure to submit

A school that has failed to submit a certification under clause (i) may remedy the failure by submitting the certification to which the failure relates. Upon submittal of such certification, the school shall be eligible for services at discount rates under this subsection.

(II) Failure to comply

A school that has failed to comply with a certification as described in clause (ii) may remedy the failure by ensuring the use of its computers in accordance with such certification. Upon submittal to the Commission of a certification or other appropriate evidence of such remedy, the school shall be eligible for services at discount rates under this subsection.

(6) Requirements for certain libraries with computers having Internet access

(A) Internet safety

(i) In general

Except as provided in clause (ii), a library having one or more computers with Internet access may not receive services at discount rates under paragraph (1)(B) unless the library—

(I) submits to the Commission the certifications described in subparagraphs (B) and (C); and

(II) submits to the Commission a certification that an Internet safety policy has been adopted and implemented for the library under subsection (*l*) of this section; and

(III) ensures the use of such computers in accordance with the certifications.

(ii) Applicability

The prohibition in clause (i) shall not apply with respect to a library that receives services at discount rates under paragraph (1)(B) only for purposes other than the provision of Internet access, Internet service, or internal connections.

(iii) Public notice; hearing

A library described in clause (i) shall provide reasonable public notice and hold at least one public hearing or meeting to address the proposed Internet safety policy.

(B) Certification with respect to minors

A certification under this subparagraph is a certification that the library—

(i) is enforcing a policy of Internet safety that includes the operation of a technology protection measure with respect to any of its computers with Internet access that protects against access through such computers to visual depictions that are—

(I) obscene;

(II) child pornography; or

(III) harmful to minors; and

(ii) is enforcing the operation of such technology protection measure during any use of such computers by minors.

(C) Certification with respect to adults

A certification under this paragraph is a certification that the library—

(i) is enforcing a policy of Internet safety that includes the operation of a technology protection measure with respect to any of its computers with Internet access that protects against access through such computers to visual depictions that are—

(I) obscene; or

(II) child pornography; and

(ii) is enforcing the operation of such technology protection measure during any use of such computers.

(D) Disabling during adult use

An administrator, supervisor, or other person authorized by the certifying authority under subparagraph (A)(i) may disable the technology protection measure concerned, during use by an adult, to enable access for bona fide research or other lawful purpose.

(E) Timing of implementation

(i) In general

Subject to clause (ii) in the case of any library covered by this paragraph as of the effective date of this paragraph under section 1721(h) of the Children's Internet Protection Act, the certification under subparagraphs (B) and (C) shall be made—

(I) with respect to the first program funding year under this subsection following such effective date, not later than 120 days after the beginning of such program funding year; and

(II) with respect to any subsequent program funding year, as part of the application process for such program funding year.

(ii) Process

(I) Libraries with Internet safety policy and technology protection measures in place

A library covered by clause (i) that has in place an Internet safety policy and technology protection measures meeting the requirements necessary for certification under subparagraphs (B) and (C) shall certify its compliance with subparagraphs (B) and (C) during each annual program application cycle under this subsection, except that with respect to the first program funding year after the effective date of this paragraph under section 1721(h) of the Children's Internet Protection Act, the certifications shall be made not later than 120 days after the beginning of such first program funding year.

(II) Libraries without Internet safety policy and technology protection measures in place

A library covered by clause (i) that does not have in place an Internet safety policy and technology protection measures meeting the requirements necessary for certification under subparagraphs (B) and (C)—

(aa) for the first program year after the effective date of this subsection in which it is applying for funds under this subsection, shall certify that it is undertaking such actions, including any necessary procurement procedures, to put in place an Internet safety policy and technology protection measures meeting the requirements necessary for certification under subparagraphs (B) and (C); and

(bb) for the second program year after the effective date of this subsection in which it is applying for funds under this subsection, shall certify that it is in compliance with subparagraphs (B) and (C).

Any library that is unable to certify compliance with such requirements in such second program year shall be ineligible for services at discount rates or funding in lieu of services at such rates under this subsection for such second year and all subsequent program years under this subsection, until such time as such library comes into compliance with this paragraph.

(III) Waivers

Any library subject to subclause (II) that cannot come into compliance with subparagraphs (B) and (C) in such second year may seek a waiver of subclause (II)(bb) if State or local procurement rules or regulations or competitive bidding requirements prevent the making of the certification otherwise required by such subclause. A library, library board, or other authority with responsibility for administration of the library shall notify the Commission of the applicability of such subclause to the library. Such notice shall certify that the library in question will be brought into compliance before the start of the third program year after the effective date of this subsection in which the library is applying for funds under this subsection.

(F) Noncompliance

(i) Failure to submit certification

Any library that knowingly fails to comply with the application guidelines regarding the annual submission of certification required by this paragraph shall not be eligible for services at discount rates or funding in lieu of services at such rates under this subsection.

(ii) Failure to comply with certification

Any library that knowingly fails to ensure the use of its computers in accordance with a certification under subparagraphs (B) and (C) shall reimburse all funds and discounts received under this subsection for the period covered by such certification.

(iii) Remedy of noncompliance

(I) Failure to submit

A library that has failed to submit a certification under clause (i) may remedy the failure by submitting the certification to which the failure relates. Upon submittal of such certification, the library shall be eligible for services at discount rates under this subsection.

(II) Failure to comply

A library that has failed to comply with a certification as described in clause (ii) may remedy the failure by ensuring the use of its computers in accordance with such certification. Upon submittal to the Commission of a certification or other appropriate evidence of such remedy, the library shall be eligible for services at discount rates under this subsection.

(7) Definitions

For purposes of this subsection:

(A) Elementary and secondary schools

The term ''elementary and secondary schools'' means elementary schools and secondary schools, as defined in section 7801 of title 20.

(B) Health care provider

The term ''health care provider'' means—

(i) post-secondary educational institutions offering health care instruction, teaching hospitals, and medical schools;

(ii) community health centers or health centers providing health care to migrants;

(iii) local health departments or agencies;

(iv) community mental health centers;

(v) not-for-profit hospitals;

(vi) rural health clinics; and

(vii) consortia of health care providers consisting of one or more entities described in clauses (i) through (vi).

(C) 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 paragraph.

(D) Minor

The term ''minor'' means any individual who has not attained the age of 17 years.

(E) Obscene

The term ''obscene'' has the meaning given such term in section 1460 of title 18.

(F) Child pornography

The term ''child pornography'' has the meaning given such term in section 2256 of title 18.

(G) Harmful to minors

The term ''harmful to minors'' means any picture, image, graphic image file, or other visual depiction that—

(i) taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion;

(ii) depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and

(iii) taken as a whole, lacks serious literary, artistic, political, or scientific value as to minors.

(H) Sexual act; sexual contact

The terms ''sexual act'' and ''sexual contact'' have the meanings given such terms in section 2246 of title 18.

(I) Technology protection measure

The term ''technology protection measure'' means a specific technology that blocks or filters Internet access to the material covered by a certification under paragraph (5) or (6) to which such certification relates.

(i) Consumer protection

The Commission and the States should ensure that universal service is available at rates that are just, reasonable, and affordable.

(j) Lifeline assistance

Nothing in this section shall affect the collection, distribution, or administration of the Lifeline Assistance Program provided for by the Commission under regulations set forth in section 69.117 of title 47, Code of Federal Regulations, and other related sections of such title.

(k) Subsidy of competitive services prohibited

A telecommunications carrier may not use services that are not competitive to subsidize services that are subject to competition. 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 the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.

(*l*) Internet safety policy requirement for schools and libraries

(1) In general

In carrying out its responsibilities under subsection (h) of this section, each school or library to which subsection (h) of this section applies shall—

(A) adopt and implement an Internet safety policy that addresses—

(i) access by minors to inappropriate matter on the Internet and World Wide Web;

(ii) the safety and security of minors when using electronic mail, chat rooms, and other forms of direct electronic communications;

(iii) unauthorized access, including so-called ''hacking'', and other unlawful activities by minors online;

(iv) unauthorized disclosure, use, and dissemination of personal identification information regarding minors; and

(v) measures designed to restrict minors' access to materials harmful to minors; and

(B) provide reasonable public notice and hold at least one public hearing or meeting to address the proposed Internet safety policy.

(2) Local determination of content

A determination regarding what matter is inappropriate for minors shall be made by the school board, local educational agency, library, or other authority responsible for making the determination. No agency or instrumentality of the United States Government may—

(A) establish criteria for making such determination;

(B) review the determination made by the certifying school, school board, local educational agency, library, or other authority; or

(C) consider the criteria employed by the certifying school, school board, local educational agency, library, or other authority in the administration of subsection (h)(1)(B) of this section.

(3) Availability for review

Each Internet safety policy adopted under this subsection shall be made available to the Commission, upon request of the Commission, by the school, school board, local educational agency, library, or other authority responsible for adopting such Internet safety policy for purposes of the review of such Internet safety policy by the Commission.

(4) Effective date

This subsection shall apply with respect to schools and libraries on or after the date that is 120 days after December 21, 2000.

(June 19, 1934, ch. 652, title II, §254, as added Pub. L. 104–104, title I, §101(a), Feb. 8, 1996, 110 Stat. 71; amended Pub. L. 104–208, div. A, title I, §101(e) [title VII, §709(a)(8)], Sept. 30, 1996, 110 Stat. 3009–233, 3009–313; Pub. L. 106–554, §1(a)(4) [div. B, title XVII, §§1721(a)–(d), 1732], Dec. 21, 2000, 114 Stat. 2763, 2763A–343 to 2763A–350; Pub. L. 107–110, title X, §1076(hh), Jan. 8, 2002, 115 Stat. 2094.)

REFERENCES IN TEXT

The Library Services and Technology Act, referred to in subsec. (h)(4), is subtitle B (§§211–263) of title II of Pub. L. 94–462, as added by Pub. L. 104–208, div. A, title I, §101(e) [title VII, §702], Sept. 30, 1996, 110 Stat. 3009–233, 3009–295, which is classified generally to subchapter II (§9121 et seq.) of chapter 72 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 9101 of Title 20 and Tables.

Section 8801 of title 20, referred to in subsec. (h)(5)(A)(iii), was repealed by Pub. L. 107–110, title X, §1011(5)(C), Jan. 8, 2002, 115 Stat. 1986. See section 7801 of Title 20, Education.

For the effective date of this paragraph under section 1721(h) of the Children's Internet Protection Act, referred to in subsec. (h)(5)(E), (6)(E), as 120 days after Dec. 21, 2000, see §1(a)(4) [div. B, title VII, §1721(h)] of Pub. L. 106–554, set out as an Effective Date of 2000 Amendment note below.

The effective date of this subsection, referred to in subsec. (h)(5)(E), (6)(E), probably means the effective date of subsec. (h)(5) and (6) which is 120 days after Dec. 21, 2000, see §1(a)(4) [div. B, title VII, §1721(h)] of Pub. L. 106–554, set out as an Effective Date of 2000 Amendment note below.

AMENDMENTS

2002—Subsec. (h)(7)(A). Pub. L. 107–110 substituted "section 7801" for "paragraphs (14) and (25), respectively, of section 8801".

2000—Subsec. (h)(4). Pub. L. 106–554, §1(a)(4) [div. B, title XVII, §1721(d)], substituted "paragraph (7)(A)" for "paragraph (5)(A)".

Subsec. (h)(5). Pub. L. 106–554, §1(a)(4) [div. B, title XVII, §1721(a)(2)], added par. (5). Former par. (5) redesignated (7).

Subsec. (h)(6). Pub. L. 106–554, §1(a)(4) [div. B, title XVII, §1721(b)], added par. (6).

Subsec. (h)(7). Pub. L. 106–554, §1(a)(4) [div. B, title XVII, §1721(a)(1)], redesignated par. (5) as (7).

Subsec. (h)(7)(D) to (I). Pub. L. 106–554, §1(a)(4) [div. B, title XVII, §1721(c)], added subpars. (D) to (I).

Subsec. (*l*). Pub. L. 106–554, §1(a)(4) [div. B, title XVII, §1732], added subsec. (*l*).

1996—Subsec. (h)(4). Pub. L. 104–208 substituted "library or library consortium not eligible for assistance from a State library administrative agency under the Library Services and Technology Act" for "library not eligible for participation in State-based plans for funds under title III of the Library Services and Construction Act (20 U.S.C. 335c et seq.)".

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of Title 20, Education.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(4) [div. B, title XVII, §1721(h)], Dec. 21, 2000, 114 Stat. 2763, 2763A–350, provided that: "The amendments made by this section [amending this section and enacting provisions set out as notes under this section and section 7001 of Title 20, Education] shall take effect 120 days after the date of the enactment of this Act [Dec. 21, 2000]."

REGULATIONS

Pub. L. 106–554, §1(a)(4) [div. B, title XVII, §1721(f)], Dec. 21, 2000, 114 Stat. 2763, 2763A–350, provided that:

"(1) REQUIREMENT.—The Federal Communications Commission shall prescribe regulations for purposes of administering the provisions of paragraphs (5) and (6) of section 254(h) of the Communications Act of 1934 [47 U.S.C. 254(h)], as amended by this section.

"(2) DEADLINE.—Notwithstanding any other provision of law, the Commission shall prescribe regulations under paragraph (1) so as to ensure that such regulations take effect 120 days after the date of the enactment of this Act [Dec. 21, 2000]."

Pub. L. 106–554, §1(a)(4) [div. B, title XVII, §1733], Dec. 21, 2000, 114 Stat. 2763, 2763A–351, provided that: "Not later than 120 days after the date of enactment of this Act [Dec. 21, 2000], the Federal Communications Commission shall prescribe regulations for purposes of section 254(*l*) of the Communications Act of 1934 [47 U.S.C. 254(*l*)], as added by section 1732 of this Act."

SEPARABILITY

Pub. L. 106–554, §1(a)(4) [div. B, title XVII, §1721(e)], Dec. 21, 2000, 114 Stat. 2763, 2763A–350, provided that: "If any provision of paragraph (5) or (6) of section 254(h) of the Communications Act of 1934 [47 U.S.C. 254(h)], as amended by this section, or the application thereof to any person or circumstance is held invalid, the remainder of such paragraph and the application of such paragraph to other persons or circumstances shall not be affected thereby."

DISCLAIMERS REGARDING INTERNET ACCESS AND PRIVACY

Pub. L. 106–554, §1(a)(4) [div. B, title XVII, §1702], Dec. 21, 2000, 114 Stat. 2763, 2763A–336, provided that:

"(a) DISCLAIMER REGARDING CONTENT.—Nothing in this title [see Short Title of 2000 Amendments note set out under section 6301 of Title 20, Education] or the amendments made by this title shall be construed to prohibit a local educational agency, elementary or secondary school, or library from blocking access on the Internet on computers owned or operated by that agency, school, or library to any content other than content covered by this title or the amendments made by this title.

"(b) DISCLAIMER REGARDING PRIVACY.—Nothing in this title or the amendments made by this title shall be construed to require the tracking of Internet use by any identifiable minor or adult user."

EXPEDITED REVIEW

Pub. L. 106–554, §1(a)(4) [div. B, title XVII, §1741], Dec. 21, 2000, 114 Stat. 2763, 2763A–351, provided that:

"(a) THREE-JUDGE DISTRICT COURT HEARING.—Notwithstanding any other provision of law, any civil action challenging the constitutionality, on its face, of this title [see Short Title of 2000 Amendments note set out under section 6301 of Title 20, Education] or any amendment made by this title, or any provision thereof, shall be heard by a district court of three judges convened pursuant to the provisions of section 2284 of title 28, United States Code.

"(b) APPELLATE REVIEW.—Notwithstanding any other provision of law, an interlocutory or final judgment, decree, or order of the court of three judges in an action under subsection (a) holding this title or an amendment made by this title, or any provision thereof, unconstitutional shall be reviewable as a matter of right by direct appeal to the Supreme Court. Any such appeal shall be filed not more than 20 days after entry of such judgment, decree, or order."

UNIVERSAL SERVICE FUND PAYMENT SCHEDULE

Pub. L. 105–33, title III, §3006, Aug. 5, 1997, 111 Stat. 269, related to appropriations to the Universal Service Fund in support of programs established pursuant to rules implementing this section and adjustment of pay-

ments by telecommunications carriers and other providers of interstate telecommunications prior to repeal by Pub. L. 105–119, title VI, § 622, Nov. 26, 1997, 111 Stat. 2521. Section 622 of Pub. L. 105–119 provided further that: ''This section shall be deemed a section of the Balanced Budget Act of 1997 [Pub. L. 105–33, see Tables for classification] for the purposes of section 10213 of that Act (111 Stat. 712) [2 U.S.C. 902 note], and shall be scored pursuant to paragraph (2) of such section.''

§ 255. 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 12102(2)(A) of title 42.

(2) Readily achievable

The term ''readily achievable'' has the meaning given to it by section 12181(9) of title 42.

(b) Manufacturing

A manufacturer of telecommunications equipment or 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) of this section 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) Guidelines

Within 18 months after February 8, 1996, the Architectural and Transportation Barriers Compliance Board shall develop guidelines for accessibility of telecommunications equipment and customer premises equipment in conjunction with the Commission. The Board shall review and update the guidelines periodically.

(f) No additional private rights authorized

Nothing in this section shall be construed to authorize any private right of action to enforce any requirement of this section or any regulation thereunder. The Commission shall have exclusive jurisdiction with respect to any complaint under this section.

(June 19, 1934, ch. 652, title II, § 255, as added Pub. L. 104–104, title I, § 101(a), Feb. 8, 1996, 110 Stat. 75.)

§ 256. Coordination for interconnectivity

(a) Purpose

It is the purpose of this section—

(1) to promote nondiscriminatory accessibility by the broadest number of users and vendors of communications products and services to public telecommunications networks used to provide telecommunications service through—

(A) coordinated public telecommunications network planning and design by telecommunications carriers and other providers of telecommunications service; and

(B) public telecommunications network interconnectivity, and interconnectivity of devices with such networks used to provide telecommunications service; and

(2) to ensure the ability of users and information providers to seamlessly and transparently transmit and receive information between and across telecommunications networks.

(b) Commission functions

In carrying out the purposes of this section, the Commission—

(1) shall establish procedures for Commission oversight of coordinated network planning by telecommunications carriers and other providers of telecommunications service for the effective and efficient interconnection of public telecommunications networks used to provide telecommunications service; and

(2) may participate, in a manner consistent with its authority and practice prior to February 8, 1996, in the development by appropriate industry standards-setting organizations of public telecommunications network interconnectivity standards that promote access to—

(A) public telecommunications networks used to provide telecommunications service;

(B) network capabilities and services by individuals with disabilities; and

(C) information services by subscribers of rural telephone companies.

(c) Commission's authority

Nothing in this section shall be construed as expanding or limiting any authority that the Commission may have under law in effect before February 8, 1996.

(d) "Public telecommunications network interconnectivity" defined

As used in this section, the term ''public telecommunications network interconnectivity'' means the ability of two or more public telecommunications networks used to provide telecommunications service to communicate and exchange information without degeneration, and to interact in concert with one another.

(June 19, 1934, ch. 652, title II, § 256, as added Pub. L. 104–104, title I, § 101(a), Feb. 8, 1996, 110 Stat. 76.)

§ 257. Market entry barriers proceeding

(a) Elimination of barriers

Within 15 months after February 8, 1996, the Commission shall complete a proceeding for the purpose of identifying and eliminating, by regulations pursuant to its authority under this chapter (other than this section), market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information serv-

ices, or in the provision of parts or services to providers of telecommunications services and information services.

(b) National policy

In carrying out subsection (a) of this section, the Commission shall seek to promote the policies and purposes of this chapter favoring diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience, and necessity.

(c) Periodic review

Every 3 years following the completion of the proceeding required by subsection (a) of this section, the Commission shall review and report to Congress on—

(1) any regulations prescribed to eliminate barriers within its jurisdiction that are identified under subsection (a) of this section and that can be prescribed consistent with the public interest, convenience, and necessity; and

(2) the statutory barriers identified under subsection (a) of this section that the Commission recommends be eliminated, consistent with the public interest, convenience, and necessity.

(June 19, 1934, ch. 652, title II, §257, as added Pub. L. 104–104, title I, §101(a), Feb. 8, 1996, 110 Stat. 77.)

§258. Illegal changes in subscriber carrier selections

(a) Prohibition

No telecommunications carrier shall submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe. Nothing in this section shall preclude any State commission from enforcing such procedures with respect to intrastate services.

(b) Liability for charges

Any telecommunications carrier that violates the verification procedures described in subsection (a) of this section and that collects charges for telephone exchange service or telephone toll service from a subscriber shall be liable to the carrier previously selected by the subscriber in an amount equal to all charges paid by such subscriber after such violation, in accordance with such procedures as the Commission may prescribe. The remedies provided by this subsection are in addition to any other remedies available by law.

(June 19, 1934, ch. 652, title II, §258, as added Pub. L. 104–104, title I, §101(a), Feb. 8, 1996, 110 Stat. 77.)

§259. Infrastructure sharing

(a) Regulations required

The Commission shall prescribe, within one year after February 8, 1996, regulations that require incumbent local exchange carriers (as defined in section 251(h) of this title) to make available to any qualifying carrier such public switched network infrastructure, technology, information, and telecommunications facilities and functions as may be requested by such qualifying carrier for the purpose of enabling such qualifying carrier to provide telecommunications services, or to provide access to information services, in the service area in which such qualifying carrier has requested and obtained designation as an eligible telecommunications carrier under section 214(e) of this title.

(b) Terms and conditions of regulations

The regulations prescribed by the Commission pursuant to this section shall—

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

(2) permit, but shall not require, the joint ownership or operation of public switched network infrastructure and services by or among such local exchange carrier and a qualifying carrier;

(3) ensure that such local exchange carrier will not be treated by the Commission or any State as a common carrier for hire or as offering common carrier services with respect to any infrastructure, technology, information, facilities, or functions made available to a qualifying carrier in accordance with regulations issued pursuant to this section;

(4) ensure that such local exchange carrier makes such infrastructure, technology, information, facilities, or functions available to a qualifying carrier on just and reasonable terms and conditions that permit such qualifying carrier to fully benefit from the economies of scale and scope of such local exchange carrier, as determined in accordance with guidelines prescribed by the Commission in regulations issued pursuant to this section;

(5) establish conditions that promote cooperation between local exchange carriers to which this section applies and qualifying carriers;

(6) not require a local exchange carrier to which this section applies to engage in any infrastructure sharing agreement for any services or access which are to be provided or offered to consumers by the qualifying carrier in such local exchange carrier's telephone exchange area; and

(7) require that such local exchange carrier file with the Commission or State for public inspection, any tariffs, contracts, or other arrangements showing the rates, terms, and conditions under which such carrier is making available public switched network infrastructure and functions under this section.

(c) Information concerning deployment of new services and equipment

A local exchange carrier to which this section applies that has entered into an infrastructure sharing agreement under this section shall provide to each party to such agreement timely information on the planned deployment of telecommunications services and equipment, including any software or upgrades of software integral to the use or operation of such telecommunications equipment.

(d) "Qualifying carrier" defined

For purposes of this section, the term ''qualifying carrier'' means a telecommunications carrier that—

(1) lacks economies of scale or scope, as determined in accordance with regulations prescribed by the Commission pursuant to this section; and

(2) offers telephone exchange service, exchange access, and any other service that is included in universal service, to all consumers without preference throughout the service area for which such carrier has been designated as an eligible telecommunications carrier under section 214(e) of this title.

(June 19, 1934, ch. 652, title II, § 259, as added Pub. L. 104–104, title I, § 101(a), Feb. 8, 1996, 110 Stat. 77.)

§ 260. Provision of telemessaging service

(a) Nondiscrimination safeguards

Any local exchange carrier subject to the requirements of section 251(c) of this title that provides telemessaging service—

(1) shall not subsidize its telemessaging service directly or indirectly from its telephone exchange service or its exchange access; and

(2) shall not prefer or discriminate in favor of its telemessaging service operations in its provision of telecommunications services.

(b) Expedited consideration of complaints

The Commission shall establish procedures for the receipt and review of complaints concerning violations of subsection (a) of this section or the regulations thereunder that result in material financial harm to a provider of telemessaging service. Such procedures shall ensure that the Commission will make a final determination with respect to any such complaint within 120 days after receipt of the complaint. If the complaint contains an appropriate showing that the alleged violation occurred, the Commission shall, within 60 days after receipt of the complaint, order the local exchange carrier and any affiliates to cease engaging in such violation pending such final determination.

(c) "Telemessaging service" defined

As used in this section, 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.

(June 19, 1934, ch. 652, title II, § 260, as added Pub. L. 104–104, title I, § 101(a), Feb. 8, 1996, 110 Stat. 79.)

§ 261. Effect on other requirements

(a) Commission regulations

Nothing in this part shall be construed to prohibit the Commission from enforcing regulations prescribed prior to February 8, 1996, in fulfilling the requirements of this part, to the extent that such regulations are not inconsistent with the provisions of this part.

(b) Existing State regulations

Nothing in this part shall be construed to prohibit any State commission from enforcing regulations prescribed prior to February 8, 1996, or from prescribing regulations after February 8, 1996, in fulfilling the requirements of this part, if such regulations are not inconsistent with the provisions of this part.

(c) Additional State requirements

Nothing in this part 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, as long as the State's requirements are not inconsistent with this part or the Commission's regulations to implement this part.

(June 19, 1934, ch. 652, title II, § 261, as added Pub. L. 104–104, title I, § 101(a), Feb. 8, 1996, 110 Stat. 79.)

PART III—SPECIAL PROVISIONS CONCERNING BELL OPERATING COMPANIES

§ 271. Bell operating company entry into interLATA services

(a) General limitation

Neither a Bell operating company, nor any affiliate of a Bell operating company, may provide interLATA services except as provided in this section.

(b) InterLATA services to which this section applies

(1) In-region services

A Bell operating company, or any affiliate of that Bell operating company, may provide interLATA services originating in any of its in-region States (as defined in subsection (i) of this section) if the Commission approves the application of such company for such State under subsection (d)(3) of this section.

(2) Out-of-region services

A Bell operating company, or any affiliate of that Bell operating company, may provide interLATA services originating outside its in-region States after February 8, 1996, subject to subsection (j) of this section.

(3) Incidental interLATA services

A Bell operating company, or any affiliate of a Bell operating company, may provide incidental interLATA services (as defined in subsection (g) of this section) originating in any State after February 8, 1996.

(4) Termination

Nothing in this section prohibits a Bell operating company or any of its affiliates from providing termination for interLATA services, subject to subsection (j) of this section.

(c) Requirements for providing certain in-region interLATA services

(1) Agreement or statement

A Bell operating company meets the requirements of this paragraph if it meets the requirements of subparagraph (A) or subparagraph (B) of this paragraph for each State for which the authorization is sought.

(A) Presence of a facilities-based competitor

A Bell operating company meets the requirements of this subparagraph if it has en-

tered into one or more binding agreements that have been approved under section 252 of this title specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service (as defined in section 153(47)(A) of this title, but excluding exchange access) to residential and business subscribers. For the purpose of this subparagraph, such telephone exchange service may be offered by such competing providers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier. For the purpose of this subparagraph, services provided pursuant to subpart K of part 22 of the Commission's regulations (47 C.F.R. 22.901 et seq.) shall not be considered to be telephone exchange services.

(B) Failure to request access

A Bell operating company meets the requirements of this subparagraph if, after 10 months after February 8, 1996, no such provider has requested the access and interconnection described in subparagraph (A) before the date which is 3 months before the date the company makes its application under subsection (d)(1) of this section, and a statement of the terms and conditions that the company generally offers to provide such access and interconnection has been approved or permitted to take effect by the State commission under section 252(f) of this title. For purposes of this subparagraph, a Bell operating company shall be considered not to have received any request for access and interconnection if the State commission of such State certifies that the only provider or providers making such a request have (i) failed to negotiate in good faith as required by section 252 of this title, or (ii) violated the terms of an agreement approved under section 252 of this title by the provider's failure to comply, within a reasonable period of time, with the implementation schedule contained in such agreement.

(2) Specific interconnection requirements

(A) Agreement required

A Bell operating company meets the requirements of this paragraph if, within the State for which the authorization is sought—

(i)(I) such company is providing access and interconnection pursuant to one or more agreements described in paragraph (1)(A), or

(II) such company is generally offering access and interconnection pursuant to a statement described in paragraph (1)(B), and

(ii) such access and interconnection meets the requirements of subparagraph (B) of this paragraph.

(B) Competitive checklist

Access or interconnection provided or generally offered by a Bell operating company to other telecommunications carriers meets the requirements of this subparagraph if such access and interconnection includes each of the following:

(i) Interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1) of this title.

(ii) Nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1) of this title.

(iii) Nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the Bell operating company at just and reasonable rates in accordance with the requirements of section 224 of this title.

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

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

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

(vii) 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.

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

(ix) Until the date by which telecommunications numbering 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.

(x) Nondiscriminatory access to databases and associated signaling necessary for call routing and completion.

(xi) Until the date by which the Commission issues regulations pursuant to section 251 of this title to require number portability, 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 such regulations.

(xii) Nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3) of this title.

(xiii) Reciprocal compensation arrangements in accordance with the requirements of section 252(d)(2) of this title.

(xiv) Telecommunications services are available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3) of this title.

(d) Administrative provisions

(1) Application to Commission

On and after February 8, 1996, a Bell operating company or its affiliate may apply to the Commission for authorization to provide interLATA services originating in any in-region State. The application shall identify each State for which the authorization is sought.

(2) Consultation

(A) Consultation with the Attorney General

The Commission shall notify the Attorney General promptly of any application under paragraph (1). Before making any determination under this subsection, the Commission shall consult with the Attorney General, and if the Attorney General submits any comments in writing, such comments shall be included in the record of the Commission's decision. In consulting with and submitting comments to the Commission under this paragraph, the Attorney General shall provide to the Commission an evaluation of the application using any standard the Attorney General considers appropriate. The Commission shall give substantial weight to the Attorney General's evaluation, but such evaluation shall not have any preclusive effect on any Commission decision under paragraph (3).

(B) Consultation with State commissions

Before making any determination under this subsection, the Commission shall consult with the State commission of any State that is the subject of the application in order to verify the compliance of the Bell operating company with the requirements of subsection (c) of this section.

(3) Determination

Not later than 90 days after receiving an application under paragraph (1), the Commission shall issue a written determination approving or denying the authorization requested in the application for each State. The Commission shall not approve the authorization requested in an application submitted under paragraph (1) unless it finds that—

(A) the petitioning Bell operating company has met the requirements of subsection (c)(1) of this section and—

(i) with respect to access and interconnection provided pursuant to subsection (c)(1)(A) of this section, has fully implemented the competitive checklist in subsection (c)(2)(B) of this section; or

(ii) with respect to access and interconnection generally offered pursuant to a statement under subsection (c)(1)(B) of this section, such statement offers all of the items included in the competitive checklist in subsection (c)(2)(B) of this section;

(B) the requested authorization will be carried out in accordance with the requirements of section 272 of this title; and

(C) the requested authorization is consistent with the public interest, convenience, and necessity.

The Commission shall state the basis for its approval or denial of the application.

(4) Limitation on Commission

The Commission may not, by rule or otherwise, limit or extend the terms used in the competitive checklist set forth in subsection (c)(2)(B) of this section.

(5) Publication

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

(6) Enforcement of conditions

(A) Commission authority

If at any time after the approval of an application under paragraph (3), the Commission determines that a Bell operating company has ceased to meet any of the conditions required for such approval, the Commission may, after notice and opportunity for a hearing—

(i) issue an order to such company to correct the deficiency;

(ii) impose a penalty on such company pursuant to subchapter V of this chapter; or

(iii) suspend or revoke such approval.

(B) Receipt and review of complaints

The Commission shall establish procedures for the review of complaints concerning failures by Bell operating companies to meet conditions required for approval under paragraph (3). Unless the parties otherwise agree, the Commission shall act on such complaint within 90 days.

(e) Limitations

(1) Joint marketing of local and long distance services

Until a Bell operating company is authorized pursuant to subsection (d) of this section to provide interLATA services in an in-region State, or until 36 months have passed since February 8, 1996, whichever is earlier, a telecommunications carrier that serves greater than 5 percent of the Nation's presubscribed access lines may not jointly market in such State telephone exchange service obtained from such company pursuant to section 251(c)(4) of this title with interLATA services offered by that telecommunications carrier.

(2) IntraLATA toll dialing parity

(A) Provision required

A Bell operating company granted authority to provide interLATA services under subsection (d) of this section shall provide intraLATA toll dialing parity throughout that State coincident with its exercise of that authority.

(B) Limitation

Except for single-LATA States and States that have issued an order by December 19, 1995, requiring a Bell operating company to

implement intraLATA toll dialing parity, a State may not require a Bell operating company to implement intraLATA toll dialing parity in that State before a Bell operating company has been granted authority under this section to provide interLATA services originating in that State or before 3 years after February 8, 1996, whichever is earlier. Nothing in this subparagraph precludes a State from issuing an order requiring intraLATA toll dialing parity in that State prior to either such date so long as such order does not take effect until after the earlier of either such dates.

(f) Exception for previously authorized activities

Neither subsection (a) of this section nor section 273 of this title shall prohibit a Bell operating company or affiliate from engaging, at any time after February 8, 1996, in any activity to the extent authorized by, and subject to the terms and conditions contained in, an order entered by the United States District Court for the District of Columbia pursuant to section VII or VIII(C) of the AT&T Consent Decree if such order was entered on or before February 8, 1996, to the extent such order is not reversed or vacated on appeal. Nothing in this subsection shall be construed to limit, or to impose terms or conditions on, an activity in which a Bell operating company is otherwise authorized to engage under any other provision of this section.

(g) "Incidental interLATA services" defined

For purposes of this section, the term ''incidental interLATA services'' means the interLATA provision by a Bell operating company or its affiliate—

(1)(A) of audio programming, video programming, or other programming services to subscribers to such services of such company or affiliate;

(B) of the capability for interaction by such subscribers to select or respond to such audio programming, video programming, or other programming services;

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

(D) of alarm monitoring services;

(2) of two-way interactive video services or Internet services over dedicated facilities to or for elementary and secondary schools as defined in section 254(h)(5)[1] of this title;

(3) of commercial mobile services in accordance with section 332(c) of this title and with the regulations prescribed by the Commission pursuant to paragraph (8) of such section;

(4) of 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;

(5) of signaling information used in connection with the provision of telephone exchange services or exchange access by a local exchange carrier; or

(6) of network control signaling information to, and receipt of such signaling information from, common carriers offering interLATA services at any location within the area in which such Bell operating company provides telephone exchange services or exchange access.

(h) Limitations

The provisions of subsection (g) of this section are intended to be narrowly construed. The interLATA services provided under subparagraph (A), (B), or (C) of subsection (g)(1) of this section 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. The Commission shall ensure that the provision of services authorized under subsection (g) of this section by a Bell operating company or its affiliate will not adversely affect telephone exchange service ratepayers or competition in any telecommunications market.

(i) Additional definitions

As used in this section—

(1) In-region State

The term ''in-region State'' means a State in which a Bell operating company or any of its affiliates was authorized to provide wireline telephone exchange service pursuant to the reorganization plan approved under the AT&T Consent Decree, as in effect on the day before February 8, 1996.

(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 522 of this title.

(j) Certain service applications treated as in-region service applications

For purposes of this section, a Bell operating company application to provide 800 service, private line service, or their equivalents that—

(1) terminate in an in-region State of that Bell operating company, and

(2) allow the called party to determine the interLATA carrier,

shall be considered an in-region service subject to the requirements of subsection (b)(1) of this section.

(June 19, 1934, ch. 652, title II, §271, as added Pub. L. 104–104, title I, §151(a), Feb. 8, 1996, 110 Stat. 86.)

REFERENCES IN TEXT

Section 254(h)(5) of this title, referred to in subsec. (g)(2), was redesignated section 254(h)(7) of this title by Pub. L. 106–554, §1(a)(4) [div. B, title XVII, §1721(a)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–343.

[1] See References in Text note below.

§ 272. Separate affiliate; safeguards

(a) Separate affiliate required for competitive activities

(1) In general

A Bell operating company (including any affiliate) which is a local exchange carrier that is subject to the requirements of section 251(c) of this title may not provide any service described in paragraph (2) unless it provides that service through one or more affiliates that—

(A) are separate from any operating company entity that is subject to the requirements of section 251(c) of this title; and

(B) meet the requirements of subsection (b) of this section.

(2) Services for which a separate affiliate is required

The services for which a separate affiliate is required by paragraph (1) are:

(A) Manufacturing activities (as defined in section 273(h) of this title).

(B) Origination of interLATA telecommunications services, other than—

(i) incidental interLATA services described in paragraphs (1), (2), (3), (5), and (6) of section 271(g) of this title;

(ii) out-of-region services described in section 271(b)(2) of this title; or

(iii) previously authorized activities described in section 271(f) of this title.

(C) InterLATA information services, other than electronic publishing (as defined in section 274(h) of this title) and alarm monitoring services (as defined in section 275(e) of this title).

(b) Structural and transactional requirements

The separate affiliate required by this section—

(1) shall operate independently from the Bell operating company;

(2) shall maintain books, records, and accounts in the manner prescribed by the Commission which shall be separate from the books, records, and accounts maintained by the Bell operating company of which it is an affiliate;

(3) shall have separate officers, directors, and employees from the Bell operating company of which it is an affiliate;

(4) may not obtain credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of the Bell operating company; and

(5) shall conduct all transactions with the Bell operating company of which it is an affiliate on an arm's length basis with any such transactions reduced to writing and available for public inspection.

(c) Nondiscrimination safeguards

In its dealings with its affiliate described in subsection (a) of this section, a Bell operating company—

(1) may not discriminate between that company or affiliate and any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards; and

(2) shall account for all transactions with an affiliate described in subsection (a) of this section in accordance with accounting principles designated or approved by the Commission.

(d) Biennial audit

(1) General requirement

A company required to operate a separate affiliate under this section shall obtain and pay for a joint Federal/State audit every 2 years conducted by an independent auditor to determine whether such company has complied with this section and the regulations promulgated under this section, and particularly whether such company has complied with the separate accounting requirements under subsection (b) of this section.

(2) Results submitted to Commission; State commissions

The auditor described in paragraph (1) shall submit the results of the audit to the Commission and to the State commission of each State in which the company audited provides service, which shall make such results available for public inspection. Any party may submit comments on the final audit report.

(3) Access to documents

For purposes of conducting audits and reviews under this subsection—

(A) the independent auditor, the Commission, and the State commission shall have access to the financial accounts and records of each company and of its affiliates necessary to verify transactions conducted with that company that are relevant to the specific activities permitted under this section and that are necessary for the regulation of rates;

(B) the Commission and the State commission shall have access to the working papers and supporting materials of any auditor who performs an audit under this section; and

(C) the State commission shall implement appropriate procedures to ensure the protection of any proprietary information submitted to it under this section.

(e) Fulfillment of certain requests

A Bell operating company and an affiliate that is subject to the requirements of section 251(c) of this title—

(1) shall fulfill any requests from an unaffiliated entity for telephone exchange service and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or to its affiliates;

(2) shall not provide any facilities, services, or information concerning its provision of exchange access to the affiliate described in subsection (a) of this section unless such facilities, services, or information are made available to other providers of interLATA services in that market on the same terms and conditions;

(3) shall charge the affiliate described in subsection (a) of this section, or impute to itself (if using the access for its provision of its own services), an amount for access to its telephone exchange service and exchange access

that is no less than the amount charged to any unaffiliated interexchange carriers for such service; and

(4) may provide any interLATA or intraLATA facilities or services to its interLATA affiliate if such services or facilities are made available to all carriers at the same rates and on the same terms and conditions, and so long as the costs are appropriately allocated.

(f) Sunset

(1) Manufacturing and long distance

The provisions of this section (other than subsection (e) of this section) shall cease to apply with respect to the manufacturing activities or the interLATA telecommunications services of a Bell operating company 3 years after the date such Bell operating company or any Bell operating company affiliate is authorized to provide interLATA telecommunications services under section 271(d) of this title, unless the Commission extends such 3-year period by rule or order.

(2) InterLATA information services

The provisions of this section (other than subsection (e) of this section) shall cease to apply with respect to the interLATA information services of a Bell operating company 4 years after February 8, 1996, unless the Commission extends such 4-year period by rule or order.

(3) Preservation of existing authority

Nothing in this subsection shall be construed to limit the authority of the Commission under any other section of this chapter to prescribe safeguards consistent with the public interest, convenience, and necessity.

(g) Joint marketing

(1) Affiliate sales of telephone exchange services

A Bell operating company affiliate required by this section may not market or sell telephone exchange services provided by the Bell operating company unless that company permits other entities offering the same or similar service to market and sell its telephone exchange services.

(2) Bell operating company sales of affiliate services

A Bell operating company may not market or sell interLATA service provided by an affiliate required by this section within any of its in-region States until such company is authorized to provide interLATA services in such State under section 271(d) of this title.

(3) Rule of construction

The joint marketing and sale of services permitted under this subsection shall not be considered to violate the nondiscrimination provisions of subsection (c) of this section.

(h) Transition

With respect to any activity in which a Bell operating company is engaged on February 8, 1996, such company shall have one year from February 8, 1996, to comply with the requirements of this section.

(June 19, 1934, ch. 652, title II, § 272, as added Pub. L. 104–104, title I, § 151(a), Feb. 8, 1996, 110 Stat. 92.)

§ 273. Manufacturing by Bell operating companies

(a) Authorization

A Bell operating company may manufacture and provide telecommunications equipment, and manufacture customer premises equipment, if the Commission authorizes that Bell operating company or any Bell operating company affiliate to provide interLATA services under section 271(d) of this title, subject to the requirements of this section and the regulations prescribed thereunder, except that neither a Bell operating company nor any of its affiliates may engage in such manufacturing in conjunction with a Bell operating company not so affiliated or any of its affiliates.

(b) Collaboration; research and royalty agreements

(1) Collaboration

Subsection (a) of this section shall not prohibit a Bell operating company from engaging in close collaboration with any manufacturer of customer premises equipment or telecommunications equipment during the design and development of hardware, software, or combinations thereof related to such equipment.

(2) Certain research arrangements; royalty agreements

Subsection (a) of this section shall not prohibit a Bell operating company from—

(A) engaging in research activities related to manufacturing, and

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

(c) Information requirements

(1) Information on protocols and technical requirements

Each Bell operating company shall, in accordance with regulations prescribed by the Commission, maintain and file with the Commission full and complete information with respect to the protocols and technical requirements for connection with and use of its telephone exchange service facilities. Each such company shall report promptly to the Commission any material changes or planned changes to such protocols and requirements, and the schedule for implementation of such changes or planned changes.

(2) Disclosure of information

A Bell operating company shall not disclose any information required to be filed under paragraph (1) unless that information has been filed promptly, as required by regulation by the Commission.

(3) Access by competitors to information

The Commission may prescribe such additional regulations under this subsection as may be necessary to ensure that manufacturers have access to the information with respect to the protocols and technical requirements for connection with and use of telephone exchange service facilities that a Bell operating company makes available to any

manufacturing affiliate or any unaffiliated manufacturer.

(4) Planning information

Each Bell operating company shall provide, to interconnecting carriers providing telephone exchange service, timely information on the planned deployment of telecommunications equipment.

(d) Manufacturing limitations for standard-setting organizations

(1) Application to Bell Communications Research or manufacturers

Bell Communications Research, Inc., or any successor entity or affiliate—

(A) shall not be considered a Bell operating company or a successor or assign of a Bell operating company at such time as it is no longer an affiliate of any Bell operating company; and

(B) notwithstanding paragraph (3), shall not engage in manufacturing telecommunications equipment or customer premises equipment as long as it is an affiliate of more than 1 otherwise unaffiliated Bell operating company or successor or assign of any such company.

Nothing in this subsection prohibits Bell Communications Research, Inc., or any successor entity, from engaging in any activity in which it is lawfully engaged on February 8, 1996. Nothing provided in this subsection shall render Bell Communications Research, Inc., or any successor entity, a common carrier under this subchapter. Nothing in this subsection restricts any manufacturer from engaging in any activity in which it is lawfully engaged on February 8, 1996.

(2) Proprietary information

Any entity which establishes standards for telecommunications equipment or customer premises equipment, or generic network requirements for such equipment, or certifies telecommunications equipment or customer premises equipment, shall be prohibited from releasing or otherwise using any proprietary information, designated as such by its owner, in its possession as a result of such activity, for any purpose other than purposes authorized in writing by the owner of such information, even after such entity ceases to be so engaged.

(3) Manufacturing safeguards

(A) Except as prohibited in paragraph (1), and subject to paragraph (6), any entity which certifies telecommunications equipment or customer premises equipment manufactured by an unaffiliated entity shall only manufacture a particular class of telecommunications equipment or customer premises equipment for which it is undertaking or has undertaken, during the previous 18 months, certification activity for such class of equipment through a separate affiliate.

(B) Such separate affiliate shall—

(i) maintain books, records, and accounts separate from those of the entity that certifies such equipment, consistent with generally acceptable accounting principles;

(ii) not engage in any joint manufacturing activities with such entity; and

(iii) have segregated facilities and separate employees with such entity.

(C) Such entity that certifies such equipment shall—

(i) not discriminate in favor of its manufacturing affiliate in the establishment of standards, generic requirements, or product certification;

(ii) not disclose to the manufacturing affiliate any proprietary information that has been received at any time from an unaffiliated manufacturer, unless authorized in writing by the owner of the information; and

(iii) not permit any employee engaged in product certification for telecommunications equipment or customer premises equipment to engage jointly in sales or marketing of any such equipment with the affiliated manufacturer.

(4) Standard-setting entities

Any entity that is not an accredited standards development organization and that establishes industry-wide standards for telecommunications equipment or customer premises equipment, or industry-wide generic network requirements for such equipment, or that certifies telecommunications equipment or customer premises equipment manufactured by an unaffiliated entity, shall—

(A) establish and publish any industry-wide standard for, industry-wide generic requirement for, or any substantial modification of an existing industry-wide standard or industry-wide generic requirement for, telecommunications equipment or customer premises equipment only in compliance with the following procedure—

(i) such entity shall issue a public notice of its consideration of a proposed industry-wide standard or industry-wide generic requirement;

(ii) such entity shall issue a public invitation to interested industry parties to fund and participate in such efforts on a reasonable and nondiscriminatory basis, administered in such a manner as not to unreasonably exclude any interested industry party;

(iii) such entity shall publish a text for comment by such parties as have agreed to participate in the process pursuant to clause (ii), provide such parties a full opportunity to submit comments, and respond to comments from such parties;

(iv) such entity shall publish a final text of the industry-wide standard or industry-wide generic requirement, including the comments in their entirety, of any funding party which requests to have its comments so published; and

(v) such entity shall attempt, prior to publishing a text for comment, to agree with the funding parties as a group on a mutually satisfactory dispute resolution process which such parties shall utilize as their sole recourse in the event of a dispute on technical issues as to which there is disagreement between any funding party

and the entity conducting such activities, except that if no dispute resolution process is agreed to by all the parties, a funding party may utilize the dispute resolution procedures established pursuant to paragraph (5) of this subsection;

(B) engage in product certification for telecommunications equipment or customer premises equipment manufactured by unaffiliated entities only if—

(i) such activity is performed pursuant to published criteria;

(ii) such activity is performed pursuant to auditable criteria; and

(iii) such activity is performed pursuant to available industry-accepted testing methods and standards, where applicable, unless otherwise agreed upon by the parties funding and performing such activity;

(C) not undertake any actions to monopolize or attempt to monopolize the market for such services; and

(D) not preferentially treat its own telecommunications equipment or customer premises equipment, or that of its affiliate, over that of any other entity in establishing and publishing industry-wide standards or industry-wide generic requirements for, and in certification of, telecommunications equipment and customer premises equipment.

(5) Alternate dispute resolution

Within 90 days after February 8, 1996, the Commission shall prescribe a dispute resolution process to be utilized in the event that a dispute resolution process is not agreed upon by all the parties when establishing and publishing any industry-wide standard or industry-wide generic requirement for telecommunications equipment or customer premises equipment, pursuant to paragraph (4)(A)(v). The Commission shall not establish itself as a party to the dispute resolution process. Such dispute resolution process shall permit any funding party to resolve a dispute with the entity conducting the activity that significantly affects such funding party's interests, in an open, nondiscriminatory, and unbiased fashion, within 30 days after the filing of such dispute. Such disputes may be filed within 15 days after the date the funding party receives a response to its comments from the entity conducting the activity. The Commission shall establish penalties to be assessed for delays caused by referral of frivolous disputes to the dispute resolution process.

(6) Sunset

The requirements of paragraphs (3) and (4) shall terminate for the particular relevant activity when the Commission determines that there are alternative sources of industry-wide standards, industry-wide generic requirements, or product certification for a particular class of telecommunications equipment or customer premises equipment available in the United States. Alternative sources shall be deemed to exist when such sources provide commercially viable alternatives that are providing such services to customers. The Commission shall act on any application for such a determination within 90 days after receipt of such application, and shall receive public comment on such application.

(7) Administration and enforcement authority

For the purposes of administering this subsection and the regulations prescribed thereunder, the Commission shall have the same remedial authority as the Commission has in administering and enforcing the provisions of this subchapter with respect to any common carrier subject to this chapter.

(8) Definitions

For purposes of this subsection:

(A) The term ''affiliate'' shall have the same meaning as in section 153 of this title, except that, for purposes of paragraph (1)(B)—

(i) an aggregate voting equity interest in Bell Communications Research, Inc., of at least 5 percent of its total voting equity, owned directly or indirectly by more than 1 otherwise unaffiliated Bell operating company, shall constitute an affiliate relationship; and

(ii) a voting equity interest in Bell Communications Research, Inc., by any otherwise unaffiliated Bell operating company of less than 1 percent of Bell Communications Research's total voting equity shall not be considered to be an equity interest under this paragraph.

(B) The term ''generic requirement'' means a description of acceptable product attributes for use by local exchange carriers in establishing product specifications for the purchase of telecommunications equipment, customer premises equipment, and software integral thereto.

(C) The term ''industry-wide'' means activities funded by or performed on behalf of local exchange carriers for use in providing wireline telephone exchange service whose combined total of deployed access lines in the United States constitutes at least 30 percent of all access lines deployed by telecommunications carriers in the United States as of February 8, 1996.

(D) The term ''certification'' means any technical process whereby a party determines whether a product, for use by more than one local exchange carrier, conforms with the specified requirements pertaining to such product.

(E) The term ''accredited standards development organization'' means an entity composed of industry members which has been accredited by an institution vested with the responsibility for standards accreditation by the industry.

(e) Bell operating company equipment procurement and sales

(1) Nondiscrimination standards for manufacturing

In the procurement or awarding of supply contracts for telecommunications equipment, a Bell operating company, or any entity acting on its behalf, for the duration of the re-

quirement for a separate subsidiary including manufacturing under this chapter—

(A) shall consider such equipment, produced or supplied by unrelated persons; and

(B) may not discriminate in favor of equipment produced or supplied by an affiliate or related person.

(2) Procurement standards

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

(3) Network planning and design

A Bell operating company shall, to the extent consistent with the antitrust laws, engage in joint network planning and design with local exchange carriers operating in the same area of interest. No participant in such planning shall be allowed to delay the introduction of new technology or the deployment of facilities to provide telecommunications services, and agreement with such other carriers shall not be required as a prerequisite for such introduction or deployment.

(4) Sales restrictions

Neither a Bell operating company engaged in manufacturing nor a manufacturing affiliate of such a company shall restrict sales to any local exchange carrier of telecommunications equipment, including software integral to the operation of such equipment and related upgrades.

(5) Protection of proprietary information

A Bell operating company and any entity it owns or otherwise controls shall protect the proprietary information submitted for procurement decisions from release not specifically authorized by the owner of such information.

(f) Administration and enforcement authority

For the purposes of administering and enforcing the provisions of this section and the regulations prescribed thereunder, the Commission shall have the same authority, power, and functions with respect to any Bell operating company or any affiliate thereof as the Commission has in administering and enforcing the provisions of this subchapter with respect to any common carrier subject to this chapter.

(g) 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, and otherwise to prevent discrimination and cross-subsidization in a Bell operating company's dealings with its affiliate and with third parties.

(h) "Manufacturing" defined

As used in this section, the term ''manufacturing'' has the same meaning as such term has under the AT&T Consent Decree.

(June 19, 1934, ch. 652, title II, § 273, as added Pub. L. 104–104, title I, § 151(a), Feb. 8, 1996, 110 Stat. 95.)

§ 274. Electronic publishing by Bell operating companies

(a) Limitations

No Bell operating company or any affiliate may engage in the provision of electronic publishing that is disseminated by means of such Bell operating company's or any of its affiliates' basic telephone service, except that nothing in this section shall prohibit a separated affiliate or electronic publishing joint venture operated in accordance with this section from engaging in the provision of electronic publishing.

(b) Separated affiliate or electronic publishing joint venture requirements

A separated affiliate or electronic publishing joint venture shall be operated independently from the Bell operating company. Such separated affiliate or joint venture and the Bell operating company with which it is affiliated shall—

(1) maintain separate books, records, and accounts and prepare separate financial statements;

(2) not incur debt in a manner that would permit a creditor of the separated affiliate or joint venture upon default to have recourse to the assets of the Bell operating company;

(3) carry out transactions (A) in a manner consistent with such independence, (B) pursuant to written contracts or tariffs that are filed with the Commission and made publicly available, and (C) in a manner that is auditable in accordance with generally accepted auditing standards;

(4) value any assets that are transferred directly or indirectly from the Bell operating company to a separated affiliate or joint venture, and record any transactions by which such assets are transferred, in accordance with such regulations as may be prescribed by the Commission or a State commission to prevent improper cross subsidies;

(5) between a separated affiliate and a Bell operating company—

(A) have no officers, directors, and employees in common after the effective date of this section; and

(B) own no property in common;

(6) not use for the marketing of any product or service of the separated affiliate or joint venture, the name, trademarks, or service marks of an existing Bell operating company except for names, trademarks, or service marks that are owned by the entity that owns or controls the Bell operating company;

(7) not permit the Bell operating company—

(A) to perform hiring or training of personnel on behalf of a separated affiliate;

(B) to perform the purchasing, installation, or maintenance of equipment on behalf of a separated affiliate, except for telephone service that it provides under tariff or contract subject to the provisions of this section; or

(C) to perform research and development on behalf of a separated affiliate;

(8) each have performed annually a compliance review—

(A) that is conducted by an independent entity for the purpose of determining com-

pliance during the preceding calendar year with any provision of this section; and

(B) the results of which are maintained by the separated affiliate or joint venture and the Bell operating company for a period of 5 years subject to review by any lawful authority; and

(9) within 90 days of receiving a review described in paragraph (8), file a report of any exceptions and corrective action with the Commission and allow any person to inspect and copy such report subject to reasonable safeguards to protect any proprietary information contained in such report from being used for purposes other than to enforce or pursue remedies under this section.

(c) Joint marketing

(1) In general

Except as provided in paragraph (2)—

(A) a Bell operating company shall not carry out any promotion, marketing, sales, or advertising for or in conjunction with a separated affiliate; and

(B) a Bell operating company shall not carry out any promotion, marketing, sales, or advertising for or in conjunction with an affiliate that is related to the provision of electronic publishing.

(2) Permissible joint activities

(A) Joint telemarketing

A Bell operating company may provide inbound telemarketing or referral services related to the provision of electronic publishing for a separated affiliate, electronic publishing joint venture, affiliate, or unaffiliated electronic publisher: *Provided*, That if such services are provided to a separated affiliate, electronic publishing joint venture, or affiliate, such services shall be made available to all electronic publishers on request, on nondiscriminatory terms.

(B) Teaming arrangements

A Bell operating company may engage in nondiscriminatory teaming or business arrangements to engage in electronic publishing with any separated affiliate or with any other electronic publisher if (i) the Bell operating company only provides facilities, services, and basic telephone service information as authorized by this section, and (ii) the Bell operating company does not own such teaming or business arrangement.

(C) Electronic publishing joint ventures

A Bell operating company or affiliate may participate on a nonexclusive basis in electronic publishing joint ventures with entities that are not a Bell operating company, affiliate, or separated affiliate to provide electronic publishing services, if the Bell operating company or affiliate has not more than a 50 percent direct or indirect equity interest (or the equivalent thereof) or the right to more than 50 percent of the gross revenues under a revenue sharing or royalty agreement in any electronic publishing joint venture. Officers and employees of a Bell operating company or affiliate participating in an electronic publishing joint venture may not have more than 50 percent of the voting control over the electronic publishing joint venture. In the case of joint ventures with small, local electronic publishers, the Commission for good cause shown may authorize the Bell operating company or affiliate to have a larger equity interest, revenue share, or voting control but not to exceed 80 percent. A Bell operating company participating in an electronic publishing joint venture may provide promotion, marketing, sales, or advertising personnel and services to such joint venture.

(d) Bell operating company requirement

A Bell operating company under common ownership or control with a separated affiliate or electronic publishing joint venture shall provide network access and interconnections for basic telephone service to electronic publishers at just and reasonable rates that are tariffed (so long as rates for such services are subject to regulation) and that are not higher on a per-unit basis than those charged for such services to any other electronic publisher or any separated affiliate engaged in electronic publishing.

(e) Private right of action

(1) Damages

Any person claiming that any act or practice of any Bell operating company, affiliate, or separated affiliate constitutes a violation of this section may file a complaint with the Commission or bring suit as provided in section 207 of this title, and such Bell operating company, affiliate, or separated affiliate shall be liable as provided in section 206 of this title; except that damages may not be awarded for a violation that is discovered by a compliance review as required by subsection (b)(7) of this section and corrected within 90 days.

(2) Cease and desist orders

In addition to the provisions of paragraph (1), any person claiming that any act or practice of any Bell operating company, affiliate, or separated affiliate constitutes a violation of this section may make application to the Commission for an order to cease and desist such violation or may make application in any district court of the United States of competent jurisdiction for an order enjoining such acts or practices or for an order compelling compliance with such requirement.

(f) Separated affiliate reporting requirement

Any separated affiliate under this section shall file with the Commission annual reports in a form substantially equivalent to the Form 10–K required by regulations of the Securities and Exchange Commission.

(g) Effective dates

(1) Transition

Any electronic publishing service being offered to the public by a Bell operating company or affiliate on February 8, 1996, shall have one year from February 8, 1996, to comply with the requirements of this section.

(2) Sunset

The provisions of this section shall not apply to conduct occurring after 4 years after February 8, 1996.

(h) "Electronic publishing" defined

(1) In general

The term ''electronic publishing'' means the dissemination, provision, publication, or sale to an unaffiliated entity or person, of any one or more of the following: news (including sports); entertainment (other than interactive games); business, financial, legal, consumer, or credit materials; editorials, columns, or features; advertising; photos or images; archival or research material; legal notices or public records; scientific, educational, instructional, technical, professional, trade, or other literary materials; or other like or similar information.

(2) Exceptions

The term ''electronic publishing'' shall not include the following services:

(A) Information access, as that term is defined by the AT&T Consent Decree.

(B) The transmission of information as a common carrier.

(C) The transmission of information as part of a gateway to an information service that does not involve the generation or alteration of the content of information, including data transmission, address translation, protocol conversion, billing management, introductory information content, and navigational systems that enable users to access electronic publishing services, which do not affect the presentation of such electronic publishing services to users.

(D) Voice storage and retrieval services, including voice messaging and electronic mail services.

(E) Data processing or transaction processing services that do not involve the generation or alteration of the content of information.

(F) Electronic billing or advertising of a Bell operating company's regulated telecommunications services.

(G) Language translation or data format conversion.

(H) The provision of information necessary for the management, control, or operation of a telephone company telecommunications system.

(I) The provision of directory assistance that provides names, addresses, and telephone numbers and does not include advertising.

(J) Caller identification services.

(K) Repair and provisioning databases and credit card and billing validation for telephone company operations.

(L) 911–E and other emergency assistance databases.

(M) Any other network service of a type that is like or similar to these network services and that does not involve the generation or alteration of the content of information.

(N) Any upgrades to these network services that do not involve the generation or alteration of the content of information.

(O) Video programming or full motion video entertainment on demand.

(i) Additional definitions

As used in this section—

(1) The term ''affiliate'' means any entity that, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with, a Bell operating company. Such term shall not include a separated affiliate.

(2) The term ''basic telephone service'' means any wireline telephone exchange service, or wireline telephone exchange service facility, provided by a Bell operating company in a telephone exchange area, except that such term does not include—

(A) a competitive wireline telephone exchange service provided in a telephone exchange area where another entity provides a wireline telephone exchange service that was provided on January 1, 1984, or

(B) a commercial mobile service.

(3) The term ''basic telephone service information'' means network and customer information of a Bell operating company and other information acquired by a Bell operating company as a result of its engaging in the provision of basic telephone service.

(4) The term ''control'' has the meaning that it has in 17 C.F.R. 240.12b–2, the regulations promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or any successor provision to such section.

(5) The term ''electronic publishing joint venture'' means a joint venture owned by a Bell operating company or affiliate that engages in the provision of electronic publishing which is disseminated by means of such Bell operating company's or any of its affiliates' basic telephone service.

(6) The term ''entity'' means any organization, and includes corporations, partnerships, sole proprietorships, associations, and joint ventures.

(7) The term ''inbound telemarketing'' means the marketing of property, goods, or services by telephone to a customer or potential customer who initiated the call.

(8) The term ''own'' with respect to an entity means to have a direct or indirect equity interest (or the equivalent thereof) of more than 10 percent of an entity, or the right to more than 10 percent of the gross revenues of an entity under a revenue sharing or royalty agreement.

(9) The term ''separated affiliate'' means a corporation under common ownership or control with a Bell operating company that does not own or control a Bell operating company and is not owned or controlled by a Bell operating company and that engages in the provision of electronic publishing which is disseminated by means of such Bell operating company's or any of its affiliates' basic telephone service.

(10) The term ''Bell operating company'' has the meaning provided in section 153 of this title, except that such term includes any entity or corporation that is owned or controlled by such a company (as so defined) but does not include an electronic publishing joint venture owned by such an entity or corporation.

(June 19, 1934, ch. 652, title II, § 274, as added Pub. L. 104–104, title I, § 151(a), Feb. 8, 1996, 110 Stat. 100.)

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in subsec. (i)(4), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§ 78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

§ 275. Alarm monitoring services

(a) Delayed entry into alarm monitoring

(1) Prohibition

No Bell operating company or affiliate thereof shall engage in the provision of alarm monitoring services before the date which is 5 years after February 8, 1996.

(2) Existing activities

Paragraph (1) does not prohibit or limit the provision, directly or through an affiliate, of alarm monitoring services by a Bell operating company that was engaged in providing alarm monitoring services as of November 30, 1995, directly or through an affiliate. Such Bell operating company or affiliate may not acquire any equity interest in, or obtain financial control of, any unaffiliated alarm monitoring service entity after November 30, 1995, and until 5 years after February 8, 1996, except that this sentence shall not prohibit an exchange of customers for the customers of an unaffiliated alarm monitoring service entity.

(b) Nondiscrimination

An incumbent local exchange carrier (as defined in section 251(h) of this title) engaged in the provision of alarm monitoring services shall—

(1) provide nonaffiliated entities, upon reasonable request, with the network services it provides to its own alarm monitoring operations, on nondiscriminatory terms and conditions; and

(2) not subsidize its alarm monitoring services either directly or indirectly from telephone exchange service operations.

(c) Expedited consideration of complaints

The Commission shall establish procedures for the receipt and review of complaints concerning violations of subsection (b) of this section or the regulations thereunder that result in material financial harm to a provider of alarm monitoring service. Such procedures shall ensure that the Commission will make a final determination with respect to any such complaint 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, order the incumbent local exchange carrier (as defined in section 251(h) of this title) and its affiliates to cease engaging in such violation pending such final determination.

(d) Use of data

A local exchange carrier may not record or use 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 such local exchange carrier, or any other entity. Any regulations necessary to enforce this subsection shall be issued initially within 6 months after February 8, 1996.

(e) "Alarm monitoring service" defined

The term ''alarm monitoring service'' means a service that uses a device located at a residence, place of business, or other fixed premises—

(1) to receive signals from other devices located at or about such premises regarding a possible threat at such premises to life, safety, or property, from burglary, fire, vandalism, bodily injury, or other emergency, and

(2) to transmit a signal regarding such threat by means of transmission facilities of a local exchange carrier or one of its affiliates to a remote monitoring center to alert a person at such center of the need to inform the customer or another person or police, fire, rescue, security, or public safety personnel of such threat,

but does not include a service that uses a medical monitoring device attached to an individual for the automatic surveillance of an ongoing medical condition.

(June 19, 1934, ch. 652, title II, § 275, as added Pub. L. 104–104, title I, § 151(a), Feb. 8, 1996, 110 Stat. 105.)

§ 276. Provision of payphone service

(a) Nondiscrimination safeguards

After the effective date of the rules prescribed pursuant to subsection (b) of this section, any Bell operating company that provides payphone service—

(1) shall not subsidize its payphone service directly or indirectly from its telephone exchange service operations or its exchange access operations; and

(2) shall not prefer or discriminate in favor of its payphone service.

(b) Regulations

(1) Contents of regulations

In order to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public, within 9 months after February 8, 1996, the Commission shall take all actions necessary (including any reconsideration) to prescribe regulations that—

(A) establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone, except that emergency calls and telecommunications relay service calls for hearing disabled individuals shall not be subject to such compensation;

(B) discontinue the intrastate and interstate carrier access charge payphone service elements and payments in effect on February 8, 1996, and all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues, in favor of a compensation plan as specified in subparagraph (A);

(C) prescribe a set of nonstructural safeguards for Bell operating company payphone service to implement the provisions of para-

graphs (1) and (2) of subsection (a) of this section, which safeguards shall, at a minimum, include the nonstructural safeguards equal to those adopted in the Computer Inquiry-III (CC Docket No. 90–623) proceeding;

(D) provide for Bell operating company payphone service providers to have the same right that independent payphone providers have to negotiate with the location provider on the location provider's selecting and contracting with, and, subject to the terms of any agreement with the location provider, to select and contract with, the carriers that carry interLATA calls from their payphones, unless the Commission determines in the rulemaking pursuant to this section that it is not in the public interest; and

(E) provide for all payphone service providers to have the right to negotiate with the location provider on the location provider's selecting and contracting with, and, subject to the terms of any agreement with the location provider, to select and contract with, the carriers that carry intraLATA calls from their payphones.

(2) Public interest telephones

In the rulemaking conducted pursuant to paragraph (1), the Commission shall determine whether public interest payphones, which are provided in the interest of public health, safety, and welfare, in locations where there would otherwise not be a payphone, should be maintained, and if so, ensure that such public interest payphones are supported fairly and equitably.

(3) Existing contracts

Nothing in this section shall affect any existing contracts between location providers and payphone service providers or interLATA or intraLATA carriers that are in force and effect as of February 8, 1996.

(c) State preemption

To the extent that any State requirements are inconsistent with the Commission's regulations, the Commission's regulations on such matters shall preempt such State requirements.

(d) "Payphone service" defined

As used in this section, the term ''payphone service'' means the provision of public or semi-public pay telephones, the provision of inmate telephone service in correctional institutions, and any ancillary services.

(June 19, 1934, ch. 652, title II, § 276, as added Pub. L. 104–104, title I, § 151(a), Feb. 8, 1996, 10 Stat. 106.)

SUBCHAPTER III—SPECIAL PROVISIONS RELATING TO RADIO

PART I—GENERAL PROVISIONS

§ 301. License for radio communication or transmission of energy

It is the purpose of this chapter, among other things, to maintain the control of the United States over all the channels of radio transmission; and to provide for the use of such channels, but not the ownership thereof, by persons for limited periods of time, under licenses granted by Federal authority, and no such license shall be construed to create any right, beyond the terms, conditions, and periods of the license. No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio (a) from one place in any State, Territory, or possession of the United States or in the District of Columbia to another place in the same State, Territory, possession, or District; or (b) from any State, Territory, or possession of the United States, or from the District of Columbia to any other State, Territory, or possession of the United States; or (c) from any place in any State, Territory, or possession of the United States, or in the District of Columbia, to any place in any foreign country or to any vessel; or (d) within any State when the effects of such use extend beyond the borders of said State, or when interference is caused by such use or operation with the transmission of such energy, communications, or signals from within said State to any place beyond its borders, or from any place beyond its borders to any place within said State, or with the transmission or reception of such energy, communications, or signals from and/or to places beyond the borders of said State; or (e) upon any vessel or aircraft of the United States (except as provided in section 303(t) of this title); or (f) upon any other mobile stations within the jurisdiction of the United States, except under and in accordance with this chapter and with a license in that behalf granted under the provisions of this chapter.

(June 19, 1934, ch. 652, title III, § 301, 48 Stat. 1081; Pub. L. 97–259, title I, §§ 107, 111(b), Sept. 13, 1982, 96 Stat. 1091, 1093.)

REFERENCES IN TEXT

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

AMENDMENTS

1982—Pub. L. 97–259 struck out ''interstate and foreign'' after ''channels of'' in first sentence, substituted ''State, Territory,'' for ''Territory'' after ''from one place in any'' and inserted ''State,'' after ''to another place in the same'' in cl. (a), and inserted ''(except as provided in section 303(t) of this title)'' in cl. (e).

§ 302. Repealed. June 5, 1936, ch. 511, § 1, 49 Stat. 1475

Section, act June 19, 1934, ch. 652, title III, § 302, 48 Stat. 1081, divided United States into five zones for purposes of this subchapter.

§ 302a. Devices which interfere with radio reception

(a) Regulations

The Commission may, consistent with the public interest, convenience, and necessity, make reasonable regulations (1) governing the interference potential of devices which in their operation are capable of emitting radio frequency energy by radiation, conduction, or other means in sufficient degree to cause harm-

ful interference to radio communications; and (2) establishing minimum performance standards for home electronic equipment and systems to reduce their susceptibility to interference from radio frequency energy. Such regulations shall be applicable to the manufacture, import, sale, offer for sale, or shipment of such devices and home electronic equipment and systems, and to the use of such devices.

(b) Restrictions

No person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section.

(c) Exceptions

The provisions of this section shall not be applicable to carriers transporting such devices or home electronic equipment and systems without trading in them, to devices or home electronic equipment and systems manufactured solely for export, to the manufacture, assembly, or installation of devices or home electronic equipment and systems for its own use by a public utility engaged in providing electric service, or to devices or home electronic equipment and systems for use by the Government of the United States or any agency thereof. Devices and home electronic equipment and systems for use by the Government of the United States or any agency thereof shall be developed, procured, or otherwise acquired, including offshore procurement, under United States Government criteria, standards, or specifications designed to achieve the objectives of reducing interference to radio reception and to home electronic equipment and systems, taking into account the unique needs of national defense and security.

(d) Cellular telecommunications receivers

(1) Within 180 days after October 28, 1992, the Commission shall prescribe and make effective regulations denying equipment authorization (under part 15 of title 47, Code of Federal Regulations, or any other part of that title) for any scanning receiver that is capable of—

(A) receiving transmissions in the frequencies allocated to the domestic cellular radio telecommunications service,

(B) readily being altered by the user to receive transmissions in such frequencies, or

(C) being equipped with decoders that convert digital cellular transmissions to analog voice audio.

(2) Beginning 1 year after the effective date of the regulations adopted pursuant to paragraph (1), no receiver having the capabilities described in subparagraph (A), (B), or (C) of paragraph (1), as such capabilities are defined in such regulations, shall be manufactured in the United States or imported for use in the United States.

(e) Delegation of equipment testing and certification to private laboratories

The Commission may—

(1) authorize the use of private organizations for testing and certifying the compliance of devices or home electronic equipment and systems with regulations promulgated under this section;

(2) accept as prima facie evidence of such compliance the certification by any such organization; and

(3) establish such qualifications and standards as it deems appropriate for such private organizations, testing, and certification.

(f) State and local enforcement of FCC regulations on use of citizens band radio equipment

(1) Except as provided in paragraph (2), a State or local government may enact a statute or ordinance that prohibits a violation of the following regulations of the Commission under this section:

(A) A regulation that prohibits a use of citizens band radio equipment not authorized by the Commission.

(B) A regulation that prohibits the unauthorized operation of citizens band radio equipment on a frequency between 24 MHz and 35 MHz.

(2) A station that is licensed by the Commission pursuant to section 301 of this title in any radio service for the operation at issue shall not be subject to action by a State or local government under this subsection. A State or local government statute or ordinance enacted for purposes of this subsection shall identify the exemption available under this paragraph.

(3) The Commission shall, to the extent practicable, provide technical guidance to State and local governments regarding the detection and determination of violations of the regulations specified in paragraph (1).

(4)(A) In addition to any other remedy authorized by law, a person affected by the decision of a State or local government agency enforcing a statute or ordinance under paragraph (1) may submit to the Commission an appeal of the decision on the grounds that the State or local government, as the case may be, enacted a statute or ordinance outside the authority provided in this subsection.

(B) A person shall submit an appeal on a decision of a State or local government agency to the Commission under this paragraph, if at all, not later than 30 days after the date on which the decision by the State or local government agency becomes final, but prior to seeking judicial review of such decision.

(C) The Commission shall make a determination on an appeal submitted under subparagraph (B) not later than 180 days after its submittal.

(D) If the Commission determines under subparagraph (C) that a State or local government agency has acted outside its authority in enforcing a statute or ordinance, the Commission shall preempt the decision enforcing the statute or ordinance.

(5) The enforcement of statute or ordinance that prohibits a violation of a regulation by a State or local government under paragraph (1) in a particular case shall not preclude the Commission from enforcing the regulation in that case concurrently.

(6) Nothing in this subsection shall be construed to diminish or otherwise affect the jurisdiction of the Commission under this section over devices capable of interfering with radio communications.

(7) The enforcement of a statute or ordinance by a State or local government under paragraph (1) with regard to citizens band radio equipment on board a ''commercial motor vehicle'', as defined in section 31101 of title 49, shall require probable cause to find that the commercial motor vehicle or the individual operating the vehicle is in violation of the regulations described in paragraph (1).

(June 19, 1934, ch. 652, title III, § 302, as added Pub. L. 90–379, July 5, 1968, 82 Stat. 290; amended Pub. L. 97–259, title I, § 108(a), Sept. 13, 1982, 96 Stat. 1091; Pub. L. 102–556, title IV, § 403(a), Oct. 28, 1992, 106 Stat. 4195; Pub. L. 104–104, title IV, § 403(f), Feb. 8, 1996, 110 Stat. 131; Pub. L. 106–521, § 1, Nov. 22, 2000, 114 Stat. 2438.)

AMENDMENTS

2000—Subsec. (f). Pub. L. 106–521 added subsec. (f).

1996—Subsec. (e). Pub. L. 104–104 added subsec. (e).

1992—Subsec. (d). Pub. L. 102–556 added subsec. (d).

1982—Subsec. (a). Pub. L. 97–259, § 108(a)(1), (2), inserted ''(1)'' after ''regulations'' and ''; and (2) establishing minimum performance standards for home electronic equipment and systems to reduce their susceptibility to interference from radio frequency energy'' after ''radio communications'', and substituted ''or shipment of such devices and home electronic equipment and systems, and to the use of such devices'' for ''shipment, or use of such devices''.

Subsec. (b). Pub. L. 97–259, § 108(a)(3), substituted ''or ship devices or home electronic equipment and systems, or use devices,'' for ''ship, or use devices''.

Subsec. (c). Pub. L. 97–259, § 108(a)(4), inserted ''or home electronic equipment and systems'' after ''devices'' wherever appearing, inserted ''and home electronic equipment and systems'' after ''Devices'', substituted ''objectives'' for ''common objective'', and inserted ''and to home electronic equipment and systems'' after ''reception''.

EFFECT ON OTHER LAWS

Section 403(c) of Pub. L. 102–556 provided that: ''This section [amending this section] shall not affect section 2512(2) of title 18, United States Code.''

MINIMUM PERFORMANCE STANDARDS; HOME ELECTRONIC EQUIPMENT AND SYSTEMS MANUFACTURED BEFORE SEPTEMBER 13, 1982

Section 108(b) of Pub. L. 97–259 provided that: ''Any minimum performance standard established by the Federal Communications Commission under section 302(a)(2) of the Communications Act of 1934 [subsec. (a)(2) of this section], as added by the amendment made in subsection (a)(1), shall not apply to any home electronic equipment or systems manufactured before the date of the enactment of this Act [Sept. 13, 1982].''

§ 303. Powers and duties of Commission

Except as otherwise provided in this chapter, the Commission from time to time, as public convenience, interest, or necessity requires, shall—

(a) Classify radio stations;

(b) Prescribe the nature of the service to be rendered by each class of licensed stations and each station within any class;

(c) Assign bands of frequencies to the various classes of stations, and assign frequencies for each individual station and determine the power which each station shall use and the time during which it may operate;

(d) Determine the location of classes of stations or individual stations;

(e) Regulate the kind of apparatus to be used with respect to its external effects and the purity and sharpness of the emissions from each station and from the apparatus therein;

(f) Make such regulations not inconsistent with law as it may deem necessary to prevent interference between stations and to carry out the provisions of this chapter: *Provided, however*, That changes in the frequencies, authorized power, or in the times of operation of any station, shall not be made without the consent of the station licensee unless the Commission shall determine that such changes will promote public convenience or interest or will serve public necessity, or the provisions of this chapter will be more fully complied with;

(g) Study new uses for radio, provide for experimental uses of frequencies, and generally encourage the larger and more effective use of radio in the public interest;

(h) Have authority to establish areas or zones to be served by any station;

(i) Have authority to make special regulations applicable to radio stations engaged in chain broadcasting;

(j) Have authority to make general rules and regulations requiring stations to keep such records of programs, transmissions of energy, communications, or signals as it may deem desirable;

(k) Have authority to exclude from the requirements of any regulations in whole or in part any radio station upon railroad rolling stock, or to modify such regulations in its discretion;

(*l*)(1) Have authority to prescribe the qualifications of station operators, to classify them according to the duties to be performed, to fix the forms of such licenses, and to issue them to persons who are found to be qualified by the Commission and who otherwise are legally eligible for employment in the United States, except that such requirement relating to eligibility for employment in the United States shall not apply in the case of licenses issued by the Commission to (A) persons holding United States pilot certificates; or (B) persons holding foreign aircraft pilot certificates which are valid in the United States, if the foreign government involved has entered into a reciprocal agreement under which such foreign government does not impose any similar requirement relating to eligibility for employment upon citizens of the United States;

(2) Notwithstanding paragraph (1) of this subsection, an individual to whom a radio station is licensed under the provisions of this chapter may be issued an operator's license to operate that station.

(3) In addition to amateur operator licenses which the Commission may issue to aliens pursuant to paragraph (2) of this subsection, and notwithstanding section 301 of this title and paragraph (1) of this subsection, the Commission may issue authorizations, under such conditions and terms as it may prescribe, to permit an alien licensed by his government as an amateur radio operator to operate his amateur radio station licensed by his government in the United States, its possessions, and the Commonwealth of Puerto Rico provided there is in effect a

multilateral or bilateral agreement, to which the United States and the alien's government are parties, for such operation on a reciprocal basis by United States amateur radio operators. Other provisions of this chapter and of subchapter II of chapter 5, and chapter 7, of title 5 shall not be applicable to any request or application for or modification, suspension, or cancellation of any such authorization.

(m)(1) Have authority to suspend the license of any operator upon proof sufficient to satisfy the Commission that the licensee—

(A) has violated, or caused, aided, or abetted the violation of, any provision of any Act, treaty, or convention binding on the United States, which the Commission is authorized to administer, or any regulation made by the Commission under any such Act, treaty, or convention; or

(B) has failed to carry out a lawful order of the master or person lawfully in charge of the ship or aircraft on which he is employed; or

(C) has willfully damaged or permitted radio apparatus or installations to be damaged; or

(D) has transmitted superfluous radio communications or signals or communications containing profane or obscene words, language, or meaning, or has knowingly transmitted—

(1) false or deceptive signals or communications, or

(2) a call signal or letter which has not been assigned by proper authority to the station he is operating; or

(E) has willfully or maliciously interfered with any other radio communications or signals; or

(F) has obtained or attempted to obtain, or has assisted another to obtain or attempt to obtain, an operator's license by fraudulent means.

(2) No order of suspension of any operator's license shall take effect until fifteen days' notice in writing thereof, stating the cause for the proposed suspension, has been given to the operator licensee who may make written application to the Commission at any time within said fifteen days for a hearing upon such order. The notice to the operator licensee shall not be effective until actually received by him, and from that time he shall have fifteen days in which to mail the said application. In the event that physical conditions prevent mailing of the application at the expiration of the fifteen-day period, the application shall then be mailed as soon as possible thereafter, accompanied by a satisfactory explanation of the delay. Upon receipt by the Commission of such application for hearing, said order of suspension shall be held in abeyance until the conclusion of the hearing which shall be conducted under such rules as the Commission may prescribe. Upon the conclusion of said hearing the Commission may affirm, modify, or revoke said order of suspension.

(n) Have authority to inspect all radio installations associated with stations required to be licensed by any Act, or which the Commission by rule has authorized to operate without a license under section 307(e)(1) of this title, or which are subject to the provisions of any Act, treaty, or convention binding on the United States, to ascertain whether in construction, installation, and operation they conform to the requirements of the rules and regulations of the Commission, the provisions of any Act, the terms of any treaty or convention binding on the United States, and the conditions of the license or other instrument of authorization under which they are constructed, installed, or operated.

(*o*) Have authority to designate call letters of all stations;

(p) Have authority to cause to be published such call letters and such other announcements and data as in the judgment of the Commission may be required for the efficient operation of radio stations subject to the jurisdiction of the United States and for the proper enforcement of this chapter;

(q) Have authority to require the painting and/or illumination of radio towers if and when in its judgment such towers constitute, or there is a reasonable possibility that they may constitute, a menace to air navigation. The permittee or licensee, and the tower owner in any case in which the owner is not the permittee or licensee, shall maintain the painting and/or illumination of the tower as prescribed by the Commission pursuant to this section. In the event that the tower ceases to be licensed by the Commission for the transmission of radio energy, the owner of the tower shall maintain the prescribed painting and/or illumination of such tower until it is dismantled, and the Commission may require the owner to dismantle and remove the tower when the Administrator of the Federal Aviation Agency determines that there is a reasonable possibility that it may constitute a menace to air navigation.

(r) Make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this chapter, or any international radio or wire communications treaty or convention, or regulations annexed thereto, including any treaty or convention insofar as it relates to the use of radio, to which the United States is or may hereafter become a party.

(s) Have authority to require that apparatus designed to receive television pictures broadcast simultaneously with sound be capable of adequately receiving all frequencies allocated by the Commission to television broadcasting when such apparatus is shipped in interstate commerce, or is imported from any foreign country into the United States, for sale or resale to the public.

(t) Notwithstanding the provisions of section 301(e) of this title, have authority, in any case in which an aircraft registered in the United States is operated (pursuant to a lease, charter, or similar arrangement) by an aircraft operator who is subject to regulation by the government of a foreign nation, to enter into an agreement with such government under which the Commission shall recognize and accept any radio station licenses and radio operator licenses issued by such government with respect to such aircraft.

(u) Require that apparatus designed to receive television pictures broadcast simultaneously

with sound be equipped with built-in decoder circuitry designed to display closed-captioned television transmissions when such apparatus is manufactured in the United States or imported for use in the United States, and its television picture screen is 13 inches or greater in size.

(v) Have exclusive jurisdiction to regulate the provision of direct-to-home satellite services. As used in this subsection, the term ''direct-to-home satellite services'' means the distribution or broadcasting of programming or services by satellite directly to the subscriber's premises without the use of ground receiving or distribution equipment, except at the subscriber's premises or in the uplink process to the satellite.

(w) Omitted.

(x) Require, in the case of an apparatus designed to receive television signals that are shipped in interstate commerce or manufactured in the United States and that have a picture screen 13 inches or greater in size (measured diagonally), that such apparatus be equipped with a feature designed to enable viewers to block display of all programs with a common rating, except as otherwise permitted by regulations pursuant to section 330(c)(4) of this title.

(y) Have authority to allocate electromagnetic spectrum so as to provide flexibility of use, if—

(1) such use is consistent with international agreements to which the United States is a party; and

(2) the Commission finds, after notice and an opportunity for public comment, that—

(A) such an allocation would be in the public interest;

(B) such use would not deter investment in communications services and systems, or technology development; and

(C) such use would not result in harmful interference among users.

(June 19, 1934, ch. 652, title III, § 303, 48 Stat. 1082; May 20, 1937, ch. 229, §§ 5, 6, 50 Stat. 190, 191; Pub. L. 85–817, § 1, Aug. 28, 1958, 72 Stat. 981; Pub. L. 87–445, Apr. 27, 1962, 76 Stat. 64; Pub. L. 87–529, § 1, July 10, 1962, 76 Stat. 150; Pub. L. 88–313, § 1, May 28, 1964, 78 Stat. 202; Pub. L. 88–487, § 2, Aug. 22, 1964, 78 Stat. 602; Pub. L. 89–268, Oct. 19, 1965, 79 Stat. 990; Pub. L. 92–81, § 1, Aug. 10, 1971, 85 Stat. 302; Pub. L. 93–505, § 1, Nov. 30, 1974, 88 Stat. 1576; Pub. L. 97–259, title I, §§ 109–111(a), 113(b), Sept. 13, 1982, 96 Stat. 1092, 1093; Pub. L. 101–396, § 8(a), Sept. 28, 1990, 104 Stat. 850; Pub. L. 101–431, § 3, Oct. 15, 1990, 104 Stat. 960; Pub. L. 102–538, title II, § 210(a), Oct. 27, 1992, 106 Stat. 3544; Pub. L. 104–104, title II, § 205(b), title IV, § 403(g), title V, § 551(b)(1), (c), Feb. 8, 1996, 110 Stat. 114, 131, 140, 141; Pub. L. 105–33, title III, § 3005, Aug. 5, 1997, 111 Stat. 268.)

CODIFICATION

Enactment of subsec. (w) by Pub. L. 104–104, § 551(b)(1), did not become effective pursuant to Pub. L. 104–104, § 551(e)(1), because the Federal Communications Commission on Mar. 12, 1998, adopted an order finding acceptable the video programming rating system currently in voluntary use. See 1996 Amendment note and Effective Date of 1996 Amendment note below.

In subsec. (*l*)(3), ''subchapter II of chapter 5, and chapter 7, of title 5'' substituted for ''the Administrative Procedure Act'' on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1997—Subsec. (y). Pub. L. 105–33 added subsec. (y).

1996—Subsec. (f). Pub. L. 104–104, § 403(g), struck out '', after a public hearing,'' after ''unless''.

Subsec. (v). Pub. L. 104–104, § 205(b), added subsec. (v).

Subsec. (w). Pub. L. 104–104, § 551(b)(1), which did not become effective, directed the insertion of subsec. (w) reading as follows: ''Prescribe—

''(1) on the basis of recommendations from an advisory committee established by the Commission in accordance with section 551(b)(2) of the Telecommunications Act of 1996, guidelines and recommended procedures for the identification and rating of video programming that contains sexual, violent, or other indecent material about which parents should be informed before it is displayed to children: *Provided*, That nothing in this paragraph shall be construed to authorize any rating of video programming on the basis of its political or religious content; and

''(2) with respect to any video programming that has been rated, and in consultation with the television industry, rules requiring distributors of such video programming to transmit such rating to permit parents to block the display of video programming that they have determined is inappropriate for their children.''

See Codification note above and Effective Date of 1996 Amendment note below.

Subsec. (x). Pub. L. 104–104, § 551(c), added subsec. (x).

1992—Subsec. (q). Pub. L. 102–538 inserted '', and the tower owner in any case in which the owner is not the permittee or licensee,'' after ''permittee or licensee''.

1990—Subsec. (*l*)(3). Pub. L. 101–396 substituted ''multilateral or bilateral agreement, to which the United States and the alien's government are parties,'' for ''bilateral agreement between the United States and the alien's government''.

Subsec. (u). Pub. L. 101–431 added subsec. (u).

1982—Subsec. (*l*)(1). Pub. L. 97–259, § 109, substituted ''persons who are found to be qualified by the commission and who otherwise are legally eligible for employment in the United States'' for ''such citizens or nationals of the United States, or citizens of the Trust Territory of the Pacific Islands presenting valid identity certificates issued by the High Commissioner of such Territory, as the Commission finds qualified'', and substituted provision that the requirement relating to eligibility for employment in the United States shall not apply in the case of licenses issued by the Commission to (A) persons holding United States pilot certificates; or (B) persons holding foreign aircraft pilot certificates which are valid in the United States, if the foreign government involved has entered into a reciprocal agreement under which such foreign government does not impose any similar requirement relating to eligibility for employment upon citizens of the United States for provision that in issuing licenses for the operation of radio stations on aircraft the Commission, if it found that the public interest would be served thereby, could waive the requirement of citizenship in the case of persons holding United States pilot certificates or in the case of persons holding foreign aircraft pilot certificates which were valid in the United States on the basis of reciprocal agreements entered into with foreign governments.

Subsec. (m)(1)(A). Pub. L. 97–259, § 110, inserted '', or caused, aided, or abetted the violation of,'' after ''violated''.

Subsec. (n). Pub. L. 97–259, § 113(b), inserted '', or which the Commission by rule has authorized to operate without a license under section 307(e)(1) of this title,'' after ''licensed by any Act''.

Subsec. (t). Pub. L. 97–259, § 111(a), added subsec. (t).

1974—Subsec. (*l*)(2). Pub. L. 93–505 substituted provisions relating to issuance, notwithstanding par. (1) of this subsection, to an individual to whom a radio station is licensed under this chapter of an operator's license to operate that station, for provisions relating to issuance by the Commission of authorizations, under

terms and conditions, for aliens licensed as amateur radio operators by their governments to operate in the United States, possessions, and Puerto Rico upon meeting specified preconditions.

Subsec. (*l*)(3). Pub. L. 93–505 substituted provisions relating to issuance of authorizations for aliens licensed by their governments as amateur radio operators to operate their radio stations in the United States, possessions, and Puerto Rico, under terms and conditions prescribed by the Commission and upon meeting specified preconditions, for provisions relating to issuance of licenses by the Commission, notwithstanding par. (1) of this subsection, to aliens admitted to the United States as permanent residents.

1971—Subsec. (*l*)(3). Pub. L. 92–81 added par. (3).

1965—Subsec. (q). Pub. L. 89–268 required abandoned or unused radio towers to continue to meet the same painting and lighting requirements that would be applicable if such towers were being used in connection with transmission of radio energy pursuant to a license issued by the Commission and authorized the Commission to direct dismantlement of such towers when the Administrator of the Federal Aviation Agency determines that there is a reasonable possibility that they may constitute a menace to air navigation.

1964—Subsec. (*l*). Pub. L. 88–487 inserted ''or citizens of the Trust Territory of the Pacific Islands presenting valid identity certificates issued by the High Commissioner of such Territory''.

Pub. L. 88–313 designated existing provisions of subsec. (*l*) as par. (1), and added par. (2).

1962—Subsec. (*l*). Pub. L. 87–445 inserted ''or nationals'' after ''citizens''.

Subsec. (s). Pub. L. 87–529 added subsec. (s).

1958—Subsec. (*l*). Pub. L. 85–817 authorized Commission to waive citizenship requirement in issuing licenses for operation of radio stations on aircraft.

1937—Subsecs. (m), (n). Act May 20, 1937, §§5, 6(a), amended subsecs. (m) and (n) generally.

Subsec. (r). Act May 20, 1937, §6(b), added subsec. (r).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 551(e) of Pub. L. 104–104 provided that:

''(1) APPLICABILITY OF RATING PROVISION.—The amendment made by subsection (b) of this section [amending this section] shall take effect 1 year after the date of enactment of this Act [Feb. 8, 1996], but only if the Commission determines [see Codification note above], in consultation with appropriate public interest groups and interested individuals from the private sector, that distributors of video programming have not, by such date—

''(A) established voluntary rules for rating video programming that contains sexual, violent, or other indecent material about which parents should be informed before it is displayed to children, and such rules are acceptable to the Commission; and

''(B) agreed voluntarily to broadcast signals that contain ratings of such programming.

''(2) EFFECTIVE DATE OF MANUFACTURING PROVISION.—In prescribing regulations to implement the amendment made by subsection (c) [amending this section], the Federal Communications Commission shall, after consultation with the television manufacturing industry, specify the effective date for the applicability of the requirement to the apparatus covered by such amendment, which date shall not be less than two years after the date of enactment of this Act [Feb. 8, 1996].'' [On Mar. 12, 1998, the Federal Communications Commission adopted technical rules that require certain television receivers to be equipped with features to block display of programs with a common rating. This feature was to be phased in, with half of subject television receivers to have it by July 1, 1999, and all such models to have it by Jan. 1, 2000.]

EFFECTIVE DATE OF 1992 AMENDMENT

Section 210(c) of Pub. L. 102–538 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect 30 days after the date of enactment of this Act [Oct. 27, 1992].''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5 of Pub. L. 101–431 provided that: ''Sections 3 and 4 of this Act [amending this section and section 330 of this title] shall take effect on July 1, 1993.''

REGULATIONS

Section 6 of Pub. L. 101–431 provided that: ''The Federal Communications Commission shall promulgate rules to implement this Act [amending this section and section 330 of this title and enacting provisions set out as notes under this section and section 609 of this title] within 180 days after the date of its enactment [Oct. 15, 1990].''

Pub. L. 100–459, title VI, §608, Oct. 1, 1988, 102 Stat. 2228, directed Federal Communications Commission to promulgate, by Jan. 31, 1989, regulations in accordance with section 1464 of Title 18, Crimes and Criminal Procedure, to enforce the provisions of such section on a 24 hour per day basis, prior to repeal by Pub. L. 102–356, §16(b), Aug. 26, 1992, 106 Stat. 954.

BROADCAST OWNERSHIP

Pub. L. 104–104, title II, §202, Feb. 8, 1996, 110 Stat. 110, as amended by Pub. L. 108–199, div. B, title VI, §629, Jan. 23, 2004, 118 Stat. 99, provided that:

''(a) NATIONAL RADIO STATION OWNERSHIP RULE CHANGES REQUIRED.—The Commission shall modify section 73.3555 of its regulations (47 C.F.R. 73.3555) by eliminating any provisions limiting the number of AM or FM broadcast stations which may be owned or controlled by one entity nationally.

''(b) LOCAL RADIO DIVERSITY.—

''(1) APPLICABLE CAPS.—The Commission shall revise section 73.3555(a) of its regulations (47 C.F.R. 73.3555) to provide that—

''(A) in a radio market with 45 or more commercial radio stations, a party may own, operate, or control up to 8 commercial radio stations, not more than 5 of which are in the same service (AM or FM);

''(B) in a radio market with between 30 and 44 (inclusive) commercial radio stations, a party may own, operate, or control up to 7 commercial radio stations, not more than 4 of which are in the same service (AM or FM);

''(C) in a radio market with between 15 and 29 (inclusive) commercial radio stations, a party may own, operate, or control up to 6 commercial radio stations, not more than 4 of which are in the same service (AM or FM); and

''(D) in a radio market with 14 or fewer commercial radio stations, a party may own, operate, or control up to 5 commercial radio stations, not more than 3 of which are in the same service (AM or FM), except that a party may not own, operate, or control more than 50 percent of the stations in such market.

''(2) EXCEPTION.—Notwithstanding any limitation authorized by this subsection, the Commission may permit a person or entity to own, operate, or control, or have a cognizable interest in, radio broadcast stations if the Commission determines that such ownership, operation, control, or interest will result in an increase in the number of radio broadcast stations in operation.

''(c) TELEVISION OWNERSHIP LIMITATIONS.—

''(1) NATIONAL OWNERSHIP LIMITATIONS.—The Commission shall modify its rules for multiple ownership set forth in section 73.3555 of its regulations (47 C.F.R. 73.3555)—

''(A) by eliminating the restrictions on the number of television stations that a person or entity may directly or indirectly own, operate, or control, or have a cognizable interest in, nationwide; and

''(B) by increasing the national audience reach limitation for television stations to 39 percent.

''(2) LOCAL OWNERSHIP LIMITATIONS.—The Commission shall conduct a rulemaking proceeding to deter-

mine whether to retain, modify, or eliminate its limitations on the number of television stations that a person or entity may own, operate, or control, or have a cognizable interest in, within the same television market.

''(3) DIVESTITURE.—A person or entity that exceeds the 39 percent national audience reach limitation for television stations in paragraph (1)(B) through grant, transfer, or assignment of an additional license for a commercial television broadcast station shall have not more than 2 years after exceeding such limitation to come into compliance with such limitation. This divestiture requirement shall not apply to persons or entities that exceed the 39 percent national audience reach limitation through population growth.

''(4) FORBEARANCE.—Section 10 of the Communications Act of 1934 (47 U.S.C. 160) shall not apply to any person or entity that exceeds the 39 percent national audience reach limitation for television stations in paragraph (1)(B);[.]

''(d) RELAXATION OF ONE-TO-A-MARKET.—With respect to its enforcement of its one-to-a-market ownership rules under section 73.3555 of its regulations, the Commission shall extend its waiver policy to any of the top 50 markets, consistent with the public interest, convenience, and necessity.

''(e) DUAL NETWORK CHANGES.—The Commission shall revise section 73.658(g) of its regulations (47 C.F.R. 658(g)) to permit a television broadcast station to affiliate with a person or entity that maintains 2 or more networks of television broadcast stations unless such dual or multiple networks are composed of—

''(1) two or more persons or entities that, on the date of enactment of the Telecommunications Act of 1996 [Feb. 8, 1996], are 'networks' as defined in section 73.3613(a)(1) of the Commission's regulations (47 C.F.R. 73.3613(a)(1)); or

''(2) any network described in paragraph (1) and an English language program distribution service that, on such date, provides 4 or more hours of programming per week on a national basis pursuant to network affiliation arrangements with local television broadcast stations in markets reaching more than 75 percent of television homes (as measured by a national ratings service).

''(f) CABLE CROSS OWNERSHIP.—

''(1) ELIMINATION OF RESTRICTIONS.—The Commission shall revise section 76.501 of its regulations (47 C.F.R. 76.501) to permit a person or entity to own or control a network of broadcast stations and a cable system.

''(2) SAFEGUARDS AGAINST DISCRIMINATION.—The Commission shall revise such regulations if necessary to ensure carriage, channel positioning, and nondiscriminatory treatment of nonaffiliated broadcast stations by a cable system described in paragraph (1).

''(g) LOCAL MARKETING AGREEMENTS.—Nothing in this section shall be construed to prohibit the origination, continuation, or renewal of any television local marketing agreement that is in compliance with the regulations of the Commission.

''(h) FURTHER COMMISSION REVIEW.—The Commission shall review its rules adopted pursuant to this section and all of its ownership rules quadrennially as part of its regulatory reform review under section 11 of the Communications Act of 1934 [47 U.S.C. 161] and shall determine whether any of such rules are necessary in the public interest as the result of competition. The Commission shall repeal or modify any regulation it determines to be no longer in the public interest. This subsection does not apply to any rules relating to the 39 percent national audience reach limitation in subsection (c)(1)(B).

''(i) ELIMINATION OF STATUTORY RESTRICTION.—[Amended section 533(a) of this title.]''

RESTRICTIONS ON OVER-THE-AIR RECEPTION DEVICES

Section 207 of Pub. L. 104–104 provided that: ''Within 180 days after the date of enactment of this Act [Feb. 8, 1996], the Commission shall, pursuant to section 303 of the Communications Act of 1934 [47 U.S.C. 303], promulgate regulations to prohibit restrictions that impair a viewer's ability to receive video programming services through devices designed for over-the-air reception of television broadcast signals, multichannel multipoint distribution service, or direct broadcast satellite services.''

PARENTAL CHOICE IN TELEVISION PROGRAMMING

Section 551(a) of Pub. L. 104–104 provided that: ''The Congress makes the following findings:

''(1) Television influences children's perception of the values and behavior that are common and acceptable in society.

''(2) Television station operators, cable television system operators, and video programmers should follow practices in connection with video programming that take into consideration that television broadcast and cable programming has established a uniquely pervasive presence in the lives of American children.

''(3) The average American child is exposed to 25 hours of television each week and some children are exposed to as much as 11 hours of television a day.

''(4) Studies have shown that children exposed to violent video programming at a young age have a higher tendency for violent and aggressive behavior later in life than children not so exposed, and that children exposed to violent video programming are prone to assume that acts of violence are acceptable behavior.

''(5) Children in the United States are, on average, exposed to an estimated 8,000 murders and 100,000 acts of violence on television by the time the child completes elementary school.

''(6) Studies indicate that children are affected by the pervasiveness and casual treatment of sexual material on television, eroding the ability of parents to develop responsible attitudes and behavior in their children.

''(7) Parents express grave concern over violent and sexual video programming and strongly support technology that would give them greater control to block video programming in the home that they consider harmful to their children.

''(8) There is a compelling governmental interest in empowering parents to limit the negative influences of video programming that is harmful to children.

''(9) Providing parents with timely information about the nature of upcoming video programming and with the technological tools that allow them easily to block violent, sexual, or other programming that they believe harmful to their children is a nonintrusive and narrowly tailored means of achieving that compelling governmental interest.''

ADVISORY COMMITTEE REQUIREMENTS

Section 551(b)(2) of Pub. L. 104–104 provided that: ''In establishing an advisory committee for purposes of the amendment made by paragraph (1) of this subsection [amending this section], the Commission shall—

''(A) ensure that such committee is composed of parents, television broadcasters, television programming producers, cable operators, appropriate public interest groups, and other interested individuals from the private sector and is fairly balanced in terms of political affiliation, the points of view represented, and the functions to be performed by the committee;

''(B) provide to the committee such staff and resources as may be necessary to permit it to perform its functions efficiently and promptly; and

''(C) require the committee to submit a final report of its recommendations within one year after the date of the appointment of the initial members.''

TECHNOLOGY FUND

Section 552 of Pub. L. 104–104 provided that: ''It is the policy of the United States to encourage broadcast television, cable, satellite, syndication, other video

programming distributors, and relevant related industries (in consultation with appropriate public interest groups and interested individuals from the private sector) to—

''(1) establish a technology fund to encourage television and electronics equipment manufacturers to facilitate the development of technology which would empower parents to block programming they deem inappropriate for their children and to encourage the availability thereof to low income parents;

''(2) report to the viewing public on the status of the development of affordable, easy to use blocking technology; and

''(3) establish and promote effective procedures, standards, systems, advisories, or other mechanisms for ensuring that users have easy and complete access to the information necessary to effectively utilize blocking technology and to encourage the availability thereof to low income parents.''

AM RADIO IMPROVEMENT STANDARD

Section 214 of Pub. L. 102–538 provided that: ''The Federal Communications Commission shall—

''(1) within 60 days after the date of enactment of this Act [Oct. 27, 1992], initiate a rulemaking to adopt a single AM radio stereophonic transmitting equipment standard that specifies the composition of the transmitted stereophonic signal; and

''(2) within one year after such date of enactment, adopt such standard.''

BROADCASTING OF INDECENT PROGRAMMING; FCC REGULATIONS

Pub. L. 102–356, § 16(a), Aug. 26, 1992, 106 Stat. 954, provided that: ''The Federal Communications Commission shall promulgate regulations to prohibit the broadcasting of indecent programming—

''(1) between 6 a.m. and 10 p.m. on any day by any public radio station or public television station that goes off the air at or before 12 midnight; and

''(2) between 6 a.m. and 12 midnight on any day for any radio or television broadcasting station not described in paragraph (1).

The regulations required under this subsection shall be promulgated in accordance with section 553 of title 5, United States Code, and shall become final not later than 180 days after the date of enactment of this Act [Aug. 26, 1992].''

CONGRESSIONAL FINDINGS REGARDING ACCESS BY HEARING-IMPAIRED PEOPLE TO TELEVISION MEDIUM

Section 2 of Pub. L. 101–431 provided that: ''The Congress finds that—

''(1) to the fullest extent made possible by technology, deaf and hearing-impaired people should have equal access to the television medium;

''(2) closed-captioned television transmissions have made it possible for thousands of deaf and hearing-impaired people to gain access to the television medium, thus significantly improving the quality of their lives;

''(3) closed-captioned television will provide access to information, entertainment, and a greater understanding of our Nation and the world to over 24,000,000 people in the United States who are deaf or hearing-impaired;

''(4) closed-captioned television will provide benefits for the nearly 38 percent of older Americans who have some loss of hearing;

''(5) closed-captioned television can assist both hearing and hearing-impaired children with reading and other learning skills, and improve literacy skills among adults;

''(6) closed-captioned television can assist those among our Nation's large immigrant population who are learning English as a second language with language comprehension;

''(7) currently, a consumer must buy a TeleCaption decoder and connect the decoder to a television set in order to display the closed-captioned television transmissions;

''(8) technology is now available to enable that closed-caption decoding capability to be built into new television sets during manufacture at a nominal cost by 1991; and

''(9) the availability of decoder-equipped television sets will significantly increase the audience that can be served by closed-captioned television, and such increased market will be an incentive to the television medium to provide more captioned programming.''

DIRECTION ON USE OF FUNDS REGARDING SPECTRUM ALLOCATION AND ASSIGNMENTS FOR PUBLIC SAFETY PURPOSES

Pub. L. 98–214, § 9, Dec. 8, 1983, 97 Stat. 1470, provided that:

''(a) Funds authorized to be appropriated under section 2 of this Act [amending section 156 of this title] shall be used by the Federal Communications Commission to establish a plan which adequately ensures that the needs of State and local public safety authorities would be taken into account in making allocations of the electromagnetic spectrum. In establishing such a plan the Commission shall (1) review the current and future needs of such public safety authorities in light of suitable and commercially available equipment and (2) consider the need for a nationwide contiguous frequency allocation for public safety purposes.

''(b) Pending adoption of a plan, the Commission, while making assignments and allocations, shall duly recognize the needs of State and local public safety authorities.''

§ 303a. Standards for children's television programming

(a) Establishment

The Commission shall, within 30 days after October 18, 1990, initiate a rulemaking proceeding to prescribe standards applicable to commercial television broadcast licensees with respect to the time devoted to commercial matter in conjunction with children's television programming. The Commission shall, within 180 days after October 18, 1990, complete the rulemaking proceeding and prescribe final standards that meet the requirements of subsection (b) of this section.

(b) Advertising duration limitations

Except as provided in subsection (c) of this section, the standards prescribed under subsection (a) of this section shall include the requirement that each commercial television broadcast licensee shall limit the duration of advertising in children's television programming to not more than 10.5 minutes per hour on weekends and not more than 12 minutes per hour on weekdays.

(c) Review of advertising duration limitations; modification

After January 1, 1993, the Commission—

(1) may review and evaluate the advertising duration limitations required by subsection (b) of this section; and

(2) may, after notice and public comment and a demonstration of the need for modification of such limitations, modify such limitations in accordance with the public interest.

(d) "Commercial television broadcast licensee" defined

As used in this section, the term ''commercial television broadcast licensee'' includes a cable operator, as defined in section 522 of this title.

(Pub. L. 101–437, title I, § 102, Oct. 17, 1990, 104 Stat. 996.)

CODIFICATION

Section was enacted as part of the Children's Television Act of 1990, and not as part of the Communications Act of 1934 which comprises this chapter.

CONGRESSIONAL FINDINGS

Section 101 of title I of Pub. L. 101–437 provided that: ''The Congress finds that—

''(1) it has been clearly demonstrated that television can assist children to learn important information, skills, values, and behavior, while entertaining them and exciting their curiosity to learn about the world around them;

''(2) as part of their obligation to serve the public interest, television station operators and licensees should provide programming that serves the special needs of children;

''(3) the financial support of advertisers assists in the provision of programming to children;

''(4) special safeguards are appropriate to protect children from overcommercialization on television;

''(5) television station operators and licensees should follow practices in connection with children's television programming and advertising that take into consideration the characteristics of this child audience; and

''(6) it is therefore necessary that the Federal Communications Commission (hereinafter referred to as the 'Commission') take the actions required by this title [enacting sections 303a and 303b of this title].''

§ 303b. Consideration of children's television service in broadcast license renewal

(a) After the standards required by section 303a of this title are in effect, the Commission shall, in its review of any application for renewal of a commercial or noncommercial television broadcast license, consider the extent to which the licensee—

(1) has complied with such standards; and

(2) has served the educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs.

(b) In addition to consideration of the licensee's programming as required under subsection (a) of this section, the Commission may consider—

(1) any special nonbroadcast efforts by the licensee which enhance the educational and informational value of such programming to children; and

(2) any special efforts by the licensee to produce or support programming broadcast by another station in the licensee's marketplace which is specifically designed to serve the educational and informational needs of children.

(Pub. L. 101–437, title I, § 103, Oct. 17, 1990, 104 Stat. 997; Pub. L. 102–356, § 15, Aug. 26, 1992, 106 Stat. 954; Pub. L. 103–414, title III, § 303(c), Oct. 25, 1994, 108 Stat. 4296.)

CODIFICATION

Section was enacted as part of the Children's Television Act of 1990, and not as part of the Communications Act of 1934 which comprises this chapter.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–414 substituted ''noncommercial'' for ''noncommerical''.

1992—Subsec. (a). Pub. L. 102–356 inserted reference to commercial or noncommercial television broadcast licenses.

§ 303c. Television program improvement

(a) Short title

This section may be cited as the ''Television Program Improvement Act of 1990''.

(b) Definitions

For purposes of this section—

(1) the term ''antitrust laws'' has the meaning given it in subsection (a) of section 12 of title 15, except that such term includes section 45 of title 15 to the extent that section 45 of title 15 applies to unfair methods of competition;

(2) the term ''person in the television industry'' means a television network, any entity which produces programming (including theatrical motion pictures) for telecasting or telecasts programming, the National Cable Television Association, the Association of Independent Television Stations, Incorporated, the National Association of Broadcasters, the Motion Picture Association of America, the Community Antenna Television Association, and each of the networks' affiliate organizations, and shall include any individual acting on behalf of such person; and

(3) the term ''telecast'' means—

(A) to broadcast by a television broadcast station; or

(B) to transmit by a cable television system or a satellite television distribution service.

(c) Exemption

The antitrust laws shall not apply to any joint discussion, consideration, review, action, or agreement by or among persons in the television industry for the purpose of, and limited to, developing and disseminating voluntary guidelines designed to alleviate the negative impact of violence in telecast material.

(d) Limitations

(1) The exemption provided in subsection (c) of this section shall not apply to any joint discussion, consideration, review, action, or agreement which results in a boycott of any person.

(2) The exemption provided in subsection (c) of this section shall apply only to any joint discussion, consideration, review, action, or agreement engaged in only during the 3-year period beginning on December 1, 1990.

(Pub. L. 101–650, title V, § 501, Dec. 1, 1990, 104 Stat. 5127.)

CODIFICATION

Section was enacted as part of the Television Program Improvement Act of 1990 and also as part of the Judicial Improvements Act of 1990, and not as part of the Communications Act of 1934 which comprises this chapter.

§ 304. Waiver by license of claims to particular frequency or of electromagnetic spectrum

No station license shall be granted by the Commission until the applicant therefor shall have waived any claim to the use of any particu-

lar frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise.

(June 19, 1934, ch. 652, title III, §304, 48 Stat. 1083; Pub. L. 97–259, title I, §127(a), Sept. 13, 1982, 96 Stat. 1099; Pub. L. 102–538, title II, §204(a), Oct. 27, 1992, 106 Stat. 3543.)

AMENDMENTS

1992—Pub. L. 102–538 substituted ''waived'' for ''signed a waiver of''.

1982—Pub. L. 97–259 substituted ''electromagnetic spectrum'' for ''ether''.

§305. Government owned stations

(a) Frequencies; compliance with regulations; stations on vessels

Radio stations belonging to and operated by the United States shall not be subject to the provisions of sections 301 and 303 of this title. All such Government stations shall use such frequencies as shall be assigned to each or to each class by the President. All such stations, except stations on board naval and other Government vessels while at sea or beyond the limits of the continental United States, when transmitting any radio communication or signal other than a communication or signal relating to Government business, shall conform to such rules and regulations designed to prevent interference with other radio stations and the rights of others as the Commission may prescribe.

(b) Call letters

All stations owned and operated by the United States, except mobile stations of the Army of the United States, and all other stations on land and sea, shall have special call letters designated by the Commission.

(c) Stations operated by foreign governments

The provisions of sections 301 and 303 of this title notwithstanding, the President may, provided he determines it to be consistent with and in the interest of national security, authorize a foreign government, under such terms and conditions as he may prescribe, to construct and operate at the seat of government of the United States a low-power radio station in the fixed service at or near the site of the embassy or legation of such foreign government for transmission of its messages to points outside the United States, but only (1) where he determines that the authorization would be consistent with the national interest of the United States and (2) where such foreign government has provided reciprocal privileges to the United States to construct and operate radio stations within territories subject to its jurisdiction. Foreign government stations authorized pursuant to the provisions of this subsection shall conform to such rules and regulations as the President may prescribe. The authorization of such stations, and the renewal, modification, suspension, revocation, or other termination of such authority shall be in accordance with such procedures as may be established by the President and shall not be subject to the other provisions of this chapter or of subchapter II of chapter 5, and chapter 7, of title 5.

(June 19, 1934, ch. 652, title III, §305, 48 Stat. 1083; Pub. L. 87–795, Oct. 11, 1962, 76 Stat. 903; Pub. L. 97–31, §12(150), Aug. 6, 1981, 95 Stat. 167; Pub. L. 104–104, title IV, §403(h)(1), Feb. 8, 1996, 110 Stat. 131.)

CODIFICATION

In subsec. (c), ''subchapter II of chapter 5, and chapter 7, of title 5'' substituted for ''the Administrative Procedure Act'' on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1996—Subsecs. (b) to (d). Pub. L. 104–104 redesignated subsecs. (c) and (d) as (b) and (c), respectively, and struck out former subsec. (b) which read as follows: ''Radio stations on board vessels of the Maritime Administration of the Department of Transportation or the Inland and Coastwise Waterways Service shall be subject to the provisions of this subchapter.''

1981—Subsec. (b). Pub. L. 97–31 substituted ''Maritime Administration of the Department of Transportation'' for ''United States Shipping Board Bureau or the United States Shipping Board Merchant Fleet Corporation''. For prior transfers of functions, see Transfer of Functions note set out below.

1962—Subsec. (d). Pub. L. 87–795 added subsec. (d).

TRANSFER OF FUNCTIONS

For transfer of functions of United States Shipping Board Bureau and United States Shipping Board Merchant Fleet Corporation, see Ex. Ord. No. 6166, set out under section 901 of Title 5, Government Organization and Employees, act June 29, 1936, ch. 858, title II, §§203, 204, title IX, §904, 49 Stat. 1987, 2016, and Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out in the Appendix to Title 5.

REORGANIZATION PLAN NO. 1 OF 1970

Eff. Apr. 20, 1970, 35 F.R. 6421, 84 Stat. 2083

Prepared by the President and Transmitted to the Senate and the House of Representatives in Congress Assembled, February 9, 1970, Pursuant to the Provisions of Chapter 9 of Title 5 of the United States Code.

OFFICE OF TELECOMMUNICATIONS POLICY

SECTION 1. TRANSFER OF FUNCTIONS

The functions relating to assigning frequencies to radio stations belonging to and operated by the United States, or to classes thereof, conferred upon the President by the provisions of section 305(a) of the Communications Act of 1934, 47 U.S.C. 305(a), are hereby transferred to the Director of the Office of Telecommunications Policy hereinafter provided for.

SEC. 2. ESTABLISHMENT OF OFFICE

There is hereby established in the Executive Office of the President the Office of Telecommunications Policy, hereinafter referred to as the Office.

SEC. 3. DIRECTOR AND DEPUTY

(a) There shall be at the head of the Office the Director of the Office of Telecommunications Policy, hereinafter referred to as the Director. The Director shall be appointed by the President by and with the advice and consent of the Senate and shall be compensated at the rate now or hereafter provided for Level III of the Executive Schedule Pay Rates (5 U.S.C. 5314).

(b) There shall be in the Office a Deputy Director of the Office of Telecommunications Policy who shall be appointed by the President by and with the advice and consent of the Senate and shall be compensated at the rate now or hereafter provided for Level IV of the Executive Schedule Pay Rates (5 U.S.C. 5315). The Deputy

Director shall perform such functions as the Director may from time to time prescribe and, unless the President shall designate another person to so act, shall act as Director during the absence or disability of the Director or in the event of vacancy in the office of Director.

(c) No person shall while holding office as Director or Deputy Director engage in any other business, vocation, or employment.

SEC. 4. PERFORMANCE OF FUNCTIONS OF DIRECTOR

(a) The Director may appoint employees necessary for the work of the Office under the classified civil service and fix their compensation in accordance with the classification laws.

(b) The Director may from time to time make such provisions as he shall deem appropriate authorizing the performance of any function transferred to him hereunder by any other officer, or by any organizational entity or employee, of the Office.

SEC. 5. ABOLITION OF OFFICE

That office of Assistant Director of the Office of Emergency Preparedness held by the Director of Telecommunications Management under Executive Order No. 10995 of February 16, 1962, as amended, is abolished. The Director of the Office of Emergency Preparedness shall make such provisions as he may deem to be necessary with respect to winding up any outstanding affairs of the office abolished by the foregoing provisions of this section.

SEC. 6. INCIDENTAL TRANSFERS

(a) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, held, or used by, or available or to be made available to, the Office of Emergency Preparedness in connection with functions affected by the provisions of this reorganization plan as the Director of the Bureau of the Budget shall determine shall be transferred to the Office of Telecommunications Policy at such time or times as he shall direct.

(b) Such further measures and dispositions as the Director of the Bureau of the Budget shall deem to be necessary in order to effectuate the transfers provided for in subsection (a) of this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

SEC. 7. INTERIM DIRECTOR

The President may authorize any person who immediately prior to the effective date of this reorganization plan holds a position in the Executive Office of the President to act as Director of the Office of Telecommunications Policy until the office of Director is for the first time filled pursuant to the provisions of section 3 of this reorganization plan or by recess appointment, as the case may be. The President may authorize any person who serves in an acting capacity under the foregoing provisions of this section to receive the compensation attached to the office of Director. Such compensation, if authorized, shall be in lieu of, but not in addition to, other compensation from the United States to which such person may be entitled.

[The Office of Telecommunications Policy was abolished and its functions transferred to the President and the Secretary of Commerce by secs. 3 and 5 of Reorg. Plan No. 1 of 1977, set out in the Appendix to Title 5, Government Organization and Employees.]

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

We live in a time when the technology of telecommunications is undergoing rapid change which will dramatically affect the whole of our society. It has long been recognized that the executive branch of the Federal government should be better equipped to deal with the issues which arise from telecommunications growth. As the largest single user of the nation's telecommunications facilities, the Federal government must also manage its internal communications operations in the most effective manner possible.

Accordingly, I am today transmitting to the Congress Reorganization Plan No. 1 of 1970, prepared in accordance with chapter 9 of title 5 of the United States Code.

That plan would establish a new Office of Telecommunications Policy in the Executive Office of the President. The new unit would be headed by a Director and a Deputy Director who would be appointed by the President with the advice and consent of the Senate. The existing office held by the Director of Telecommunications Management in the Office of Emergency Preparedness would be abolished.

In addition to the functions which are transferred to it by the reorganization plan, the new Office would perform certain other duties which I intend to assign to it by Executive order as soon as the reorganization plan takes effect. That order would delegate to the new Office essentially those functions which are now assigned to the Director of Telecommunications Management. The Office of Telecommunications Policy would be assisted in its research and analysis responsibilities by the agencies and departments of the Executive Branch including another new office, located in the Department of Commerce.

The new Office of Telecommunications Policy would play three essential roles:

1. It would serve as the President's principal adviser on telecommunications policy, helping to formulate government policies concerning a wide range of domestic and international telecommunications issues and helping to develop plans and programs which take full advantage of the nation's technological capabilities. The speed of economic and technological advance in our time means that new questions concerning communications are constantly arising, questions on which the government must be well informed and well advised. The new Office will enable the President and all government officials to share more fully in the experience, the insights, and the forecasts of government and non-government experts.

2. The Office of Telecommunications Policy would help formulate policies and coordinate operations for the Federal government's own vast communications systems. It would, for example, set guidelines for the various departments and agencies concerning their communications equipment and services. It would regularly review the ability of government communications systems to meet the security needs of the nation and to perform effectively in time of emergency. The Office would direct the assignment of those portions of the radio spectrum which are reserved for government use, carry out responsibilities conferred on the President by the Communications Satellite Act, advise State and local governments, and provide policy direction for the National Communications System.

3. Finally, the new Office would enable the executive branch to speak with a clearer vote and to act as a more effective partner in discussions of communications policy with both the Congress and the Federal Communications Commission. This action would take away none of the prerogatives or functions assigned to the Federal Communications Commission by the Congress. It is my hope, however, that the new Office and the Federal Communications Commission would cooperate in achieving certain reforms in telecommunications policy, especially in their procedures for allocating portions of the radio spectrum for government and civilian use. Our current procedures must be more flexible if they are to deal adequately with problems such as the worsening spectrum shortage.

Each reorganization included in the plan which accompanies this message is necessary to accomplish one or more of the purposes set forth in section 901(a) of title 5 of the United States Code. In particular, the plan is responsive to section 901(a)(1), "to promote the better execution of the laws, the more effective management of the executive branch and of its agencies and functions, and the expeditious administration of the

public business;'' and section 901(a)(3), ''to increase the efficiency of the operations of the government to the fullest extent practicable.''

The reorganization provided for in this plan make necessary the appointment and compensation of new officers, as specified in sections 3(a) and 3(b) of the plan. The rates of compensation fixed for these officers are comparable to those fixed for other officers in the executive branch who have similar responsibilities.

This plan should result in the more efficient operation of the government. It is not practical, however, to itemize or aggregate the exact expenditure reductions which will result from this action.

The public interest requires that government policies concerning telecommunications be formulated with as much sophistication and vision as possible. This reorganization plan—and the executive order which would follow it—are necessary instruments if the government is to respond adequately to the challenges and opportunities presented by the rapid pace of change in communications. I urge that the Congress allow this plan to become effective so that these necessary reforms can be accomplished.

RICHARD NIXON.

THE WHITE HOUSE, February 9, 1970.

EXECUTIVE ORDER NO. 10995

Ex. Ord. No. 10995, eff. Feb. 16, 1962, 27 F.R. 1519, as amended by Ex. Ord. No. 11084, eff. Feb. 18, 1963, 28 F.R. 1531, which related to the assignment of telecommunications management functions, was revoked by Ex. Ord. No. 11556, eff. Sept. 14, 1970, 35 F.R. 14193, formerly set out below.

EXECUTIVE ORDER NO. 11556

Ex. Ord. No. 11556, Sept. 4, 1970, 35 F.R. 14193, as amended by Ex. Ord. No. 11921, June 11, 1976, 41 F.R. 2494, which related to the assignment of telecommunication functions, was revoked by Ex. Ord. No. 12046, Mar. 27, 1978, 43 F.R. 13349, set out below.

EX. ORD. NO. 12046. TRANSFER OF TELECOMMUNICATIONS FUNCTIONS

Ex. Ord. No. 12046, Mar. 27, 1978, 43 F.R. 13349, as amended by Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239; Ex. Ord. No. 12472, Apr. 3, 1984, 49 F.R. 13471, provided:

By virtue of the authority vested in me by the Constitution and laws of the United States of America, including Section 7 of Reorganization Plan No. 1 of 1977 (42 FR 56101 (October 21, 1977)) [set out in the Appendix to Title 5, Government Organization and Employees], the authority and control vested in the President by Section 2 of Executive Order No. 11556, as amended. Section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581c) [31 U.S.C. 1531], and Section 301 of Title 3 of the United States Code, and as President of the United States of America, in order to provide for the transfer of certain telecommunications functions, it is hereby ordered as follows:

SECTION 1

REORGANIZATION PLAN

1–1. IMPLEMENTATION OF REORGANIZATION PLAN

1–101. The transfer of all the functions of the Office of Telecommunications Policy and of its Director, as provided by Section 5B of Reorganization Plan No. 1 of 1977 (42 FR 56101), is hereby effective.

1–102. The abolition of the Office of Telecommunications Policy, as provided by Section 3C of Reorganization Plan No. 1 of 1977, is hereby effective.

1–103. The establishment of an Assistant Secretary for Communications and Information, Department of Commerce, as provided by Section 4 of Reorganization Plan No. 1 of 1977, is hereby effective.

1–2. TELECOMMUNICATIONS FUNCTION

1–201. Prior to the effective date of Reorganization Plan No. 1 of 1977, the Office of Telecommunications Policy and its Director had the functions set forth or referenced by: (1) Section 1 of Reorganization Plan No. 1 of 1970 (5 U.S.C. App.), (2) Executive Order No. 11556 of September 4, 1970, as amended (47 U.S.C. 305 note), (3) Executive Order No. 11191 of January 4, 1965, as amended (47 U.S.C. 721 note), (4) Executive Order No. 10705 of April 17, 1957, as amended (47 U.S.C. 606 note), and (5) Presidential Memorandum of August 21, 1963, as amended by Executive Order No. 11556 and entitled ''Establishment of the National Communications System.''

1–202. So much of those functions which relate to the preparation of Presidential telecommunications policy options or to the disposition of appeals from assignments of radio frequencies to stations of the United States Government were transferred to the President. These functions may be delegated within the Executive Office of the President and the delegations are set forth in this Order at Sections 3–1 through 4–3.

1–203. Those telecommunications functions which were not transferred to the President were transferred to the Secretary of Commerce. Functions transferred to the Secretary are set forth in this Order at Sections 2–1 through 2–5.

SECTION 2

FUNCTIONS TRANSFERRED TO COMMERCE

2–1. RADIO FREQUENCIES

2–101. The authority of the President to assign frequencies to radio stations or to classes of radio stations belonging to and operated by the United States, including the authority to amend, modify, or revoke such assignments, was transferred to the Secretary of Commerce.

2–102. This authority, which was originally vested in the President by Section 305(a) of the Communications Act of 1934, as amended (47 U.S.C. 305(a)), was transferred and assigned to the Director of the Office of Telecommunications Policy by Section 1 of Reorganization Plan No. 1 of 1970 and Section 3 of Executive Order No. 11556.

2–103. The authority to assign frequencies to radio stations is subject to the authority to dispose of appeals from frequency assignments as set forth in Section 3–2 of this Order.

2–2. CONSTRUCTION OF RADIO STATIONS

2–201. The authority to authorize a foreign government to construct and operate a radio station at the seat of government of the United States was transferred to the Secretary of Commerce. Authorization for the construction and operation of a radio station pursuant to this authority and the assignment of a frequency for its use can be made only upon recommendation of the Secretary of State and after consultation with the Attorney General and the Chairman of the Federal Communications Commission.

2–202. This authority, which was originally vested in the President by Section 305(d) of the Communications Act of 1934, as amended (47 U.S.C. 305), was delegated to the Director of the Office of Telecommunications Policy by Section 5 of Executive Order No. 11556.

2–3. COMMUNICATIONS SATELLITE SYSTEM

2–301. Certain functions relating to the communications satellite system were transferred to the Secretary of Commerce. Those functions were delegated or assigned to the Director of the Office of Telecommunications Policy by Executive Order No. 11191, as amended by Executive Order No. 11556. The functions include authority vested in the President by Section 201(a) of the Communications Satellite Act of 1962 (76 Stat. 421, 47 U.S.C. 721(a)). These functions are specifically set forth in the following provisions of this Section.

(a) Aid in the planning and development of the commercial communications satellite system and aid in the execution of a national program for the operation of such a system.

(b) Conduct a continuous review of all phases of the development and operation of such system, including the activities of the Corporation.

(c) Coordinate, in consultation with the Secretary of State, the activities of governmental agencies with responsibilities in the field of telecommunications, so as to insure that there is full and effective compliance at all times with the policies set forth in the Act [47 U.S.C. 701 et seq.].

(d) Make recommendations to the President and others as appropriate, with respect to all steps necessary to insure the availability and appropriate utilization of the communications satellite system for general government purposes in consonance with Section 201(a)(6) of the Act [47 U.S.C. 721(a)(6)].

(e) Help attain coordinated and efficient use of the electromagnetic spectrum and the technical compatibility of the communications satellite system with existing communications facilities both in the United States and abroad.

(f) Assist in the preparation of Presidential action documents for consideration by the President as may be appropriate under Section 201(a) of the Act, make necessary recommendations to the President in connection therewith, and keep the President currently informed with respect to the carrying out of the Act.

(g) Serve as the chief point of liaison between the President and the Corporation.

(h) The Secretary of Commerce shall timely submit to the President each year the report (including evaluations and recommendations) provided for in Section 404(a) of the Act (47 U.S.C. 744(a)).

(i) The Secretary of Commerce shall coordinate the performance of these functions with the Secretary of State. The Corporation and other concerned Executive agencies shall provide the Secretary of Commerce with such assistance, documents, and other cooperation as will enable the Secretary to carry out these functions.

2–4. Other Telecommunications Functions

Certain functions assigned, subject to the authority and control of the President to the Director of the Office of Telecommunications Policy by Section 2 of Executive Order No. 11556 were transferred to the Secretary of Commerce. These functions, subject to the authority and control of the President, are set forth in the following subsections.

2–401. The Secretary of Commerce shall serve as the President's principal adviser on telecommunications policies pertaining to the Nation's economic and technological advancement and to the regulation of the telecommunications industry.

2–402. The Secretary of Commerce shall advise the Director of the Office of Management and Budget on the development of policies relating to the procurement and management of Federal telecommunications systems.

2–403. The Secretary of Commerce shall conduct studies and evaluations concerning telecommunications research and development, and concerning the initiation, improvement, expansion, testing, operation, and use of Federal telecommunications systems. The Secretary shall advise appropriate agencies, including the Office of Management and Budget, of the recommendations which result from such studies and evaluations.

2–404. The Secretary of Commerce shall develop and set forth, in coordination with the Secretary of State and other interested agencies, plans, policies, and programs which relate to international telecommunications issues, conferences, and negotiations. The Secretary of Commerce shall coordinate economic, technical, operational and related preparations for United States participation in international telecommunications conferences and negotiations. The Secretary shall provide advice and assistance to the Secretary of State on international telecommunications policies to strengthen the position and serve the best interests of the United States, in support of the Secretary of State's responsibility for the conduct of foreign affairs.

2–405. The Secretary of Commerce shall provide for the coordination of the telecommunications activities of the Executive Branch, and shall assist in the formulation of policies and standards for those activities, including but not limited to considerations of interoperability, privacy, security, spectrum use and emergency readiness.

2–406. The Secretary of Commerce shall develop and set forth telecommunications policies pertaining to the Nation's economic and technological advancement and to the regulation of the telecommunications industry.

2–407. The Secretary of Commerce shall ensure that the Executive Branch views on telecommunications matters are effectively presented to the Federal Communications Commission and, in coordination with the Director of the Office of Management and Budget, to the Congress.

2–408. The Secretary of Commerce shall establish policies concerning spectrum assignments and use by radio stations belonging to and operated by the United States. Agencies shall consult with the Secretary of Commerce to ensure that their conduct of telecommunications activities is consistent with those policies.

2–409. The Secretary of Commerce shall develop, in cooperation with the Federal Communications Commission, a comprehensive long-range plan for improved management of all electromagnetic spectrum resources.

2–410. The Secretary of Commerce shall conduct studies and make recommendations concerning the impact of the convergence of computer and communications technology.

2–411. The Secretary of Commerce shall coordinate Federal telecommunications assistance to State and local governments, except as otherwise provided by Executive Order No. 12472 [set out as a note under section 5195 of Title 42, The Public Health and Welfare].

2–412. The Secretary of Commerce shall conduct and coordinate economic and technical analyses of telecommunications policies, activities, and opportunities in support of assigned responsibilities.

2–413. The Secretary of Commerce shall contract for studies and reports related to any aspect of assigned responsibilities.

2–414. [Revoked. Ex. Ord. No. 12472, Apr. 3, 1984, 49 F.R. 13471.]

2–5. Consultation Responsibilities

2–501. The authority to establish coordinating committees, as assigned to the Director of the Office of Telecommunications Policy by Section 10 of Executive Order No. 11556, was transferred to the Secretary of Commerce.

2–502. As permitted by law, the Secretary of Commerce shall establish such interagency committees and working groups composed of representatives of interested agencies, and shall consult with such departments and agencies as may be necessary for the most effective performance of his functions. To the extent he deems it necessary to continue the Interdepartment Radio Advisory Committee, that Committee shall serve in an advisory capacity to the Secretary. As permitted by law, the Secretary also shall establish one or more telecommunications advisory committees composed of experts in the telecommunications area outside the Government.

SECTION 3

Functions Assigned to the Office of Management and Budget

3–1. Telecommunications Procurement and Management

3–101. The responsibility for serving as the President's principal adviser on procurement and management of Federal telecommunications systems and the responsibility for developing and establishing policies for procurement and management of such systems, which responsibilities were assigned to the Director of the Office of Telecommunications Policy subject to the authority and control of the President by Section 2(b) of Executive Order No. 11556, were transferred to the President.

3–102. These functions are delegated to the Director of the Office of Management and Budget.

3–2. Radio Frequency Appeals

3–201. The authority to make final disposition of appeals from frequency assignments by the Secretary of Commerce for radio stations belonging to and operated by the United States, which authority was vested in the President by Section 305(a) of the Communications Act of 1934 (47 U.S.C. 305(a)) and transferred to the Director of the Office of Telecommunications Policy by Reorganization Plan No. 1 of 1970 (5 U.S.C. App.), was transferred to the President.

3–202. This function is delegated to the Director of the Office of Management and Budget.

SECTION 4

Functions Assigned to the National Security Council and the Office of Science and Technology Policy

4–1. Emergency Functions

4–101. The war power functions of the President under Section 606 of the Communications Act of 1934, as amended (47 U.S.C. 606), which were delegated to the Director of the Office of Telecommunications Policy by the Provisions of Section 4 of Executive Order No. 10705, were transferred to the President.

4–102. [Revoked. Ex. Ord. No. 12472, Apr. 3, 1984, 49 F.R. 13471.]

4–103. [Revoked. Ex. Ord. No. 12472, Apr. 3, 1984, 49 F.R. 13471.]

4–2. National Communications System

4–201. The responsibility for policy direction of the development and operation of a National Communications System, which was assigned to the Director of the Office of Telecommunications Policy by the Presidential Memorandum of August 21, 1963, as amended by Executive Order No. 11556, was transferred to the President.

4–202. [Revoked. Ex. Ord. No. 12472, Apr. 3, 1984, 49 F.R. 13471.]

4–3. Planning Functions

4–301. The function of coordinating the development of policy, plans, programs, and standards for the mobilization and use of the Nation's telecommunications resources in any emergency, which function was assigned to the Director of the Office of Telecommunications Policy subject to the authority and control of the President by Section 2(h) of the Executive Order No. 11556, was transferred to the President.

4–302. [Revoked. Ex. Ord. No. 12472, Apr. 3, 1984, 49 F.R. 13471.]

SECTION 5

Related Telecommunications Functions

5–1. The Department of Commerce

5–101. The Secretary of Commerce shall continue to perform the following functions previously assigned by Section 13 of Executive Order No. 11556:

(a) Perform analysis, engineering, and administrative functions, including the maintenance of necessary files and data bases, as necessary in the performance of assigned responsibilities for the management of electromagnetic spectrum.

(b) Conduct research and analysis of electromagnetic propagation, radio systems characteristics, and operating techniques affecting the utilization of the electromagnetic spectrum in coordination with specialized, related research and analysis performed by other Federal agencies in their areas of responsibility.

(c) Conduct research and analysis in the general field of telecommunications sciences in support of assigned functions and in support of other Government agencies.

5–102. The Secretary of Commerce shall participate, as appropriate, in evaluating the capability of telecommunications resources, in recommending remedial actions, and in developing policy options.

5–2. Department of State

5–201. With respect to telecommunications, the Secretary of State shall exercise primary authority for the conduct of foreign policy, including the determination of United States positions and the conduct of United States participation in negotiations with foreign governments and international bodies. In exercising this responsibility the Secretary of State shall coordinate with other agencies as appropriate, and, in particular, shall give full consideration to the Federal Communications Commission's regulatory and policy responsibility in this area.

5–202. The Secretary of State shall continue to perform the following functions previously assigned by Executive Order No. 11191, as amended:

(a) Exercise the supervision provided for in Section 201(a)(4) of the Communications Satellite Act of 1962, as amended (47 U.S.C. 721(a)(4)), be responsible, although the Secretary of Commerce is the chief point of liaison, for instructing the Communications Satellite Corporation in its role as the designated United States representative to the International Telecommunications Satellite Organization; and direct the foreign relations of the United States with respect to actions under the Communications Satellite Act of 1962, as amended [section 701 et seq. of this title].

(b) Coordinate, in accordance with the applicable interagency agreements, the performance of these functions with the Secretary of Commerce, the Federal Communications Commission, other concerned Executive agencies, and the Communications Satellite Corporation (see 47 U.S.C. 731–735). The Corporation and other concerned Executive agencies shall provide the Secretary of State with such assistance, documents, and other cooperation as will enable the Secretary to carry out these functions.

5–3. Federal Emergency Management Agency [Revoked. Ex. Ord. No. 12472, Apr. 3, 1984, 49 F.R. 13471.]

SECTION 6

General Provisions

6–1. Transfer Provisions

6–101. [Revoked. Ex. Ord. No. 12472, Apr. 3, 1984, 49 F.R. 13471.]

6–102. The primary responsibility for performing all administrative support and service functions that are related to functions transferred from the Office of Telecommunications Policy and its Director to the President, including those functions delegated or assigned within the Executive Office of the President, are transferred to the Office of Administration. The Domestic Policy Staff shall perform such functions related to the preparation of Presidential telecommunications policy options as the President may from time to time direct.

6–103. The records, property, personnel, and unexpended balances of appropriations, available or to be made available, which relate to the functions transferred, assigned, or delegated as provided in this Order are hereby transferred as appropriate.

6–104. The Director of the Office of Management and Budget shall make such determinations, issue such orders, and take all actions necessary or appropriate to effectuate the transfers or reassignments provided in this Order, including the transfer of funds, records, property, and personnel.

6–2. Amendments

In order to reflect the transfers provided by this Order, the following conforming amendments and revocations are ordered:

6–201. Section 306 of Executive Order No. 11051, as amended [50 U.S.C. App. 2271 note], is further amended to read:

''Sec. 306. *Emergency telecommunications*. The Administrator of General Services shall be responsible for coordinating with the National Security Council in planning for the mobilization of the Nation's telecommunications resources in time of national emergency.''.

6–202. Executive Order No. 11490, as amended [formerly set out as a note under section 2251 of Title 50, Appendix, War and National Defense] is further amended by:

(1) substituting ''National Security Council'' for ''Office of Telecommunications Policy (35 FR 6421)'' in Section 401(27), and

(2) substituting the number of this Order for ''11556'' and deleting references to Executive Order No. 10705 [47 U.S.C. 606 note] in Sections 1802 and 2002(3).

6–203. Executive Order No. 11725, as amended [50 U.S.C. App. 2271 note], is further amended by substituting the number and date of this Order for the reference to Executive Order No. 11556 of September 4, 1970 in Section 3(16).

6–204. Executive Orders No. 10705, as amended [47 U.S.C. 606 note], No. 11191, as amended [47 U.S.C. 721 note] and No. 11556, as amended, are revoked.

6–3. GENERAL

6–301. All Executive agencies to which functions are assigned pursuant to this Order shall issue such rules and regulations as may be necessary to carry them out.

6–302. All Executive agencies are authorized and directed to cooperate with the departments and agencies to which functions are assigned pursuant to this Order and to furnish them such information, support and assistance, not inconsistent with law, as they may require in the performance of those functions.

6–303. (a) Nothing in this Order reassigns any function assigned any agency under the Federal Property and Administrative Services Act of 1949, as amended [now chapters 1 to 11 of Title 40, Public Buildings, Property, and Works, and title III of the Act of June 30, 1949 (41 U.S.C. 251 et seq.)], nor does anything in this Order impair the existing authority of the Administrator of General Services to provide and operate telecommunications services and to prescribe policies and methods of procurement, or impair the policy and oversight roles of the Office of Management and Budget.

(b) In carrying out the functions in this Order, the Secretary of Commerce shall coordinate activities as appropriate with the Federal Communications Commission and make appropriate recommendations to it as the regulator of the private sector. Nothing in this Order reassigns any function vested by law in the Federal Communications Commission.

6–304. This Order shall be effective March 26, 1978.

§ 306. Foreign ships; application of section 301

Section 301 of this title shall not apply to any person sending radio communications or signals on a foreign ship while the same is within the jurisdiction of the United States, but such communications or signals shall be transmitted only in accordance with such regulations designed to prevent interference as may be promulgated under the authority of this chapter.

(June 19, 1934, ch. 652, title III, § 306, 48 Stat. 1083.)

§ 307. Licenses

(a) Grant

The Commission, if public convenience, interest, or necessity will be served thereby, subject to the limitations of this chapter, shall grant to any applicant therefor a station license provided for by this chapter.

(b) Allocation of facilities

In considering applications for licenses, and modifications and renewals thereof, when and insofar as there is demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.

(c) Terms of licenses

(1) Initial and renewal licenses

Each license granted for the operation of a broadcasting station shall be for a term of not to exceed 8 years. Upon application therefor, a renewal of such license may be granted from time to time for a term of not to exceed 8 years from the date of expiration of the preceding license, if the Commission finds that public interest, convenience, and necessity would be served thereby. Consistent 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, the public interest, convenience, or necessity would be served by such action.

(2) Materials in application

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.

(3) Continuation pending decision

Pending any administrative or judicial hearing and final decision on such an application and the disposition of any petition for rehearing pursuant to section 405 or section 402 of this title, the Commission shall continue such license in effect.

(d) Renewals

No renewal of an existing station license in the broadcast or the common carrier services shall be granted more than thirty days prior to the expiration of the original license.

(e) Operation of certain radio stations without individual licenses

(1) Notwithstanding any license requirement established in this chapter, if the Commission determines that such authorization serves the public interest, convenience, and necessity, the Commission may by rule authorize the operation of radio stations without individual licenses in the following radio services: (A) the citizens band radio service; (B) the radio control service; (C) the aviation radio service for aircraft stations operated on domestic flights when

such aircraft are not otherwise required to carry a radio station; and (D) the maritime radio service for ship stations navigated on domestic voyages when such ships are not otherwise required to carry a radio station.

(2) Any radio station operator who is authorized by the Commission to operate without an individual license shall comply with all other provisions of this chapter and with rules prescribed by the Commission under this chapter.

(3) For purposes of this subsection, the terms ''citizens band radio service'', ''radio control service'', ''aircraft station'' and ''ship station'' shall have the meanings given them by the Commission by rule.

(f) Areas in Alaska without access to over the air broadcasts

Notwithstanding any other provision of law, (1) any holder of a broadcast license may broadcast to an area of Alaska that otherwise does not have access to over the air broadcasts via translator, microwave, or other alternative signal delivery even if another holder of a broadcast license begins broadcasting to such area, (2) any holder of a broadcast license who has broadcast to an area of Alaska that did not have access to over the air broadcasts via translator, microwave, or other alternative signal delivery may continue providing such service even if another holder of a broadcast license begins broadcasting to such area, and shall not be fined or subject to any other penalty, forfeiture, or revocation related to providing such service including any fine, penalty, forfeiture, or revocation for continuing to operate notwithstanding orders to the contrary.

(June 19, 1934, ch. 652, title III, §307, 48 Stat. 1083; June 5, 1936, ch. 511, §2, 49 Stat. 1475; July 16, 1952, ch. 879, §5, 66 Stat. 714; Pub. L. 86–752, §3, Sept. 13, 1960, 74 Stat. 889; Pub. L. 87–439, Apr. 27, 1962, 76 Stat. 58; Pub. L. 97–35, title XII, §1241(a), Aug. 13, 1981, 95 Stat. 736; Pub. L. 97–259, title I, §§112, 113(a), Sept. 13, 1982, 96 Stat. 1093; Pub. L. 104–104, title II, §203, title IV, §403(i), Feb. 8, 1996, 110 Stat. 112, 131; Pub. L. 108–447, div. J, title IX [title II, §213(1), (2)], Dec. 8, 2004, 118 Stat. 3431.)

AMENDMENTS

2004—Subsec. (c)(3). Pub. L. 108–447, §213(1), substituted ''any administrative or judicial hearing'' for ''any hearing'' and inserted ''or section 402'' after ''section 405''.

Subsec. (f). Pub. L. 108–447, §213(2), added subsec. (f).

1996—Subsec. (c). Pub. L. 104–104, §203, inserted heading and amended text generally, restructuring existing provisions into pars. (1) to (3) and substituting provisions providing 8 year term for licenses of broadcasting stations for provisions providing 5 year term for licenses of television broadcasting stations, 7 year term for licenses of radio broadcasting stations, and 10 year term for other broadcasting stations.

Subsec. (e). Pub. L. 104–104, §403(i), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows:

''(1) Notwithstanding any licensing requirement established in this chapter, the Commission may by rule authorize the operation of radio stations without individual licenses in the radio control service and the citizens band radio service if the Commission determines that such authorization serves the public interest, convenience, and necessity.

''(2) Any radio station operator who is authorized by the Commission under paragraph (1) to operate without an individual license shall comply with all other provisions of this chapter and with rules prescribed by the Commission under this chapter.

''(3) For purposes of this subsection, the terms 'radio control service' and 'citizens band radio service' shall have the meanings given them by the Commission by rule.''

1982—Subsec. (c). Pub. L. 97–259, §112, redesignated subsec. (d) as (c), substituted ''ten years'' for ''five years'' after ''station) shall be for a longer term than'' and ''term of not to exceed'', and inserted provision that 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. Former subsec. (c), which required the Commission to study proposal that Congress allocate fixed percentages of radio broadcasting facilities to nonprofit activities and report recommendations, with reasons, to Congress not later than Feb. 1, 1935, was struck out.

Subsec. (d). Pub. L. 97–259, §112(a), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 97–259, §§112(a), 113(a), added subsec. (e) and redesignated former subsec. (e) as (d).

1981—Subsec. (d). Pub. L. 97–35 substituted provisions authorizing term of five years for a television broadcasting station license, seven years for a radio broadcasting station license, and five years for any other class of license, with comparable provisions for renewal, for provisions authorizing term of three years for a broadcasting station license, and five years for any other class of station license, with comparable provisions for renewal.

1962—Subsec. (e). Pub. L. 87–439 inserted ''in the broadcast or the common carrier services'' before ''shall be granted''.

1960—Subsec. (d). Pub. L. 86–752 inserted last sentence dealing with the Commission's authority to grant licenses for periods shorter than 3 years.

1952—Subsec. (d). Act July 16, 1952, provided that upon the expiration of any license, any renewal applied for may be granted ''if the Commission finds that public interest, convenience, and necessity would be served thereby'', and provided that pending a hearing and final decision on an application for renewal and the disposition of any petition for a rehearing the Commission shall continue the license in effect.

1936—Subsec. (b). Act June 5, 1936, amended subsec. (b) generally.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 1241(b) of Pub. L. 97–35 provided that: ''The amendments made in subsection (a) [amending this section] shall apply to television and radio broadcasting licenses granted or renewed by the Federal Communications Commission after the date of the enactment of this Act [Aug. 13, 1981].''

§308. Requirements for license

(a) Writing; exceptions

The Commission may grant construction permits and station licenses, or modifications or renewals thereof, only upon written application therefor received by it: *Provided*, That (1) in cases of emergency found by the Commission involving danger to life or property or due to damage to equipment, or (2) during a national emergency proclaimed by the President or declared by the Congress and during the continuance of any war in which the United States is engaged and when such action is necessary for the national defense or security or otherwise in furtherance of the war effort, or (3) in cases of

emergency where the Commission finds, in the nonbroadcast services, that it would not be feasible to secure renewal applications from existing licensees or otherwise to follow normal licensing procedure, the Commission may grant construction permits and station licenses, or modifications or renewals thereof, during the emergency so found by the Commission or during the continuance of any such national emergency or war, in such manner and upon such terms and conditions as the Commission shall by regulation prescribe, and without the filing of a formal application, but no authorization so granted shall continue in effect beyond the period of the emergency or war requiring it: *Provided further*, That the Commission may issue by cable, telegraph, or radio a permit for the operation of a station on a vessel of the United States at sea, effective in lieu of a license until said vessel shall return to a port of the continental United States.

(b) Conditions

All applications for station licenses, or modifications or renewals thereof, shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and financial, technical, and other qualifications of the applicant to operate the station; the ownership and location of the proposed station and of the stations, if any, with which it is proposed to communicate; the frequencies and the power desired to be used; the hours of the day or other periods of time during which it is proposed to operate the station; the purposes for which the station is to be used; and such other information as it may require. The Commission, at any time after the filing of such original application and during the term of any such license, may require from an applicant or licensee further written statements of fact to enable it to determine whether such original application should be granted or denied or such license revoked. Such application and/or such statement of fact shall be signed by the applicant and/or licensee in any manner or form, including by electronic means, as the Commission may prescribe by regulation.

(c) Commercial communication

The Commission in granting any license for a station intended or used for commercial communication between the United States or any Territory or possession, continental or insular, subject to the jurisdiction of the United States, and any foreign country, may impose any terms, conditions, or restrictions authorized to be imposed with respect to submarine-cable licenses by section 35 of this title.

(d) Summary of complaints

Each applicant for the renewal of a commercial or noncommercial television license shall attach as an exhibit to the application a summary of written comments and suggestions received from the public and maintained by the licensee (in accordance with Commission regulations) that comment on the applicant's programming, if any, and that are characterized by the commentor as constituting violent programming.

(June 19, 1934, ch. 652, title III, § 308, 48 Stat. 1084; July 16, 1952, ch. 879, § 6, 66 Stat. 714; Pub. L. 87–444, § 3, Apr. 27, 1962, 76 Stat. 63; Pub. L. 102–538, title II, § 204(b), Oct. 27, 1992, 106 Stat. 3543; Pub. L. 103–414, title III, § 303(a)(15), Oct. 25, 1994, 108 Stat. 4295; Pub. L. 104–104, title II, § 204(b), Feb. 8, 1996, 110 Stat. 113.)

AMENDMENTS

1996—Subsec. (d). Pub. L. 104–104 added subsec. (d).

1994—Subsec. (c). Pub. L. 103–414 made technical amendment to reference to section 35 of this title to correct reference to corresponding section of original act.

1992—Subsec. (b). Pub. L. 102–538 inserted before period at end ''in any manner or form, including by electronic means, as the Commission may prescribe by regulation''.

1962—Subsec. (b). Pub. L. 87–444 struck out requirement that applications or statements of fact were to be signed under oath or affirmation.

1952—Subsec. (a). Act July 16, 1952, § 6(a), provided that the Commission may grant construction permits and station licenses, or modifications or renewals, only upon written application except that during war or emergency periods no formal application need be filed.

Subsec. (b). Act July 16, 1952, § 6(b), substituted ''All applications for station licenses or modifications or renewals thereof, shall set forth'' for ''All such applications shall set forth''.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 204(c) of Pub. L. 104–104 provided that: ''The amendments made by this section [amending this section and section 309 of this title] apply to applications filed after May 1, 1995.''

§ 309. Application for license

(a) Considerations in granting application

Subject to the provisions of this section, the Commission shall determine, in the case of each application filed with it to which section 308 of this title applies, whether the public interest, convenience, and necessity will be served by the granting of such application, and, if the Commission, upon examination of such application and upon consideration of such other matters as the Commission may officially notice, shall find that public interest, convenience, and necessity would be served by the granting thereof, it shall grant such application.

(b) Time of granting application

Except as provided in subsection (c) of this section, no such application—

(1) for an instrument of authorization in the case of a station in the broadcasting or common carrier services, or

(2) for an instrument of authorization in the case of a station in any of the following categories:

(A) industrial radio positioning stations for which frequencies are assigned on an exclusive basis,

(B) aeronautical en route stations,

(C) aeronautical advisory stations,

(D) airdrome control stations,

(E) aeronautical fixed stations, and

(F) such other stations or classes of stations, not in the broadcasting or common carrier services, as the Commission shall by rule prescribe,

shall be granted by the Commission earlier than thirty days following issuance of public notice by the Commission of the acceptance for filing

of such application or of any substantial amendment thereof.

(c) Applications not affected by subsection (b)

Subsection (b) of this section shall not apply—

(1) to any minor amendment of an application to which such subsection is applicable, or

(2) to any application for—

(A) a minor change in the facilities of an authorized station,

(B) consent to an involuntary assignment or transfer under section 310(b) of this title or to an assignment or transfer thereunder which does not involve a substantial change in ownership or control,

(C) a license under section 319(c) of this title or, pending application for or grant of such license, any special or temporary authorization to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as would be authorized by such license,

(D) extension of time to complete construction of authorized facilities,

(E) an authorization of facilities for remote pickups, studio links and similar facilities for use in the operation of a broadcast station,

(F) authorizations pursuant to section 325(c) of this title where the programs to be transmitted are special events not of a continuing nature,

(G) a special temporary authorization for nonbroadcast operation not to exceed thirty days where no application for regular operation is contemplated to be filed or not to exceed sixty days pending the filing of an application for such regular operation, or

(H) an authorization under any of the proviso clauses of section 308(a) of this title.

(d) Petition to deny application; time; contents; reply; findings

(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) of this section (or subsection (k) of this section 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) of this section (or subsection (k) of this section 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) of this section (or subsection (k) of this section in the case of renewal of any broadcast station license), it shall proceed as provided in subsection (e) of this section.

(e) Hearings; intervention; evidence; burden of proof

If, in the case of any application to which subsection (a) of this section applies, a substantial and material question of fact is presented or the Commission for any reason is unable to make the finding specified in such subsection, it shall formally designate the application for hearing on the ground or reasons then obtaining and shall forthwith notify the applicant and all other known parties in interest of such action and the grounds and reasons therefor, specifying with particularity the matters and things in issue but not including issues or requirements phrased generally. When the Commission has so designated an application for hearing the parties in interest, if any, who are not notified by the Commission of such action may acquire the status of a party to the proceeding thereon by filing a petition for intervention showing the basis for their interest not more than thirty days after publication of the hearing issues or any substantial amendment thereto in the Federal Register. Any hearing subsequently held upon such application shall be a full hearing in which the applicant and all other parties in interest shall be permitted to participate. The burden of proceeding with the introduction of evidence and the burden of proof shall be upon the applicant, except that with respect to any issue presented by a petition to deny or a petition to enlarge the issues, such burdens shall be as determined by the Commission.

(f) Temporary authorization of temporary operations under subsection (b)

When an application subject to subsection (b) of this section has been filed, the Commission, notwithstanding the requirements of such subsection, may, if the grant of such application is otherwise authorized by law and if it finds that there are extraordinary circumstances requiring temporary operations in the public interest and that delay in the institution of such temporary operations would seriously prejudice the public interest, grant a temporary authorization, accompanied by a statement of its reasons therefor, to permit such temporary operations for a

period not exceeding 180 days, and upon making like findings may extend such temporary authorization for additional periods not to exceed 180 days. When any such grant of a temporary authorization is made, the Commission shall give expeditious treatment to any timely filed petition to deny such application and to any petition for rehearing of such grant filed under section 405 of this title.

(g) Classification of applications

The Commission is authorized to adopt reasonable classifications of applications and amendments in order to effectuate the purposes of this section.

(h) Form and conditions of station licenses

Such station licenses as the Commission may grant shall be in such general form as it may prescribe, but each license shall contain, in addition to other provisions, a statement of the following conditions to which such license shall be subject: (1) The station license shall not vest in the licensee any right to operate the station nor any right in the use of the frequencies designated in the license beyond the term thereof nor in any other manner than authorized therein; (2) neither the license nor the right granted thereunder shall be assigned or otherwise transferred in violation of this chapter; (3) every license issued under this chapter shall be subject in terms to the right of use or control conferred by section 606 of this title.

(i) Random selection

(1) GENERAL AUTHORITY.—Except as provided in paragraph (5), if there is more than one application for any initial license or construction permit, then the Commission shall have the authority to grant such license or permit to a qualified applicant through the use of a system of random selection.

(2) No license or construction permit shall be granted to an applicant selected pursuant to paragraph (1) unless the Commission determines the qualifications of such applicant pursuant to subsection (a) of this section and section 308(b) of this title. When substantial and material questions of fact exist concerning such qualifications, the Commission shall conduct a hearing in order to make such determinations. For the purpose of making such determinations, the Commission may, by rule, and notwithstanding any other provision of law—

(A) adopt procedures for the submission of all or part of the evidence in written form;

(B) delegate the function of presiding at the taking of written evidence to Commission employees other than administrative law judges; and

(C) omit the determination required by subsection (a) of this section with respect to any application other than the one selected pursuant to paragraph (1).

(3)(A) The Commission shall establish rules and procedures to ensure that, in the administration of any system of random selection under this subsection used for granting licenses or construction permits for any media of mass communications, significant preferences will be granted to applicants or groups of applicants, the grant to which of the license or permit would increase the diversification of ownership of the media of mass communications. To further diversify the ownership of the media of mass communications, an additional significant preference shall be granted to any applicant controlled by a member or members of a minority group.

(B) The Commission shall have authority to require each qualified applicant seeking a significant preference under subparagraph (A) to submit to the Commission such information as may be necessary to enable the Commission to make a determination regarding whether such applicant shall be granted such preference. Such information shall be submitted in such form, at such times, and in accordance with such procedures, as the Commission may require.

(C) For purposes of this paragraph:

(i) The term ''media of mass communications'' includes television, radio, cable television, multipoint distribution service, direct broadcast satellite service, and other services, the licensed facilities of which may be substantially devoted toward providing programming or other information services within the editorial control of the licensee.

(ii) The term ''minority group'' includes Blacks, Hispanics, American Indians, Alaska Natives, Asians, and Pacific Islanders.

(4)(A) The Commission shall, after notice and opportunity for hearing, prescribe rules establishing a system of random selection for use by the Commission under this subsection in any instance in which the Commission, in its discretion, determines that such use is appropriate for the granting of any license or permit in accordance with paragraph (1).

(B) The Commission shall have authority to amend such rules from time to time to the extent necessary to carry out the provisions of this subsection. Any such amendment shall be made after notice and opportunity for hearing.

(C) Not later than 180 days after August 10, 1993, the Commission shall prescribe such transfer disclosures and antitrafficking restrictions and payment schedules as are necessary to prevent the unjust enrichment of recipients of licenses or permits as a result of the methods employed to issue licenses under this subsection.

(5) TERMINATION OF AUTHORITY.—(A) Except as provided in subparagraph (B), the Commission shall not issue any license or permit using a system of random selection under this subsection after July 1, 1997.

(B) Subparagraph (A) of this paragraph shall not apply with respect to licenses or permits for stations described in section 397(6) of this title.

(j) Use of competitive bidding

(1) General authority

If, consistent with the obligations described in paragraph (6)(E), mutually exclusive applications are accepted for any initial license or construction permit, then, except as provided in paragraph (2), the Commission shall grant the license or permit to a qualified applicant through a system of competitive bidding that meets the requirements of this subsection.

(2) Exemptions

The competitive bidding authority granted by this subsection shall not apply to licenses

or construction permits issued by the Commission—

(A) for public safety radio services, including private internal radio services used by State and local governments and non-government entities and including emergency road services provided by not-for-profit organizations, that—

(i) are used to protect the safety of life, health, or property; and

(ii) are not made commercially available to the public;

(B) for initial licenses or construction permits for digital television service given to existing terrestrial broadcast licensees to replace their analog television service licenses; or

(C) for stations described in section 397(6) of this title.

(3) Design of systems of competitive bidding

For each class of licenses or permits that the Commission grants through the use of a competitive bidding system, the Commission shall, by regulation, establish a competitive bidding methodology. The Commission shall seek to design and test multiple alternative methodologies under appropriate circumstances. The Commission shall, directly or by contract, provide for the design and conduct (for purposes of testing) of competitive bidding using a contingent combinatorial bidding system that permits prospective bidders to bid on combinations or groups of licenses in a single bid and to enter multiple alternative bids within a single bidding round. In identifying classes of licenses and permits to be issued by competitive bidding, in specifying eligibility and other characteristics of such licenses and permits, and in designing the methodologies for use under this subsection, the Commission shall include safeguards to protect the public interest in the use of the spectrum and shall seek to promote the purposes specified in section 151 of this title and the following objectives:

(A) the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays;

(B) promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women;

(C) recovery for the public of a portion of the value of the public spectrum resource made available for commercial use and avoidance of unjust enrichment through the methods employed to award uses of that resource;

(D) efficient and intensive use of the electromagnetic spectrum;

(E) ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed—

(i) before issuance of bidding rules, to permit notice and comment on proposed auction procedures; and

(ii) after issuance of bidding rules, to ensure that interested parties have a sufficient time to develop business plans, assess market conditions, and evaluate the availability of equipment for the relevant services; and

(F) for any auction of eligible frequencies described in section 113(g)(2) of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 923(g)(2)), the recovery of 110 percent of estimated relocation costs as provided to the Commission pursuant to section 113(g)(4) of such Act.

(4) Contents of regulations

In prescribing regulations pursuant to paragraph (3), the Commission shall—

(A) consider alternative payment schedules and methods of calculation, including lump sums or guaranteed installment payments, with or without royalty payments, or other schedules or methods that promote the objectives described in paragraph (3)(B), and combinations of such schedules and methods;

(B) include performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid deployment of new technologies and services;

(C) consistent with the public interest, convenience, and necessity, the purposes of this chapter, and the characteristics of the proposed service, prescribe area designations and bandwidth assignments that promote (i) an equitable distribution of licenses and services among geographic areas, (ii) economic opportunity for a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women, and (iii) investment in and rapid deployment of new technologies and services;

(D) ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services, and, for such purposes, consider the use of tax certificates, bidding preferences, and other procedures;

(E) require such transfer disclosures and antitrafficking restrictions and payment schedules as may be necessary to prevent unjust enrichment as a result of the methods employed to issue licenses and permits; and

(F) prescribe methods by which a reasonable reserve price will be required, or a minimum bid will be established, to obtain any license or permit being assigned pursuant to the competitive bidding, unless the Commission determines that such a reserve price or minimum bid is not in the public interest.

(5) Bidder and licensee qualification

No person shall be permitted to participate in a system of competitive bidding pursuant to this subsection unless such bidder submits such information and assurances as the Commission may require to demonstrate that such bidder's application is acceptable for filing. No license shall be granted to an applicant selected pursuant to this subsection unless the Commission determines that the applicant is qualified pursuant to subsection (a) of this section and sections 308(b) and 310 of this title. Consistent with the objectives described in paragraph (3), the Commission shall, by regulation, prescribe expedited procedures consistent with the procedures authorized by subsection (i)(2) of this section for the resolution of any substantial and material issues of fact concerning qualifications.

(6) Rules of construction

Nothing in this subsection, or in the use of competitive bidding, shall—

(A) alter spectrum allocation criteria and procedures established by the other provisions of this chapter;

(B) limit or otherwise affect the requirements of subsection (h) of this section, section 301, 304, 307, 310, or 606 of this title, or any other provision of this chapter (other than subsections (d)(2) and (e) of this section);

(C) diminish the authority of the Commission under the other provisions of this chapter to regulate or reclaim spectrum licenses;

(D) be construed to convey any rights, including any expectation of renewal of a license, that differ from the rights that apply to other licenses within the same service that were not issued pursuant to this subsection;

(E) be construed to relieve the Commission of the obligation in the public interest to continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings;

(F) be construed to prohibit the Commission from issuing nationwide, regional, or local licenses or permits;

(G) be construed to prevent the Commission from awarding licenses to those persons who make significant contributions to the development of a new telecommunications service or technology; or

(H) be construed to relieve any applicant for a license or permit of the obligation to pay charges imposed pursuant to section 158 of this title.

(7) Consideration of revenues in public interest determinations

(A) Consideration prohibited

In making a decision pursuant to section 303(c) of this title to assign a band of frequencies to a use for which licenses or permits will be issued pursuant to this subsection, and in prescribing regulations pursuant to paragraph (4)(C) of this subsection, the Commission may not base a finding of public interest, convenience, and necessity on the expectation of Federal revenues from the use of a system of competitive bidding under this subsection.

(B) Consideration limited

In prescribing regulations pursuant to paragraph (4)(A) of this subsection, the Commission may not base a finding of public interest, convenience, and necessity solely or predominantly on the expectation of Federal revenues from the use of a system of competitive bidding under this subsection.

(C) Consideration of demand for spectrum not affected

Nothing in this paragraph shall be construed to prevent the Commission from continuing to consider consumer demand for spectrum-based services.

(8) Treatment of revenues

(A) General rule

Except as provided in subparagraphs (B), (D), and (E), all proceeds from the use of a competitive bidding system under this subsection shall be deposited in the Treasury in accordance with chapter 33 of title 31.

(B) Retention of revenues

Notwithstanding subparagraph (A), the salaries and expenses account of the Commission shall retain as an offsetting collection such sums as may be necessary from such proceeds for the costs of developing and implementing the program required by this subsection. Such offsetting collections shall be available for obligation subject to the terms and conditions of the receiving appropriations account, and shall be deposited in such accounts on a quarterly basis. Such offsetting collections are authorized to remain available until expended. No sums may be retained under this subparagraph during any fiscal year beginning after September 30, 1998, if the annual report of the Commission under section 154(k) of this title for the second preceding fiscal year fails to include in the itemized statement required by paragraph (3) of such section a statement of each expenditure made for purposes of conducting competitive bidding under this subsection during such second preceding fiscal year.

(C) Deposit and use of auction escrow accounts

Any deposits the Commission may require for the qualification of any person to bid in a system of competitive bidding pursuant to this subsection shall be deposited in an interest bearing account at a financial institution designated for purposes of this subsection by the Commission (after consultation with the Secretary of the Treasury). Within 45 days following the conclusion of the competitive bidding—

(i) the deposits of successful bidders shall be paid to the Treasury, except as otherwise provided in subparagraph (E)(ii);

(ii) the deposits of unsuccessful bidders shall be returned to such bidders; and

(iii) the interest accrued to the account shall be transferred to the Telecommuni-

cations Development Fund established pursuant to section 614 of this title.

(D) Disposition of cash proceeds

Cash proceeds attributable to the auction of any eligible frequencies described in section 113(g)(2) of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 923(g)(2)) shall be deposited in the Spectrum Relocation Fund established under section 118 of such Act [47 U.S.C. 928], and shall be available in accordance with that section.

(E) Transfer of receipts

(i) Establishment of Fund

There is established in the Treasury of the United States a fund to be known as the Digital Television Transition and Public Safety Fund.

(ii) Proceeds for funds

Notwithstanding subparagraph (A), the proceeds (including deposits and upfront payments from successful bidders) from the use of a competitive bidding system under this subsection with respect to recovered analog spectrum shall be deposited in the Digital Television Transition and Public Safety Fund.

(iii) Transfer of amount to Treasury

On September 30, 2009, the Secretary shall transfer $7,363,000,000 from the Digital Television Transition and Public Safety Fund to the general fund of the Treasury.

(iv) Recovered analog spectrum

For purposes of clause (i), the term ''recovered analog spectrum'' has the meaning provided in paragraph (15)(C)(vi).

(9) Use of former Government spectrum

The Commission shall, not later than 5 years after August 10, 1993, issue licenses and permits pursuant to this subsection for the use of bands of frequencies that—

(A) in the aggregate span not less than 10 megahertz; and

(B) have been reassigned from Government use pursuant to part B of the National Telecommunications and Information Administration Organization Act [47 U.S.C. 921 et seq.].

(10) Authority contingent on availability of additional spectrum

(A) Initial conditions

The Commission's authority to issue licenses or permits under this subsection shall not take effect unless—

(i) the Secretary of Commerce has submitted to the Commission the report required by section 113(d)(1) of the National Telecommunications and Information Administration Organization Act [47 U.S.C. 923(d)(1)];

(ii) such report recommends for immediate reallocation bands of frequencies that, in the aggregate, span not less than 50 megahertz;

(iii) such bands of frequencies meet the criteria required by section 113(a) of such Act [47 U.S.C. 923(a)]; and

(iv) the Commission has completed the rulemaking required by section 332(c)(1)(D) of this title.

(B) Subsequent conditions

The Commission's authority to issue licenses or permits under this subsection on and after 2 years after August 10, 1993, shall cease to be effective if—

(i) the Secretary of Commerce has failed to submit the report required by section 113(a) of the National Telecommunications and Information Administration Organization Act [47 U.S.C. 923(a)];

(ii) the President has failed to withdraw and limit assignments of frequencies as required by paragraphs (1) and (2) of section 114(a) of such Act [47 U.S.C. 924(a)];

(iii) the Commission has failed to issue the regulations required by section 115(a) of such Act [47 U.S.C. 925(a)];

(iv) the Commission has failed to complete and submit to Congress, not later than 18 months after August 10, 1993, a study of current and future spectrum needs of State and local government public safety agencies through the year 2010, and a specific plan to ensure that adequate frequencies are made available to public safety licensees; or

(v) the Commission has failed under section 332(c)(3) of this title to grant or deny within the time required by such section any petition that a State has filed within 90 days after August 10, 1993;

until such failure has been corrected.

(11) Termination

The authority of the Commission to grant a license or permit under this subsection shall expire September 30, 2011.

(12) Evaluation

Not later than September 30, 1997, the Commission shall conduct a public inquiry and submit to the Congress a report—

(A) containing a statement of the revenues obtained, and a projection of the future revenues, from the use of competitive bidding systems under this subsection;

(B) describing the methodologies established by the Commission pursuant to paragraphs (3) and (4);

(C) comparing the relative advantages and disadvantages of such methodologies in terms of attaining the objectives described in such paragraphs;

(D) evaluating whether and to what extent—

(i) competitive bidding significantly improved the efficiency and effectiveness of the process for granting radio spectrum licenses;

(ii) competitive bidding facilitated the introduction of new spectrum-based technologies and the entry of new companies into the telecommunications market;

(iii) competitive bidding methodologies have secured prompt delivery of service to rural areas and have adequately addressed the needs of rural spectrum users; and

(iv) small businesses, rural telephone companies, and businesses owned by mem-

bers of minority groups and women were able to participate successfully in the competitive bidding process; and

(E) recommending any statutory changes that are needed to improve the competitive bidding process.

(13) Recovery of value of public spectrum in connection with pioneer preferences

(A) In general

Notwithstanding paragraph (6)(G), the Commission shall not award licenses pursuant to a preferential treatment accorded by the Commission to persons who make significant contributions to the development of a new telecommunications service or technology, except in accordance with the requirements of this paragraph.

(B) Recovery of value

The Commission shall recover for the public a portion of the value of the public spectrum resource made available to such person by requiring such person, as a condition for receipt of the license, to agree to pay a sum determined by—

(i) identifying the winning bids for the licenses that the Commission determines are most reasonably comparable in terms of bandwidth, scope of service area, usage restrictions, and other technical characteristics to the license awarded to such person, and excluding licenses that the Commission determines are subject to bidding anomalies due to the award of preferential treatment;

(ii) dividing each such winning bid by the population of its service area (hereinafter referred to as the per capita bid amount);

(iii) computing the average of the per capita bid amounts for the licenses identified under clause (i);

(iv) reducing such average amount by 15 percent; and

(v) multiplying the amount determined under clause (iv) by the population of the service area of the license obtained by such person.

(C) Installments permitted

The Commission shall require such person to pay the sum required by subparagraph (B) in a lump sum or in guaranteed installment payments, with or without royalty payments, over a period of not more than 5 years.

(D) Rulemaking on pioneer preferences

Except with respect to pending applications described in clause (iv) of this subparagraph, the Commission shall prescribe regulations specifying the procedures and criteria by which the Commission will evaluate applications for preferential treatment in its licensing processes (by precluding the filing of mutually exclusive applications) for persons who make significant contributions to the development of a new service or to the development of new technologies that substantially enhance an existing service. Such regulations shall—

(i) specify the procedures and criteria by which the significance of such contributions will be determined, after an opportunity for review and verification by experts in the radio sciences drawn from among persons who are not employees of the Commission or by any applicant for such preferential treatment;

(ii) include such other procedures as may be necessary to prevent unjust enrichment by ensuring that the value of any such contribution justifies any reduction in the amounts paid for comparable licenses under this subsection;

(iii) be prescribed not later than 6 months after December 8, 1994;

(iv) not apply to applications that have been accepted for filing on or before September 1, 1994; and

(v) cease to be effective on the date of the expiration of the Commission's authority under subparagraph (F).

(E) Implementation with respect to pending applications

In applying this paragraph to any broadband licenses in the personal communications service awarded pursuant to the preferential treatment accorded by the Federal Communications Commission in the Third Report and Order in General Docket 90–314 (FCC 93–550, released February 3, 1994)—

(i) the Commission shall not reconsider the award of preferences in such Third Report and Order, and the Commission shall not delay the grant of licenses based on such awards more than 15 days following December 8, 1994, and the award of such preferences and licenses shall not be subject to administrative or judicial review;

(ii) the Commission shall not alter the bandwidth or service areas designated for such licenses in such Third Report and Order;

(iii) except as provided in clause (v), the Commission shall use, as the most reasonably comparable licenses for purposes of subparagraph (B)(i), the broadband licenses in the personal communications service for blocks A and B for the 20 largest markets (ranked by population) in which no applicant has obtained preferential treatment;

(iv) for purposes of subparagraph (C), the Commission shall permit guaranteed installment payments over a period of 5 years, subject to—

(I) the payment only of interest on unpaid balances during the first 2 years, commencing not later than 30 days after the award of the license (including any preferential treatment used in making such award) is final and no longer subject to administrative or judicial review, except that no such payment shall be required prior to the date of completion of the auction of the comparable licenses described in clause (iii); and

(II) payment of the unpaid balance and interest thereon after the end of such 2 years in accordance with the regulations prescribed by the Commission; and

(v) the Commission shall recover with respect to broadband licenses in the personal communications service an amount under this paragraph that is equal to not less than $400,000,000, and if such amount is less than $400,000,000, the Commission shall recover an amount equal to $400,000,000 by allocating such amount among the holders of such licenses based on the population of the license areas held by each licensee.

The Commission shall not include in any amounts required to be collected under clause (v) the interest on unpaid balances required to be collected under clause (iv).

(F) Expiration

The authority of the Commission to provide preferential treatment in licensing procedures (by precluding the filing of mutually exclusive applications) to persons who make significant contributions to the development of a new service or to the development of new technologies that substantially enhance an existing service shall expire on August 5, 1997.

(G) Effective date

This paragraph shall be effective on December 8, 1994, and apply to any licenses issued on or after August 1, 1994, by the Federal Communications Commission pursuant to any licensing procedure that provides preferential treatment (by precluding the filing of mutually exclusive applications) to persons who make significant contributions to the development of a new service or to the development of new technologies that substantially enhance an existing service.

(14) Auction of recaptured broadcast television spectrum

(A) Limitations on terms of terrestrial television broadcast licenses

A full-power television broadcast license that authorizes analog television service may not be renewed to authorize such service for a period that extends beyond February 17, 2009.

(B) Spectrum reversion and resale

(i) The Commission shall—

(I) ensure that, as licenses for analog television service expire pursuant to subparagraph (A), each licensee shall cease using electromagnetic spectrum assigned to such service according to the Commission's direction; and

(II) reclaim and organize the electromagnetic spectrum in a manner consistent with the objectives described in paragraph (3) of this subsection.

(ii) Licensees for new services occupying spectrum reclaimed pursuant to clause (i) shall be assigned in accordance with this subsection.

(C) Certain limitations on qualified bidders prohibited

In prescribing any regulations relating to the qualification of bidders for spectrum reclaimed pursuant to subparagraph (B)(i), the Commission, for any license that may be used for any digital television service where the grade A contour of the station is projected to encompass the entirety of a city with a population in excess of 400,000 (as determined using the 1990 decennial census), shall not—

(i) preclude any party from being a qualified bidder for such spectrum on the basis of—

(I) the Commission's duopoly rule (47 C.F.R. 73.3555(b)); or

(II) the Commission's newspaper cross-ownership rule (47 C.F.R. 73.3555(d)); or

(ii) apply either such rule to preclude such a party that is a winning bidder in a competitive bidding for such spectrum from using such spectrum for digital television service.

(15) Commission to determine timing of auctions

(A) Commission authority

Subject to the provisions of this subsection (including paragraph (11)), but notwithstanding any other provision of law, the Commission shall determine the timing of and deadlines for the conduct of competitive bidding under this subsection, including the timing of and deadlines for qualifying for bidding; conducting auctions; collecting, depositing, and reporting revenues; and completing licensing processes and assigning licenses.

(B) Termination of portions of auctions 31 and 44

Except as provided in subparagraph (C), the Commission shall not commence or conduct auctions 31 and 44 on June 19, 2002, as specified in the public notices of March 19, 2002, and March 20, 2002 (DA 02–659 and DA 02–563).

(C) Exception

(i) Blocks excepted

Subparagraph (B) shall not apply to the auction of—

(I) the C-block of licenses on the bands of frequencies located at 710–716 megahertz, and 740–746 megahertz; or

(II) the D-block of licenses on the bands of frequencies located at 716–722 megahertz.

(ii) Eligible bidders

The entities that shall be eligible to bid in the auction of the C-block and D-block licenses described in clause (i) shall be those entities that were qualified entities, and that submitted applications to participate in auction 44, by May 8, 2002, as part of the original auction 44 short form filing deadline.

(iii) Auction deadlines for excepted blocks

Notwithstanding subparagraph (B), the auction of the C-block and D-block licenses described in clause (i) shall be commenced no earlier than August 19, 2002, and no later than September 19, 2002, and the proceeds of such auction shall be de-

posited in accordance with paragraph (8) not later than December 31, 2002.

(iv) Report

Within one year after June 19, 2002, the Commission shall submit a report to Congress—

(I) specifying when the Commission intends to reschedule auctions 31 and 44 (other than the blocks excepted by clause (i)); and

(II) describing the progress made by the Commission in the digital television transition and in the assignment and allocation of additional spectrum for advanced mobile communications services that warrants the scheduling of such auctions.

(v) Additional deadlines for recovered analog spectrum

Notwithstanding subparagraph (B), the Commission shall conduct the auction of the licenses for recovered analog spectrum by commencing the bidding not later than January 28, 2008, and shall deposit the proceeds of such auction in accordance with paragraph (8)(E)(ii) not later than June 30, 2008.

(vi) Recovered analog spectrum

For purposes of clause (v), the term ''recovered analog spectrum'' means the spectrum between channels 52 and 69, inclusive (between frequencies 698 and 806 megahertz, inclusive) reclaimed from analog television service broadcasting under paragraph (14), other than—

(I) the spectrum required by section 337 of this title to be made available for public safety services; and

(II) the spectrum auctioned prior to February 8, 2006.

(D) Return of payments

Within one month after June 19, 2002, the Commission shall return to the bidders for licenses in the A-block, B-block, and E-block of auction 44 the full amount of all upfront payments made by such bidders for such licenses.

(16) Special auction provisions for eligible frequencies

(A) Special regulations

The Commission shall revise the regulations prescribed under paragraph (4)(F) of this subsection to prescribe methods by which the total cash proceeds from any auction of eligible frequencies described in section 113(g)(2) of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 923(g)(2)) shall at least equal 110 percent of the total estimated relocation costs provided to the Commission pursuant to section 113(g)(4) of such Act.

(B) Conclusion of auctions contingent on minimum proceeds

The Commission shall not conclude any auction of eligible frequencies described in section 113(g)(2) of such Act [47 U.S.C. 923(g)(2)] if the total cash proceeds attributable to such spectrum are less than 110 percent of the total estimated relocation costs provided to the Commission pursuant to section 113(g)(4) of such Act. If the Commission is unable to conclude an auction for the foregoing reason, the Commission shall cancel the auction, return within 45 days after the auction cancellation date any deposits from participating bidders held in escrow, and absolve such bidders from any obligation to the United States to bid in any subsequent reauction of such spectrum.

(C) Authority to issue prior to deauthorization

In any auction conducted under the regulations required by subparagraph (A), the Commission may grant a license assigned for the use of eligible frequencies prior to the termination of an eligible Federal entity's authorization. However, the Commission shall condition such license by requiring that the licensee cannot cause harmful interference to such Federal entity until such entity's authorization has been terminated by the National Telecommunications and Information Administration.

(k) Broadcast station renewal procedures

(1) Standards for renewal

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, with respect to that station, during the preceding term of its license—

(A) the station has served the public interest, convenience, and necessity;

(B) there have been no serious violations by the licensee of this chapter or the rules and regulations of the Commission; and

(C) there have been no other violations by the licensee of this chapter or the rules and regulations of the Commission which, taken together, would constitute a pattern of abuse.

(2) Consequence of failure to meet standard

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 (3), or grant such application on terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted.

(3) Standards for denial

If the Commission determines, after notice and opportunity for a hearing as provided in subsection (e) of this section, that a licensee has failed to meet the requirements specified in paragraph (1) 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 of this title; and

(B) only thereafter accept and consider such applications for a construction permit as may be filed under section 308 of this title specifying the channel or broadcasting facilities of the former licensee.

(4) Competitor consideration prohibited

In making the determinations specified in paragraph (1) or (2), 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.

(*l*) Applicability of competitive bidding to pending comparative licensing cases

With respect to competing applications for initial licenses or construction permits for commercial radio or television stations that were filed with the Commission before July 1, 1997, the Commission shall—

(1) have the authority to conduct a competitive bidding proceeding pursuant to subsection (j) of this section to assign such license or permit;

(2) treat the persons filing such applications as the only persons eligible to be qualified bidders for purposes of such proceeding; and

(3) waive any provisions of its regulations necessary to permit such persons to enter an agreement to procure the removal of a conflict between their applications during the 180-day period beginning on August 5, 1997.

(June 19, 1934, ch. 652, title III, §309, 48 Stat. 1085; July 16, 1952, ch. 879, §7, 66 Stat. 715; Mar. 26, 1954, ch. 110, 68 Stat. 35; Jan. 20, 1956, ch. 1, 70 Stat. 3; Pub. L. 86–752, §4(a), Sept. 13, 1960, 74 Stat. 889; Pub. L. 88–306, May 14, 1964, 78 Stat. 193; Pub. L. 88–307, May 14, 1964, 78 Stat. 194; Pub. L. 97–35, title XII, §1242(a), Aug. 13, 1981, 95 Stat. 736; Pub. L. 97–259, title I, §§114, 115, Sept. 13, 1982, 96 Stat. 1094; Pub. L. 98–549, §6(b)(1), Oct. 30, 1984, 98 Stat. 2804; Pub. L. 103–66, title VI, §6002(a), (b)(1), Aug. 10, 1993, 107 Stat. 387, 392; Pub. L. 103–414, title III, §§303(a)(16), (17), 304(a)(9), Oct. 25, 1994, 108 Stat. 4295, 4297; Pub. L. 103–465, title VIII, §801, Dec. 8, 1994, 108 Stat. 5050; Pub. L. 104–104, title II, §204(a), title IV, §403(j), title VII, §§707(a), 710(c), Feb. 8, 1996, 110 Stat. 112, 131, 154, 161; Pub. L. 105–33, title III, §§3002(a)(1)–(3), 3003, Aug. 5, 1997, 111 Stat. 258, 260, 265; Pub. L. 107–195, §3(a), (b)(1), June 19, 2002, 116 Stat. 716, 717; Pub. L. 108–494, title II, §203, Dec. 23, 2004, 118 Stat. 3993; Pub. L. 109–171, title III, §§3002(a), 3003, 3004, Feb. 8, 2006, 120 Stat. 21, 22.)

REFERENCES IN TEXT

The National Telecommunications and Information Administration Organization Act, referred to in subsec. (j)(9)(B), is title I of Pub. L. 102–538, Oct. 27, 1992, 106 Stat. 3533, as amended. Part B of the Act is classified generally to subchapter II (§921 et seq.) of chapter 8 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 901 of this title and Tables.

AMENDMENTS

2006—Subsec. (j)(8)(A). Pub. L. 109–171, §3004(1), substituted ''subparagraphs (B), (D), and (E)'' for ''subparagraph (B) or subparagraph (D)''.

Subsec. (j)(8)(C)(i). Pub. L. 109–171, §3004(2), inserted '', except as otherwise provided in subparagraph (E)(ii)'' before semicolon at end.

Subsec. (j)(8)(E). Pub. L. 109–171, §3004(3), added subpar. (E).

Subsec. (j)(11). Pub. L. 109–171, §3003(b), substituted ''2011'' for ''2007''.

Subsec. (j)(14)(A). Pub. L. 109–171, §3002(a)(1), inserted ''full-power'' before ''television broadcast license'' and substituted ''February 17, 2009'' for ''December 31, 2006''.

Subsec. (j)(14)(B). Pub. L. 109–171, §3002(a)(2), (5), redesignated subpar. (C) as (B) and struck out former subpar. (B) which related to requirement of Commission to extend renewal period upon certain findings.

Subsec. (j)(14)(C). Pub. L. 109–171, §3002(a)(5), redesignated subpar. (D) as (C). Former subpar. (C) redesignated (B).

Subsec. (j)(14)(C)(i)(I). Pub. L. 109–171, §3002(a)(3), struck out ''or (B)'' after ''pursuant to subparagraph (A)''.

Subsec. (j)(14)(D). Pub. L. 109–171, §3002(a)(5), redesignated subpar. (D) as (C).

Pub. L. 109–171, §3002(a)(4), substituted ''subparagraph (B)(i)'' for ''subparagraph (C)(i)'' in introductory provisions.

Subsec. (j)(15). Pub. L. 109–171, §3003(a)(2), added cls. (v) and (vi) to subpar. (C).

Pub. L. 109–171, §3003(a)(1), redesignated par. (15) relating to special auction provisions for eligible frequencies as (16).

Subsec. (j)(16). Pub. L. 109–171, §3003(a)(1), redesignated par. (15) relating to special auction provisions for eligible frequencies as (16).

2004—Subsec. (j)(3)(F). Pub. L. 108–494, §203(a), added subpar. (F).

Subsec. (j)(8)(A). Pub. L. 108–494, §203(c)(1), inserted ''or subparagraph (D)'' after ''subparagraph (B)''.

Subsec. (j)(8)(D). Pub. L. 108–494, §203(c)(2), added subpar. (D).

Subsec. (j)(15). Pub. L. 108–494, §203(b), added par. (15) relating to special auction provisions for eligible frequencies.

2002—Subsec. (j)(14)(C)(ii). Pub. L. 107–195, §3(b)(1), struck out at end ''The Commission shall complete the assignment of such licenses, and report to the Congress the total revenues from such competitive bidding, by September 30, 2002.''

Subsec. (j)(15). Pub. L. 107–195, §3(a), added par. (15).

1997—Subsec. (i)(1). Pub. L. 105–33, §3002(a)(2)(A), added par. (1) and struck out heading and text of former par. (1). Text read as follows: ''If—

''(A) there is more than one application for any initial license or construction permit which will involve a use of the electromagnetic spectrum; and

''(B) the Commission has determined that the use is not described in subsection (j)(2)(A) of this section;

then the Commission shall have the authority to grant such license or permit to a qualified applicant through the use of a system of random selection.''

Subsec. (i)(5). Pub. L. 105–33, §3002(a)(2)(B), added par. (5).

Subsec. (j)(1), (2). Pub. L. 105–33, §3002(a)(1)(A), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

''(1) GENERAL AUTHORITY.—If mutually exclusive applications are accepted for filing for any initial license or construction permit which will involve a use of the electromagnetic spectrum described in paragraph (2), then the Commission shall have the authority, subject to paragraph (10), to grant such license or permit to a qualified applicant through the use of a system of competitive bidding that meets the requirements of this subsection.

''(2) USES TO WHICH BIDDING MAY APPLY.—A use of the electromagnetic spectrum is described in this paragraph if the Commission determines that—

''(A) the principal use of such spectrum will involve, or is reasonably likely to involve, the licensee receiving compensation from subscribers in return for which the licensee—

''(i) enables those subscribers to receive communications signals that are transmitted utilizing frequencies on which the licensee is licensed to operate; or

''(ii) enables those subscribers to transmit directly communications signals utilizing frequencies on which the licensee is licensed to operate; and

''(B) a system of competitive bidding will promote the objectives described in paragraph (3).''

Subsec. (j)(3). Pub. L. 105–33, § 3002(a)(1)(B)(i), inserted after second sentence of introductory provisions ''The Commission shall, directly or by contract, provide for the design and conduct (for purposes of testing) of competitive bidding using a contingent combinatorial bidding system that permits prospective bidders to bid on combinations or groups of licenses in a single bid and to enter multiple alternative bids within a single bidding round.''

Subsec. (j)(3)(E). Pub. L. 105–33, § 3002(a)(1)(B)(ii)–(iv), added subpar. (E).

Subsec. (j)(4)(F). Pub. L. 105–33, § 3002(a)(1)(C), added subpar. (F).

Subsec. (j)(8)(B). Pub. L. 105–33, § 3002(a)(1)(D), struck out ''Any funds appropriated to the Commission for fiscal years 1994 through 1998 for the purpose of assigning licenses using random selection under subsection (i) of this section shall be used by the Commission to implement this subsection.'' after ''quarterly basis.'' and inserted at end ''No sums may be retained under this subparagraph during any fiscal year beginning after September 30, 1998, if the annual report of the Commission under section 154(k) of this title for the second preceding fiscal year fails to include in the itemized statement required by paragraph (3) of such section a statement of each expenditure made for purposes of conducting competitive bidding under this subsection during such second preceding fiscal year.''

Subsec. (j)(11). Pub. L. 105–33, § 3002(a)(1)(E), substituted ''2007'' for ''1998''.

Subsec. (j)(13)(F). Pub. L. 105–33, § 3002(a)(1)(F), substituted ''August 5, 1997'' for ''September 30, 1998''.

Subsec. (j)(14). Pub. L. 105–33, § 3003, added par. (14).

Subsec. (*l*). Pub. L. 105–33, § 3002(a)(3), added subsec. (*l*).

1996—Subsec. (b)(2)(A) to (G). Pub. L. 104–104, § 403(j), redesignated subpars. (B) to (G) as (A) to (F), respectively, and struck out former subpar. (A) which read as follows: ''fixed point-to-point microwave stations (exclusive of control and relay stations used as integral parts of mobile radio systems),''.

Subsec. (d). Pub. L. 104–104, § 204(a)(2), inserted ''(or subsection (k) of this section in the case of renewal of any broadcast station license)'' after ''with subsection (a) of this section'' wherever appearing.

Subsec. (j)(8)(B). Pub. L. 104–104, § 710(c), inserted at end ''Such offsetting collections are authorized to remain available until expended.''

Subsec. (j)(8)(C). Pub. L. 104–104, § 707(a), added subpar. (C).

Subsec. (k). Pub. L. 104–104, § 204(a)(1), added subsec. (k).

1994—Subsec. (c)(2)(F). Pub. L. 103–414, § 303(a)(16), substituted ''section 325(c)'' for ''section 325(b)''.

Subsec. (i)(4)(A). Pub. L. 103–414, § 304(a)(9), which directed substitution of ''The Commission shall'' for ''The commission, not later than 180 days after the date of the enactment of the Communications Technical Amendments Act of 1982, shall'', was executed by making the substitution for ''The Commission, not later than 180 days after the date of the enactment of the Communications Amendments Act of 1982, shall'', which for purposes of codification had been translated as ''The Commission, not later than 180 days after September 13, 1982, shall'', to reflect the probable intent of Congress and the amendment by Pub. L. 103–414, § 303(a)(17). See below.

Pub. L. 103–414, § 303(a)(17), substituted ''date of the enactment of the Communications Amendments Act of 1982'' for ''date of the enactment of the Communications Technical Amendments Act of 1982'', which for purposes of codification had been translated as ''September 13, 1982'', thus resulting in no change in text.

Subsec. (j)(13). Pub. L. 103–465 added par. (13).

1993—Subsec. (i). Pub. L. 103–66, § 6002(b)(1), inserted subsec. heading, added par. (1), struck out former par. (1), and in par. (4), added subpar. (C). Prior to amendment, par. (1) read as follows: ''If there is more than one application for any initial license or construction permit which will involve any use of the electromagnetic spectrum, then the Commission, after determining that each such application is acceptable for filing, shall have authority to grant such license or permit to a qualified applicant through the use of a system of random selection.''

Subsec. (j). Pub. L. 103–66, § 6002(a), added subsec. (j).

1984—Subsec. (h). Pub. L. 98–549 substituted ''section 706'' for ''section 606'' in the original to accommodate renumbering of sections in subchapter VI (section 601 et seq.) of this chapter by section 6(a) of Pub. L. 98–549. Because both sections translate as ''section 606 of this title'', the amendment by section 6(b)(1) of Pub. L. 98–549 resulted in no change in text.

1982—Subsec. (f). Pub. L. 97–259, § 114, substituted ''temporary'' for ''emergency'' wherever appearing, ''additional periods'' for ''one additional period'', and ''180 days'' for ''ninety days'' wherever appearing.

Subsec. (i)(1). Pub. L. 97–259, § 115(a), substituted ''application'' for ''applicant'' after ''more than one'', and ''that each such application is acceptable for filing'' for ''the qualifications of each such applicant under section 308(b) of this title''.

Subsec. (i)(2). Pub. L. 97–259, § 115(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The determination of the Commission under paragraph (1) with respect to the qualifications of applicants for an initial license or construction permit shall be made after notice and opportunity for a hearing, except that the provisions of section 409(c)(2) of this title shall not apply in the case of any such determination.''

Subsec. (i)(3)(A). Pub. L. 97–259, § 115(c)(1), substituted ''used for granting licenses or construction permits for any media of mass communications, significant preferences will be granted to applicants or groups of applicants, the grant to which of the license or permit would increase the diversification of ownership of the media of mass communications. To further diversify the ownership of the media of mass communications, an additional significant preference shall be granted to any applicant controlled by a member or members of a minority group'' for '', groups or organizations, or members of groups or organizations, which are underrepresented in the ownership of telecommunications facilities or properties will be granted significant preferences''.

Subsec. (i)(3)(C). Pub. L. 97–259, § 115(c)(2), added subpar. (C).

Subsec. (i)(4)(A). Pub. L. 97–259, § 115(d), substituted ''September 13, 1982,'' for ''August 13, 1981,''.

1981—Subsec. (i). Pub. L. 97–35 added subsec. (i).

1964—Subsec. (c)(2)(G). Pub. L. 88–307 inserted ''not to exceed sixty days''.

Subsec. (e). Pub. L. 88–306 substituted ''not more than thirty days after publication of the hearing issues or any substantial amendment thereto in the Federal Register'' for ''at any time not less than ten days prior to the date of hearing''.

1960—Pub. L. 86–752 amended section generally to revise pre-grant procedure, and, among other changes, a public notice was substituted for a mandatory notice to applicants and interested parties before hearings upon applications; the Commission was required to hold applications for 30 days before acting upon them without hearings; interested parties were permitted to file petitions to deny applications before the Commission acted upon them without hearings, in lieu of 30 days after applications were granted; interested parties were required to support their petitions with ''specific'' allegations of fact; the Commission was permitted to dispense with formal hearings when there are ''no substantial or material questions of fact,'' subject to a requirement that it issue a ''concise statement of the reasons'' for its action.

1956—Subsec. (c). Act Jan. 20, 1956, struck out hearings with respect to facts which, even if true, would not be grounds for setting aside the Commission's grant; gave the Commission discretion to keep in effect the protested authorization but required the Commission to affirmatively find and set forth that the public interest requires grant to remain in effect; and authorized Commission to redraft issues urged by protestant in accordance with the facts alleged in the protest.

1954—Subsec. (c). Act Mar. 26, 1954, substituted ''thirty days'' for ''fifteen days'' in fourth sentence.

1952—Act July 16, 1952, amended section generally to set forth procedure to be followed in cases of denial of applications.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 3002(a)(5) of Pub. L. 105–33 provided that: ''Except as otherwise provided therein, the amendments made by this subsection [amending this section] are effective on July 1, 1997.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 204(a) of Pub. L. 104–104 applicable to applications filed after May 1, 1995, see section 204(c) of Pub. L. 104–104, set out as a note under section 308 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

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

EFFECTIVE DATE OF 1960 AMENDMENT

Section 4(d)(1)–(3) of Pub. L. 86–752 provided that:

''(1) Subsections (a) and (b) of this section [amending this section and section 319 of this title] shall take effect ninety days after the date of the enactment of this Act [Sept. 13, 1960].

''(2) Section 309 of the Communications Act of 1934 [this section] (as amended by subsection (a) of this section) shall apply to any application to which section 308 of such Act [section 308 of this title] applies (A) which is filed on or after the effective date of subsection (a) of this section, (B) which is filed before such effective date, but is substantially amended on or after such effective date, or (C) which is filed before such effective date and is not substantially amended on or after such effective date, but with respect to which the Commission by rule provides reasonable opportunity to file petitions to deny in accordance with section 309 of such Act (as amended by subsection (a) of this section) [this section].

''(3) Section 309 of the Communications Act of 1934 [this section], as in effect immediately before the effective date of subsection (a) of this section, shall, on and after such effective date, apply only to applications to which section 308 of such Act [section 308 of this title] apply which are filed before such effective date and not substantially amended on or after such effective date and with respect to which the Commission does not permit petitions to deny to be filed as provided in clause (C) of paragraph (2) of this subsection.''

DIGITAL TELEVISION TRANSITION AND PUBLIC SAFETY

Pub. L. 109–171, title III, Feb. 8, 2006, 120 Stat. 21, provided that:

''SEC. 3001. SHORT TITLE; DEFINITION.

''(a) SHORT TITLE.—This title may be cited as the 'Digital Television Transition and Public Safety Act of 2005'.

''(b) DEFINITION.—As used in this Act [probably should be ''this title''], the term 'Assistant Secretary' means the Assistant Secretary for Communications and Information of the Department of Commerce.

''SEC. 3002. ANALOG SPECTRUM RECOVERY: FIRM DEADLINE.

''(a) AMENDMENTS.—[Amended this section.]

''(b) TERMINATIONS OF ANALOG LICENSES AND BROADCASTING.—The Federal Communications Commission shall take such actions as are necessary—

''(1) to terminate all licenses for full-power television stations in the analog television service, and to require the cessation of broadcasting by full-power stations in the analog television service, by February 18, 2009; and

''(2) to require by February 18, 2009, that all broadcasting by Class A stations, whether in the analog television service or digital television service, and all broadcasting by full-power stations in the digital television service, occur only on channels between channels 2 and 36, inclusive, or 38 and 51, inclusive (between frequencies 54 and 698 megahertz, inclusive).

''(c) CONFORMING AMENDMENTS.—[AMENDED SECTION 337 OF THIS TITLE.]

''SEC. 3003. AUCTION OF RECOVERED SPECTRUM.

[Amended this section.]

''SEC. 3004. RESERVATION OF AUCTION PROCEEDS.

[Amended this section.]

''SEC. 3005. DIGITAL-TO-ANALOG CONVERTER BOX PROGRAM.

''(a) CREATION OF PROGRAM.—The Assistant Secretary shall—

''(1) implement and administer a program through which households in the United States may obtain coupons that can be applied toward the purchase of digital-to-analog converter boxes; and

''(2) make payments of not to exceed $990,000,000, in the aggregate, through fiscal year 2009 to carry out that program from the Digital Television Transition and Public Safety Fund established under section 309(j)(8)(E) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(E)).

''(b) CREDIT.—The Assistant Secretary may borrow from the Treasury beginning on October 1, 2006, such sums as may be necessary, but not to exceed $1,500,000,000, to implement this section. The Assistant Secretary shall reimburse the Treasury, without interest, as funds are deposited into the Digital Television Transition and Public Safety Fund.

''(c) PROGRAM SPECIFICATIONS.—

''(1) LIMITATIONS.—

''(A) TWO-PER-HOUSEHOLD MAXIMUM.—A household may obtain coupons by making a request as required by the regulations under this section between January 1, 2008, and March 31, 2009, inclusive. The Assistant Secretary shall ensure that each requesting household receives, via the United States Postal Service, no more than two coupons.

''(B) NO COMBINATIONS OF COUPONS.—Two coupons may not be used in combination toward the purchase of a single digital-to-analog converter box.

''(C) DURATION.—All coupons shall expire 3 months after issuance.

''(2) DISTRIBUTION OF COUPONS.—The Assistant Secretary shall expend not more than $100,000,000 on administrative expenses and shall ensure that the sum of—

''(A) all administrative expenses for the program, including not more than $5,000,000 for consumer education concerning the digital television transition and the availability of the digital-to-analog converter box program; and

''(B) the total maximum value of all the coupons redeemed, and issued but not expired, does not exceed $990,000,000.

''(3) USE OF ADDITIONAL AMOUNT.—If the Assistant Secretary transmits to the Committee on Energy and Commerce of the House of Representatives and Committee on Commerce, Science, and Transportation of the Senate a statement certifying that the sum permitted to be expended under paragraph (2) will be insufficient to fulfill the requests for coupons from eligible households—

''(A) paragraph (2) shall be applied—

''(i) by substituting '$160,000,000' for '$100,000,000'; and

''(ii) by substituting '$1,500,000,000' for '$990,000,000';

''(B) subsection (a)(2) shall be applied by substituting '$1,500,000,000' for '$990,000,000'; and

''(C) the additional amount permitted to be expended shall be available 60 days after the Assistant Secretary sends such statement.

''(4) COUPON VALUE.—The value of each coupon shall be $40.

''(d) DEFINITION OF DIGITAL-TO-ANALOG CONVERTER BOX.—For purposes of this section, the term 'digital-to-analog converter box' means a stand-alone device that does not contain features or functions except those necessary to enable a consumer to convert any channel broadcast in the digital television service into a format that the consumer can display on television receivers designed to receive and display signals only in the analog television service, but may also include a remote control device.

''SEC. 3006. PUBLIC SAFETY INTEROPERABLE COMMUNICATIONS.

''(a) CREATION OF PROGRAM.—The Assistant Secretary, in consultation with the Secretary of the Department of Homeland Security—

''(1) may take such administrative action as is necessary to establish and implement a grant program to assist public safety agencies in the acquisition of, deployment of, or training for the use of interoperable communications systems that utilize, or enable interoperability with communications systems that can utilize, reallocated public safety spectrum for radio communication; and

''(2) shall make payments of not to exceed $1,000,000,000, in the aggregate, through fiscal year 2010 to carry out that program from the Digital Television Transition and Public Safety Fund established under section 309(j)(8)(E) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(E)).

''(b) CREDIT.—The Assistant Secretary may borrow from the Treasury beginning on October 1, 2006, such sums as may be necessary, but not to exceed $1,000,000,000, to implement this section. The Assistant Secretary shall reimburse the Treasury, without interest, as funds are deposited into the Digital Television Transition and Public Safety Fund.

''(c) CONDITION OF GRANTS.—In order to obtain a grant under the grant program, a public safety agency shall agree to provide, from non-Federal sources, not less than 20 percent of the costs of acquiring and deploying the interoperable communications systems funded under the grant program.

''(d) DEFINITIONS.—For purposes of this section:

''(1) PUBLIC SAFETY AGENCY.—The term 'public safety agency' means any State, local, or tribal government entity, or nongovernmental organization authorized by such entity, whose sole or principal purpose is to protect the safety of life, health, or property.

''(2) INTEROPERABLE COMMUNICATIONS SYSTEMS.—The term 'interoperable communications systems' means communications systems which enable public safety agencies to share information amongst local, State, Federal, and tribal public safety agencies in the same area via voice or data signals.

''(3) REALLOCATED PUBLIC SAFETY SPECTRUM.—The term 'reallocated public safety spectrum' means the bands of spectrum located at 764–776 megahertz and 794–806 megahertz, inclusive.

''SEC. 3007. NYC 9/11 DIGITAL TRANSITION.

''(a) FUNDS AVAILABLE.—From the Digital Television Transition and Public Safety Fund established under section 309(j)(8)(E) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(E)) the Assistant Secretary shall make payments of not to exceed $30,000,000, in the aggregate, which shall be available to carry out this section for fiscal years 2007 through 2008. The Assistant Secretary may borrow from the Treasury beginning October 1, 2006, such sums as may be necessary not to exceed $30,000,000 to implement and administer the program in accordance with this section. The Assistant Secretary shall reimburse the Treasury, without interest, as funds are deposited into the Digital Television Transition and Public Safety Fund.

''(b) USE OF FUNDS.—The sums available under subsection (a) shall be made available by the Assistant Secretary by grant to be used to reimburse the Metropolitan Television Alliance for costs incurred in the design and deployment of a temporary digital television broadcast system to ensure that, until a permanent facility atop the Freedom Tower is constructed, the members of the Metropolitan Television Alliance can provide the New York City area with an adequate digital television signal as determined by the Federal Communications Commission.

''(c) DEFINITIONS.—For purposes of this section:

''(1) METROPOLITAN TELEVISION ALLIANCE.—The term 'Metropolitan Television Alliance' means the organization formed by New York City television broadcast station licensees to locate new shared facilities as a result of the attacks on September 11, 2001 and the loss of use of shared facilities that housed broadcast equipment.

''(2) NEW YORK CITY AREA.—The term 'New York City area' means the five counties comprising New York City and counties of northern New Jersey in immediate proximity to New York City (Bergen, Essex, Union, and Hudson Counties).

''SEC. 3008. LOW-POWER TELEVISION AND TRANSLATOR DIGITAL-TO-ANALOG CONVERSION.

''(a) CREATION OF PROGRAM.—The Assistant Secretary shall make payments of not to exceed $10,000,000, in the aggregate, during the fiscal year 2008 and 2009 period from the Digital Television Transition and Public Safety Fund established under section 309(j)(8)(E) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(E)) to implement and administer a program through which each eligible low-power television station may receive compensation toward the cost of the purchase of a digital-to-analog conversion device that enables it to convert the incoming digital signal of its corresponding full-power television station to analog format for transmission on the low-power television station's analog channel. An eligible low-power television station may receive such compensation only if it submits a request for such compensation on or before February 17, 2009. Priority compensation shall be given to eligible low-power television stations in which the license is held by a non-profit corporation and eligible low-power television stations that serve rural areas of fewer than 10,000 viewers.

''(b) CREDIT.—The Assistant Secretary may borrow from the Treasury beginning October 1, 2006, such sums as may be necessary, but not to exceed $10,000,000, to implement this section. The Assistant Secretary shall reimburse the Treasury, without interest, as funds are deposited into the Digital Television Transition and Public Safety Fund.

''(c) ELIGIBLE STATIONS.—For purposes of this section, the term 'eligible low-power television station' means a low-power television broadcast station, Class A television station, television translator station, or television booster station—

''(1) that is itself broadcasting exclusively in analog format; and

''(2) that has not purchased a digital-to-analog conversion device prior to the date of enactment of the Digital Television Transition and Public Safety Act of 2005 [Feb. 8, 2006].

''SEC. 3009. LOW-POWER TELEVISION AND TRANSLATOR UPGRADE PROGRAM.

''(a) ESTABLISHMENT.—The Assistant Secretary shall make payments of not to exceed $65,000,000, in the aggregate, during fiscal year 2009 from the Digital Television Transition and Public Safety Fund established under section 309(j)(8)(E) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(E)) to implement and administer a program through which each licensee of an eligible low-power television station may receive reimbursement for equipment to upgrade low-power television stations from analog to digital in eligible rural communities, as that term is defined in section 610(b)(2) [601(b)(2)] of the Rural Electrification Act of 1937 [1936] (7 U.S.C. 950bb(b)(2)). Such reimbursements shall be issued to eligible stations no earlier than October 1, 2010. Priority reimbursements shall be given to eligible low-

power television stations in which the license is held by a non-profit corporation and eligible low-power television stations that serve rural areas of fewer than 10,000 viewers.

''(b) ELIGIBLE STATIONS.—For purposes of this section, the term 'eligible low-power television station' means a low-power television broadcast station, Class A television station, television translator station, or television booster station—

''(1) that is itself broadcasting exclusively in analog format; and

''(2) that has not converted from analog to digital operations prior to the date of enactment of the Digital Television Transition and Public Safety Act of 2005 [Feb. 8, 2006].

''SEC. 3010. NATIONAL ALERT AND TSUNAMI WARNING PROGRAM.

''The Assistant Secretary shall make payments of not to exceed $156,000,000, in the aggregate, during the fiscal year 2007 through 2012 period from the Digital Television Transition and Public Safety Fund established under section 309(j)(8)(E) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(E)) to implement a unified national alert system capable of alerting the public, on a national, regional, or local basis to emergency situations by using a variety of communications technologies. The Assistant Secretary shall use $50,000,000 of such amounts to implement a tsunami warning and coastal vulnerability program.

''SEC. 3011. ENHANCE 911.

''The Assistant Secretary shall make payments of not to exceed $43,500,000, in the aggregate, from the Digital Television Transition and Public Safety Fund established under section 309(j)(8)(E) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(E)) to implement the ENHANCE 911 Act of 2004 [title I of Pub. L. 108–494, see Short Title of 2004 Amendment note set out under section 901 of this title].

''SEC. 3012. ESSENTIAL AIR SERVICE PROGRAM.

''(a) IN GENERAL.—If the amount appropriated to carry out the essential air service program under subchapter II of chapter 417 of title 49, United States Code, equals or exceeds $110,000,000 for fiscal year 2007 or 2008, then the Secretary of Commerce shall make $15,000,000 available, from the Digital Television Transition and Public Safety Fund established by section 309(j)(8)(E) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(E)), to the Secretary of Transportation for use in carrying out the essential air service program for that fiscal year.

''(b) APPLICATION WITH OTHER FUNDS.—Amounts made available under subsection (a) for any fiscal year shall be in addition to any amounts—

''(1) appropriated for that fiscal year; or

''(2) derived from fees collected pursuant to section 45301(a)(1) of title 49, United States Code, that are made available for obligation and expenditure to carry out the essential air service program for that fiscal year.

''(c) ADVANCES.—The Secretary of Transportation may borrow from the Treasury such sums as may be necessary, but not to exceed $30,000,000 on a temporary and reimbursable basis to implement subsection (a). The Secretary of Transportation shall reimburse the Treasury, without interest, as funds are deposited into the Digital Television Transition and Public Safety Fund under section 309(j)(8)(E) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(E)) and made available to the Secretary under subsection (a).

''SEC. 3013. SUPPLEMENTAL LICENSE FEES.

''In addition to any fees assessed under the Communications Act of 1934 (47 U.S.C. 151 et seq.), the Federal Communications Commission shall assess extraordinary fees for licenses in the aggregate amount of $10,000,000, which shall be deposited in the Treasury during fiscal year 2006 as offsetting receipts.''

FINDINGS

Pub. L. 107–195, §2, June 19, 2002, 116 Stat. 715, provided that: ''Congress finds the following:

''(1) Circumstances in the telecommunications market have changed dramatically since the auctioning of spectrum in the 700 megahertz band was originally mandated by Congress in 1997, raising serious questions as to whether the original deadlines, or the subsequent revision of the deadlines, are consistent with sound telecommunications policy and spectrum management principles.

''(2) No comprehensive plan yet exists for allocating additional spectrum for third-generation wireless and other advanced communications services. The Federal Communications Commission should have the flexibility to auction frequencies in the 700 megahertz band for such purposes.

''(3) The study being conducted by the National Telecommunications and Information Administration in consultation with the Department of Defense to determine whether the Department of Defense can share or relinquish additional spectrum for third generation wireless and other advanced communications services will not be completed until after the June 19th auction date for the upper 700 megahertz band, and long after the applications must be filed to participate in the auction, thereby creating further uncertainty as to whether the frequencies in the 700 megahertz band will be put to their highest and best use for the benefit of consumers.

''(4) The Federal Communications Commission is also in the process of determining how to resolve the interference problems that exist in the 800 megahertz band, especially for public safety. One option being considered for the 800 megahertz band would involve the 700 megahertz band. The Commission should not hold the 700 megahertz auction before the 800 megahertz interference issues are resolved or a tenable plan has been conceived.

''(5) The 700 megahertz band is currently occupied by television broadcasters, and will be so until the transfer to digital television is completed. This situation creates a tremendous amount of uncertainty concerning when the spectrum will be available and reduces the value placed on the spectrum by potential bidders. The encumbrance of the 700 megahertz band reduces both the amount of money that the auction would be likely to produce and the probability that the spectrum would be purchased by the entities that valued the spectrum the most and would put the spectrum to its most productive use.

''(6) The Commission's rules governing voluntary mechanisms for vacating the 700 megahertz band by broadcast stations—

''(A) produced no certainty that the band would be available for advanced mobile communications services, public safety operations, or other wireless services any earlier than the existing statutory framework provides; and

''(B) should advance the transition of digital television and must not result in the unjust enrichment of any incumbent licensee.''

COMPLIANCE WITH AUCTION AUTHORITY

Pub. L. 107–195, §4, June 19, 2002, 116 Stat. 717, provided that: ''The Federal Communications Commission shall conduct rescheduled auctions 31 and 44 prior to the expiration of the auction authority under section 309(j)(11) of the Communications Act of 1934 (47 U.S.C. 309(j)(11)).''

PRESERVATION OF BROADCASTER OBLIGATIONS

Pub. L. 107–195, §5, June 19, 2002, 116 Stat. 717, provided that: ''Nothing in this Act [see Short Title of 2002 Amendment note set out under section 609 of this title] shall be construed to relieve television broadcast station licensees of the obligation to complete the digital television service conversion as required by section 309(j)(14) of the Communications Act of 1934 (47 U.S.C. 309(j)(14)).''

DEADLINE FOR COLLECTION

Pub. L. 105–33, title III, §3007, Aug. 5, 1997, 111 Stat. 269, which provided that the Commission was to con-

duct the competitive bidding required under title III of Pub. L. 105–33, which enacted section 337 of this title, amended this section and sections 153, 303, and 923 to 925 of this title, enacted provisions set out as notes under this section and sections 153, 254, and 925 of this title, and repealed provisions set out as a note under this section, in a manner that ensured that all proceeds of such bidding would be deposited in accordance with section 309(j)(8) of this title not later than Sept. 30, 2002, was repealed by Pub. L. 107–195, § 3(b)(2), June 19, 2002, 116 Stat. 717.

ADMINISTRATIVE PROCEDURES FOR SPECTRUM AUCTIONS

Section 3008 of title III of Pub. L. 105–33 provided that: ''Notwithstanding section 309(b) of the Communications Act of 1934 (47 U.S.C. 309(b)), no application for an instrument of authorization for frequencies assigned under this title [enacting section 337 of this title, amending this section and sections 153, 303, and 923 to 925 of this title, enacting provisions set out as notes under this section and sections 153, 254, and 925 of this title, and repealing provisions set out as a note under this section] (or amendments made by this title) shall be granted by the Commission earlier than 7 days following issuance of public notice by the Commission of the acceptance for filing of such application or of any substantial amendment thereto. Notwithstanding section 309(d)(1) of such Act (47 U.S.C. 309(d)(1)), the Commission may specify a period (no less than 5 days following issuance of such public notice) for the filing of petitions to deny any application for an instrument of authorization for such frequencies.''

DEADLINES FOR COMMISSION ACTION REGARDING COMPETITIVE BIDDING

Section 6002(d)(1), (2) of Pub. L. 103–66 provided that: ''(1) GENERAL RULEMAKING.—The Federal Communications Commission shall prescribe regulations to implement section 309(j) of the Communications Act of 1934 [47 U.S.C. 309(j)] (as added by this section) within 210 days after the date of enactment of this Act [Aug. 10, 1993].

''(2) PCS ORDERS AND LICENSING.—The Commission shall—

''(A) within 180 days after such date of enactment, issue a final report and order (i) in the matter entitled 'Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies' (ET Docket No. 92–9); and (ii) in the matter entitled 'Amendment of the Commission's Rules to Establish New Personal Communications Services' (GEN Docket No. 90–314; ET Docket No. 92–100); and

''(B) within 270 days after such date of enactment, commence issuing licenses and permits in the personal communications service.''

SPECIAL RULE REGARDING SUBSECTION (i) LICENSES AND PERMITS

Section 6002(e) of Pub. L. 103–66, which provided for exceptions to ban on Federal Communications Commission issuance of licenses and permits under section 309(i) of this title after Aug. 10, 1993, was repealed by Pub. L. 105–33, title III, § 3002(a)(4), Aug. 5, 1997, 111 Stat. 260.

AUTHORITY TO USE THE SYSTEM OF RANDOM SELECTION WITH RESPECT TO APPLICATIONS FOR INITIAL LICENSES AND CONSTRUCTION PERMITS

Section 1242(b) of Pub. L. 97–35 provided that: ''The Commission shall have authority to use the system of random selection established by the Commission under section 309(i) of the Communications Act of 1934 [subsec. (i) of this section], as added in subsection (a), with respect to any application for an initial license or construction permit which will involve any use of the electromagnetic spectrum and which—

''(1) is filed with the Commission after the date of the enactment of this Act [Aug. 13, 1981]; or

''(2) is pending before the Commission on such date of enactment but has not been designated for hearing on or before such date of enactment.''

§ 310. License ownership restrictions

(a) Grant to or holding by foreign government or representative

The station license required under this chapter shall not be granted to or held by any foreign government or the representative thereof.

(b) Grant to or holding by alien or representative, foreign corporation, etc.

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 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 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.

(c) Authorization for aliens licensed by foreign governments; multilateral or bilateral agreement to which United States and foreign country are parties as prerequisite

In addition to amateur station licenses which the Commission may issue to aliens pursuant to this chapter, the Commission may issue authorizations, under such conditions and terms as it may prescribe, to permit an alien licensed by his government as an amateur radio operator to operate his amateur radio station licensed by his government in the United States, its possessions, and the Commonwealth of Puerto Rico provided there is in effect a multilateral or bilateral agreement, to which the United States and the alien's government are parties, for such operation on a reciprocal basis by United States amateur radio operators. Other provisions of this chapter and of subchapter II of chapter 5, and chapter 7, of title 5 shall not be applicable to any request or application for or modification, suspension, or cancellation of any such authorization.

(d) Assignment and transfer of construction permit or station license

No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby. Any such application shall be disposed of as if the proposed transferee or assignee were making application under section 308 of this

title for the permit or license in question; but in acting thereon the Commission may not consider whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee.

(e) Administration of regional concentration rules for broadcast stations

(1) In the case of any broadcast station, and any ownership interest therein, which is excluded from the regional concentration rules by reason of the savings provision for existing facilities provided by the First Report and Order adopted March 9, 1977 (docket No. 20548; 42 Fed. Reg. 16145), the exclusion shall not terminate solely by reason of changes made in the technical facilities of the station to improve its service.

(2) For purposes of this subsection, the term ''regional concentration rules'' means the provisions of sections 73.35, 73.240, and 73.636 of title 47, Code of Federal Regulations (as in effect June 1, 1983), which prohibit any party from directly or indirectly owning, operating, or controlling three broadcast stations in one or several services where any two of such stations are within 100 miles of the third (measured city-to-city), and where there is a primary service contour overlap of any of the stations.

(June 19, 1934, ch. 652, title III, §310, 48 Stat. 1086; July 16, 1952, ch. 879, §8, 66 Stat. 716; Pub. L. 85–817, §2, Aug. 28, 1958, 72 Stat. 981; Pub. L. 88–313, §2, May 28, 1964, 78 Stat. 202; Pub. L. 92–81, §2, Aug. 10, 1971, 85 Stat. 302; Pub. L. 93–505, §2, Nov. 30, 1974, 88 Stat. 1576; Pub. L. 98–214, §7, Dec. 8, 1983, 97 Stat. 1469; Pub. L. 101–396, §8(b), Sept. 28, 1990, 104 Stat. 850; Pub. L. 104–104, title IV, §403(k), Feb. 8, 1996, 110 Stat. 131.)

CODIFICATION

In subsec. (c), ''subchapter II of chapter 5, and chapter 7, of title 5'' substituted for ''the Administrative Procedure Act'' on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1996—Subsec. (b)(3). Pub. L. 104–104, §403(k)(1), struck out ''of which any officer or director is an alien or'' before ''of which more''.

Subsec. (b)(4). Pub. L. 104–104, §403(k)(2), struck out ''of which any officer or more than one-fourth of the directors are aliens, or'' after ''any other corporation''.

1990—Subsec. (c). Pub. L. 101–396 substituted ''multilateral or bilateral agreement, to which the United States and the alien's government are parties,'' for ''bilateral agreement between the United States and the alien's government''.

1983—Subsec. (e). Pub. L. 98–214 added subsec. (e).

1974—Subsec. (a). Pub. L. 93–505 added subsec. (a). Former subsec. (a), which related to granting to or holding of required station licenses by aliens, was struck out.

Subsecs. (b) to (d). Pub. L. 93–505 added subsecs. (b) and (c) and redesignated former subsec. (b) as (d).

1971—Subsec. (a). Pub. L. 92–81 inserted provisions empowering the Commission to issue licenses to certain aliens admitted to the United States for permanent residence, provided that the Commission notify the appropriate agencies of the Government of applications received for license, and that such agencies furnish to the Commission information bearing on the request's compatibility with national security.

1964—Subsec. (a). Pub. L. 88–313 empowered the Commission to issue authorizations to permit an alien licensed by his government as an amateur radio operator to operate his station, licensed by his government, in the United States, its possessions, and Puerto Rico, provided there is a bilateral agreement between the United States and the alien's government giving similar rights to United States amateur radio operators, and provided that the Commission notify appropriate agencies of our Government of any applications for authorization, and that such agencies furnish to the Commission information bearing on the request's compatibility with our national security.

1958—Subsec. (a). Pub. L. 85–817 inserted paragraph authorizing the grant of licenses for radio stations on aircraft to aliens or representatives of aliens holding pilot certificates.

1952—Subsec. (b). Act July 16, 1952, provided that construction permits and station licenses cannot be transferred, assigned, or disposed of except upon a finding by the Commission that public interest, convenience, or necessity will be served thereby, and that such transfer application will be treated the same as if made under section 308 of this title.

§311. Requirements as to certain applications in broadcasting service

(a) Notices of filing and hearing; form and contents

When there is filed with the Commission any application to which section 309(b)(1) of this title applies, for an instrument of authorization for a station in the broadcasting service, the applicant—

(1) shall give notice of such filing in the principal area which is served or is to be served by the station; and

(2) if the application is formally designated for hearing in accordance with section 309 of this title, shall give notice of such hearing in such area at least ten days before commencement of such hearing.

The Commission shall by rule prescribe the form and content of the notices to be given in compliance with this subsection, and the manner and frequency with which such notices shall be given.

(b) Place of hearing

Hearings referred to in subsection (a) of this section may be held at such places as the Commission shall determine to be appropriate, and in making such determination in any case the Commission shall consider whether the public interest, convenience, or necessity will be served by conducting the hearing at a place in, or in the vicinity of, the principal area to be served by the station involved.

(c) Agreement between two or more applicants; approval of Commission; pendency of application

(1) If there are pending before the Commission two or more applications for a permit for construction of a broadcasting station, only one of which can be granted, it shall be unlawful, without approval of the Commission, for the applicants or any of them to effectuate an agreement whereby one or more of such applicants withdraws his or their application or applications.

(2) The request for Commission approval in any such case shall be made in writing jointly

by all the parties to the agreement. Such request shall contain or be accompanied by full information with respect to the agreement, set forth in such detail, form, and manner as the Commission shall by rule require.

(3) The Commission shall approve the agreement only if it determines that (A) the agreement is consistent with the public interest, convenience, or necessity; and (B) no party to the agreement filed its application for the purpose of reaching or carrying out such agreement.

(4) For the purposes of this subsection an application shall be deemed to be ''pending'' before the Commission from the time such application is filed with the Commission until an order of the Commission granting or denying it is no longer subject to rehearing by the Commission or to review by any court.

(d) License for operation of station; agreement to withdraw application; approval of Commission

(1) If there are pending before the Commission an application for the renewal of a license granted for the operation of a broadcasting station and one or more applications for a construction permit relating to such station, only one of which can be granted, it shall be unlawful, without approval of the Commission, for the applicants or any of them to effectuate an agreement whereby one or more of such applicants withdraws his or their application or applications in exchange for the payment of money, or the transfer of assets or any other thing of value by the remaining applicant or applicants.

(2) The request for Commission approval in any such case shall be made in writing jointly by all the parties to the agreement. Such request shall contain or be accompanied by full information with respect to the agreement, set forth in such detail, form, and manner as the Commission shall require.

(3) The Commission shall approve the agreement only if it determines that (A) the agreement is consistent with the public interest, convenience, or necessity; and (B) no party to the agreement filed its application for the purpose of reaching or carrying out such agreement.

(4) For purposes of this subsection, an application shall be deemed to be pending before the Commission from the time such application is filed with the Commission until an order of the Commission granting or denying it is no longer subject to rehearing by the Commission or to review by any court.

(June 19, 1934, ch. 652, title III, § 311, 48 Stat. 1086; July 16, 1952, ch. 879, § 9, 66 Stat. 716; Pub. L. 86–752, § 5(a), Sept. 13, 1960, 74 Stat. 892; Pub. L. 97–35, title XII, § 1243, Aug. 13, 1981, 95 Stat. 737; Pub. L. 97–259, title I, § 116, Sept. 13, 1982, 96 Stat. 1095.)

AMENDMENTS

1982—Subsec. (c)(3). Pub. L. 97–259, § 116(a), inserted provision that the Commission may not approve the agreement if it determines that a party to the agreement filed its application for the purpose of reaching or carrying out the agreement, and struck out provision that if the agreement did not contemplate a merger, but contemplated the making of any direct or indirect payment to any party thereto in consideration of his withdrawal of his application, the Commission could determine the agreement to be consistent with the public interest, convenience, or necessity only if the amount or value of such payment, as determined by the Commission, was not in excess of the aggregate amount determined by the Commission to have been legitimately and prudently expended and to be expended by such applicant in connection with preparing, filing, and advocating the granting of his application.

Subsec. (d)(1). Pub. L. 97–259, § 116(b), substituted ''an application for the renewal of a license granted for the operation of a broadcasting station and one or more applications for a construction permit relating to such station'' for ''two or more applications for a license granted for the operation of a broadcasting station''.

Subsec. (d)(3)(B). Pub. L. 97–259, § 116(c), struck out ''license'' after ''filed its''.

1981—Subsec. (d). Pub. L. 97–35 added subsec. (d).

1960—Pub. L. 86–752 amended section generally, substituting provisions on requirements for certain applications for broadcasting service, for provisions directing the Commission to refuse a license or permit to any person whose license had been revoked by a court under section 313 of this title.

1952—Act July 16, 1952, omitted provisions relating to monopoly.

§ 312. Administrative sanctions

(a) Revocation of station license or construction permit

The Commission may revoke any station license or construction permit—

(1) for false statements knowingly made either in the application or in any statement of fact which may be required pursuant to section 308 of this title;

(2) because of conditions coming to the attention of the Commission which would warrant it in refusing to grant a license or permit on an original application;

(3) for willful or repeated failure to operate substantially as set forth in the license;

(4) for willful or repeated violation of, or willful or repeated failure to observe any provision of this chapter or any rule or regulation of the Commission authorized by this chapter or by a treaty ratified by the United States;

(5) for violation of or failure to observe any final cease and desist order issued by the Commission under this section;

(6) for violation of section 1304, 1343, or 1464 of title 18; or

(7) for willful or repeated failure to allow reasonable access to or to permit purchase of reasonable amounts of time for the use of a broadcasting station, other than a non-commercial educational broadcast station, by a legally qualified candidate for Federal elective office on behalf of his candidacy.

(b) Cease and desist orders

Where any person (1) has failed to operate substantially as set forth in a license, (2) has violated or failed to observe any of the provisions of this chapter, or section 1304, 1343, or 1464 of title 18, or (3) has violated or failed to observe any rule or regulation of the Commission authorized by this chapter or by a treaty ratified by the United States, the Commission may order such person to cease and desist from such action.

(c) Order to show cause

Before revoking a license or permit pursuant to subsection (a) of this section, or issuing a

cease and desist order pursuant to subsection (b) of this section, the Commission shall serve upon the licensee, permittee, or person involved an order to show cause why an order of revocation or a cease and desist order should not be issued. Any such order to show cause shall contain a statement of the matters with respect to which the Commission is inquiring and shall call upon said licensee, permittee, or person to appear before the Commission at a time and place stated in the order, but in no event less than thirty days after the receipt of such order, and give evidence upon the matter specified therein; except that where safety of life or property is involved, the Commission may provide in the order for a shorter period. If after hearing, or a waiver thereof, the Commission determines that an order of revocation or a cease and desist order should issue, it shall issue such order, which shall include a statement of the findings of the Commission and the grounds and reasons therefor and specify the effective date of the order, and shall cause the same to be served on said licensee, permittee, or person.

(d) Burden of proof

In any case where a hearing is conducted pursuant to the provisions of this section, both the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Commission.

(e) Procedure for issuance of cease and desist order

The provisions of section 558(c) of title 5 which apply with respect to the institution of any proceeding for the revocation of a license or permit shall apply also with respect to the institution, under this section, of any proceeding for the issuance of a cease and desist order.

(f) "Willful" and "repeated" defined

For purposes of this section:

(1) The term ''willful'', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this chapter or any rule or regulation of the Commission authorized by this chapter or by a treaty ratified by the United States.

(2) The term ''repeated'', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

(g) Limitation on silent station authorizations

If a broadcasting station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary, except that the Commission may extend or reinstate such station license if the holder of the station license prevails in an administrative or judicial appeal, the applicable law changes, or for any other reason to promote equity and fairness. Any broadcast license revoked or terminated in Alaska in a proceeding related to broadcasting via translator, microwave, or other alternative signal delivery is reinstated.

(June 19, 1934, ch. 652, title III, § 312, 48 Stat. 1086; July 16, 1952, ch. 879, § 10, 66 Stat. 716; Pub. L. 86–752, § 6, Sept. 13, 1960, 74 Stat. 893; Pub. L. 92–225, title I, § 103(a)(2)(A), Feb. 7, 1972, 86 Stat. 4; Pub. L. 97–259, title I, § 117, Sept. 13, 1982, 96 Stat. 1095; Pub. L. 104–104, title IV, § 403(*l*), Feb. 8, 1996, 110 Stat. 132; Pub. L. 106–554, § 1(a)(4) [div. B, title I, § 148(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–251; Pub. L. 108–447, div. J, title IX [title II, § 213(3)], Dec. 8, 2004, 118 Stat. 3431.)

CODIFICATION

In subsec. (e), ''section 558(c) of title 5'' substituted for ''section 1008(b) of title 5'' on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

2004—Subsec. (g). Pub. L. 108–447 inserted before period at end '', except that the Commission may extend or reinstate such station license if the holder of the station license prevails in an administrative or judicial appeal, the applicable law changes, or for any other reason to promote equity and fairness. Any broadcast license revoked or terminated in Alaska in a proceeding related to broadcasting via translator, microwave, or other alternative signal delivery is reinstated''.

2000—Subsec. (a)(7). Pub. L. 106–554 inserted '', other than a non-commercial educational broadcast station,'' after ''use of a broadcasting station''.

1996—Subsec. (g). Pub. L. 104–104 added subsec. (g).

1982—Subsec. (f). Pub. L. 97–259 added subsec. (f).

1972—Subsec. (a)(7). Pub. L. 92–225 added par. (7).

1960—Subsecs. (a), (b). Pub. L. 86–752 inserted provisions referring to sections 1304, 1343 and 1464 of title 18.

1952—Act July 16, 1952, amended section generally to provide for revocation of licenses and permits only for acts willfully and knowingly committed or for disregarding cease and desist orders, and to authorize the Commission to issue cease and desist orders.

REPEALS

Repeal of title I of Pub. L. 92–225, cited as a credit to this section, by Pub. L. 93–443, title II, § 205(b), Oct. 15, 1974, 88 Stat. 1278, has been construed as not repealing the amendment to this section made by section 103(a)(2)(A) of such title I.

DECLINATION OF POLITICAL ADVERTISING BY EDUCATIONAL BROADCAST STATIONS

Pub. L. 106–554, § 1(a)(4) [div. B, title I, § 148(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–251, provided that: ''The Federal Communications Commission shall take no action against any non-commercial educational broadcast station which declines to carry a political advertisement.''

§ 312a. Revocation of operator's license used in unlawful distribution of controlled substances

The Federal Communications Commission may revoke any private operator's license issued to any person under the Communications Act of 1934 (47 U.S.C. 151 et seq.) who is found to have willfully used said license for the purpose of distributing, or assisting in the distribution of, any controlled substance in violation of any provision of Federal law. In addition, the Federal Communications Commission may, upon the request of an appropriate Federal law enforcement agency, assist in the enforcement of Federal law

prohibiting the use or distribution of any controlled substance where communications equipment within the jurisdiction of the Federal Communications Commission under the Communications Act of 1934 is willfully being used for purposes of distributing, or assisting in the distribution of, any such substance.

(Pub. L. 99–570, title III, § 3451, Oct. 27, 1986, 100 Stat. 3207–103.)

REFERENCES IN TEXT

The Communications Act of 1934, referred to in text, is act June 19, 1934, ch. 652, 48 Stat. 1064, as amended, which is classified principally to this chapter (§ 151 et seq.). For complete classification of this Act to the Code, see section 609 of this title and Tables.

CODIFICATION

Section was enacted as part of the Anti-Drug Abuse Act of 1986, and also as part of the National Drug Interdiction Improvement Act of 1986, and not as part of the Communications Act of 1934 which comprises this chapter.

§ 313. Application of antitrust laws to manufacture, sale, and trade in radio apparatus

(a) Revocation of licenses

All laws of the United States relating to unlawful restraints and monopolies and to combinations, contracts, or agreements in restraint of trade are declared to be applicable to the manufacture and sale of and to trade in radio apparatus and devices entering into or affecting interstate or foreign commerce and to interstate or foreign radio communications. Whenever in any suit, action, or proceeding, civil or criminal, brought under the provisions of any of said laws or in any proceedings brought to enforce or to review findings and orders of the Federal Trade Commission or other governmental agency in respect of any matters as to which said Commission or other governmental agency is by law authorized to act, any licensee shall be found guilty of the violation of the provisions of such laws or any of them, the court, in addition to the penalties imposed by said laws, may adjudge, order, and/or decree that the license of such licensee shall, as of the date the decree or judgment becomes finally effective or as of such other date as the said decree shall fix, be revoked and that all rights under such license shall thereupon cease: *Provided, however*, That such licensee shall have the same right of appeal or review as is provided by law in respect of other decrees and judgments of said court.

(b) Refusal of licenses and permits

The Commission is hereby directed to refuse a station license and/or the permit hereinafter required for the construction of a station to any person (or to any person directly or indirectly controlled by such person) whose license has been revoked by a court under this section.

(June 19, 1934, ch. 652, title III, § 313, 48 Stat. 1087; Pub. L. 86–752, § 5(b), Sept. 13, 1960, 74 Stat. 893.)

AMENDMENTS

1960—Pub. L. 86–752 designated existing provisions as subsec. (a) and added subsec. (b).

TRANSFER OF FUNCTIONS

All executive and administrative functions of the Federal Trade Commission were, with certain exceptions, transferred to the Chairman of such Commission by Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out in the Appendix to Title 5, Government Organization and Employees.

§ 314. Competition in commerce; preservation

After the effective date of this chapter no person engaged directly, or indirectly through any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such person, or through an agent, or otherwise, in the business of transmitting and/or receiving for hire energy, communications, or signals by radio in accordance with the terms of the license issued under this chapter, shall by purchase, lease, construction, or otherwise, directly or indirectly, acquire, own, control, or operate any cable or wire telegraph or telephone line or system between any place in any State, Territory, or possession of the United States or in the District of Columbia, and any place in any foreign country, or shall acquire, own, or control any part of the stock or other capital share or any interest in the physical property and/or other assets of any such cable, wire, telegraph, or telephone line or system, if in either case the purpose is and/or the effect thereof may be to substantially lessen competition or to restrain commerce between any place in any State, Territory, or possession of the United States, or in the District of Columbia, and any place in any foreign country, or unlawfully to create monopoly in any line of commerce; nor shall any person engaged directly, or indirectly through any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such person, or through an agent, or otherwise, in the business of transmitting and/or receiving for hire messages by any cable, wire, telegraph, or telephone line or system (a) between any place in any State, Territory, or possession of the United States, or in the District of Columbia, and any place in any other State, Territory, or possession of the United States; or (b) between any place in any State, Territory, or possession of the United States, or the District of Columbia, and any place in any foreign country, by purchase, lease, construction, or otherwise, directly or indirectly acquire, own, control, or operate any station or the apparatus therein, or any system for transmitting and/or receiving radio communications or signals between any place in any State, Territory, or possession of the United States, or in the District of Columbia, and any place in any foreign country, or shall acquire, own, or control any part of the stock or other capital share or any interest in the physical property and/or other assets of any such radio station, apparatus, or system, if in either case the purpose is and/or the effect thereof may be to substantially lessen competition or to restrain commerce between any place in any State, Territory, or possession of the United States, or in the District of Columbia, and any place in any foreign country, or unlawfully to create monopoly in any line of commerce.

(June 19, 1934, ch. 652, title III, § 314, 48 Stat. 1087.)

REFERENCES IN TEXT

For effective date of this chapter, see section 607 of this title.

§315. Candidates for public office

(a) Equal opportunities requirement; censorship prohibition; allowance of station use; news appearances exception; public interest; public issues discussion opportunities

If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station: *Provided*, That such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is imposed under this subsection upon any licensee to allow the use of its station by any such candidate. Appearance by a legally qualified candidate on any—

(1) bona fide newscast,

(2) bona fide news interview,

(3) bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary), or

(4) on-the-spot coverage of bona fide news events (including but not limited to political conventions and activities incidental thereto),

shall not be deemed to be use of a broadcasting station within the meaning of this subsection. Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this chapter to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance.

(b) Charges

(1) In general

The charges made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office in connection with his campaign for nomination for election, or election, to such office shall not exceed—

(A) subject to paragraph (2), during the forty-five days preceding the date of a primary or primary runoff election and during the sixty days preceding the date of a general or special election in which such person is a candidate, the lowest unit charge of the station for the same class and amount of time for the same period; and

(B) at any other time, the charges made for comparable use of such station by other users thereof.

(2) Content of broadcasts

(A) In general

In the case of a candidate for Federal office, such candidate shall not be entitled to receive the rate under paragraph (1)(A) for the use of any broadcasting station unless the candidate provides written certification to the broadcast station that the candidate (and any authorized committee of the candidate) shall not make any direct reference to another candidate for the same office, in any broadcast using the rights and conditions of access under this chapter, unless such reference meets the requirements of subparagraph (C) or (D).

(B) Limitation on charges

If a candidate for Federal office (or any authorized committee of such candidate) makes a reference described in subparagraph (A) in any broadcast that does not meet the requirements of subparagraph (C) or (D), such candidate shall not be entitled to receive the rate under paragraph (1)(A) for such broadcast or any other broadcast during any portion of the 45-day and 60-day periods described in paragraph (1)(A), that occur on or after the date of such broadcast, for election to such office.

(C) Television broadcasts

A candidate meets the requirements of this subparagraph if, in the case of a television broadcast, at the end of such broadcast there appears simultaneously, for a period no less than 4 seconds—

(i) a clearly identifiable photographic or similar image of the candidate; and

(ii) a clearly readable printed statement, identifying the candidate and stating that the candidate has approved the broadcast and that the candidate's authorized committee paid for the broadcast.

(D) Radio broadcasts

A candidate meets the requirements of this subparagraph if, in the case of a radio broadcast, the broadcast includes a personal audio statement by the candidate that identifies the candidate, the office the candidate is seeking, and indicates that the candidate has approved the broadcast.

(E) Certification

Certifications under this section shall be provided and certified as accurate by the candidate (or any authorized committee of the candidate) at the time of purchase.

(F) Definitions

For purposes of this paragraph, the terms ''authorized committee'' and ''Federal office'' have the meanings given such terms by section 431 of title 2.

(c) Definitions

For purposes of this section—

(1) the term ''broadcasting station'' includes a community antenna television system; and

(2) the terms ''licensee'' and ''station licensee'' when used with respect to a community antenna television system mean the operator of such system.

(d) Rules and regulations

The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section.

(e) Political record

(1) In general

A licensee shall maintain, and make available for public inspection, a complete record of a request to purchase broadcast time that—

(A) is made by or on behalf of a legally qualified candidate for public office; or

(B) communicates a message relating to any political matter of national importance, including—

(i) a legally qualified candidate;

(ii) any election to Federal office; or

(iii) a national legislative issue of public importance.

(2) Contents of record

A record maintained under paragraph (1) shall contain information regarding—

(A) whether the request to purchase broadcast time is accepted or rejected by the licensee;

(B) the rate charged for the broadcast time;

(C) the date and time on which the communication is aired;

(D) the class of time that is purchased;

(E) the name of the candidate to which the communication refers and the office to which the candidate is seeking election, the election to which the communication refers, or the issue to which the communication refers (as applicable);

(F) in the case of a request made by, or on behalf of, a candidate, the name of the candidate, the authorized committee of the candidate, and the treasurer of such committee; and

(G) in the case of any other request, the name of the person purchasing the time, the name, address, and phone number of a contact person for such person, and a list of the chief executive officers or members of the executive committee or of the board of directors of such person.

(3) Time to maintain file

The information required under this subsection shall be placed in a political file as soon as possible and shall be retained by the licensee for a period of not less than 2 years.

(June 19, 1934, ch. 652, title III, § 315, 48 Stat. 1088; July 16, 1952, ch. 879, § 11, 66 Stat. 717; Pub. L. 86–274, § 1, Sept. 14, 1959, 73 Stat. 557; Pub. L. 92–225, title I, §§ 103(a)(1), (2)(B), 104(c), Feb. 7, 1972, 86 Stat. 4, 7; Pub. L. 93–443, title IV, § 402, Oct. 15, 1974, 88 Stat. 1291; Pub. L. 107–155, title III, § 305(a), (b), title V, § 504, Mar. 27, 2002, 116 Stat. 100, 101, 115.)

AMENDMENTS

2002—Subsec. (b). Pub. L. 107–155, § 305(a), (b), inserted subsec. heading, designated existing provisions as par. (1), inserted par. heading, redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), inserted ''subject to paragraph (2),'' before ''during the forty-five days'' in par. (1)(A), and added par. (2).

Subsec. (e). Pub. L. 107–155, § 504, which directed addition of subsec. (e) and redesignation of former subsecs. (e) and (f) as (f) and (g), respectively, was executed by adding subsec. (e) to reflect the probable intent of Congress. Section did not contain subsecs. (e) and (f).

1974—Subsec. (c). Pub. L. 93–443, § 402, struck out provisions respecting station use charges upon certification of nonviolation of Federal limitations of expenditures for use of communications media; redesignated former subsec. (f) as (c); incorporated former par. (1)(A) and (B) provisions in clauses designated (1) and (2) and struck out subpar. (C) definition of ''Federal elective office'' and par. (2) definition of ''legally qualified candidate''.

Subsec. (d). Pub. L. 93–443, § 402(a), struck out provisions respecting station use charges upon certification of nonviolation of State limitations of expenditures for use of communications media and conditions for application of State limitations and redesignated former subsec. (g) as (d).

Subsecs. (e) to (g). Pub. L. 93–443, § 402(a), struck out subsec. (e) provisions respecting penalties for violations and inapplicability of sections 501 through 503 of this title and redesignated former subsecs. (f) and (g) as (c) and (d).

1972—Subsec. (a). Pub. L. 92–225, § 103(a)(2)(B), inserted ''under this subsection'' after ''No obligation is imposed''.

Subsec. (b). Pub. L. 92–225, § 103(a)(1), substituted in introductory text ''by any person who is a legally qualified candidate for any public office in connection with his campaign for nomination for election, or election, to such office'', for ''for any of the purposes set forth in this section'', added par. (1), designated existing provisions as par. (2), inserted therein the opening words ''at any other time,'' and substituted ''by other users thereof'' for ''for other purposes''.

Subsecs. (c) to (g). Pub. L. 92–225, § 104(c), added subsecs. (c) to (f) and redesignated former subsec. (c) as (g).

1959—Subsec. (a). Pub. L. 86–274 provided that appearances by legally qualified candidates on bona fide newscasts, interviews and documentaries and on on-the-spot coverage of bona fide news events shall not be deemed to be use of a broadcasting station within the meaning of this subsection.

1952—Act July 16, 1952, designated existing provisions as subsecs. (a) and (c) and added subsec. (b).

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–155, title III, § 305(c), Mar. 27, 2002, 116 Stat. 102, provided that: ''The amendments made by this section [amending this section] shall apply to broadcasts made after the effective date of this Act [Nov. 6, 2002].''

Amendment by Pub. L. 107–155 effective Nov. 6, 2002 (notwithstanding section 305(c) of Pub. L. 107–155, set out above), but not applicable with respect to runoff elections, recounts, or election contests resulting from elections held prior to Nov. 6, 2002, see section 402 of Pub. L. 107–155, set out as an Effective Date of 2002 Amendment; Regulations note under section 431 of Title 2, The Congress.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–443 effective Jan. 1, 1975, see section 410(a) of Pub. L. 93–443, set out as a note under section 431 of Title 2, The Congress.

REPEALS

Repeal of title I of Pub. L. 92–225, cited as a credit to this section, by Pub. L. 93–443, title II, § 205(b), Oct. 15, 1974, 88 Stat. 1278, has been construed as not repealing the amendments to this section made by sections 103(a)(1), (2)(B), and 104(c) of such title I.

REEXAMINATION OF 1959 AMENDMENT; DECLARATION OF CONGRESSIONAL INTENT

Section 2 of Pub. L. 86–274 provided that:

''(a) The Congress declares its intention to reexamine from time to time the amendment to section 315(a) of the Communications Act of 1934 [subsec. (a) of this section] made by the first section of this Act, to ascertain whether such amendment has proved to be effective and practicable.

''(b) To assist the Congress in making its reexaminations of such amendment, the Federal Communications Commission shall include in each annual report it makes to Congress a statement setting forth (1) the information and data used by it in determining questions arising from or connected with such amendment, and (2) such recommendations as it deems necessary in the public interest.''

SUSPENSION OF EQUAL TIME PROVISIONS FOR 1960 CAMPAIGN

Pub. L. 86–677, Aug. 24, 1960, 74 Stat. 554, suspended that part of subsec. (a) of this section, which requires any licensee of a broadcast station who permits any person who is a legally qualified candidate for any public office to use a broadcasting station to afford equal opportunities to all other such candidates for that office in the use of such broadcasting station, for the period of the 1960 presidential and vice presidential campaigns with respect to nominees for the offices of President and Vice President of the United States. The Federal Communications Commission was directed to make a report to the Congress, not later than March 1, 1961, with respect to the effect of the provisions of Pub. L. 86–677 and any recommendations the Commission might have for amendments to this chapter as a result of experience under the provisions of Pub. L. 86–677.

§316. Modification by Commission of station licenses or construction permits; burden of proof

(a)(1) Any station license or construction permit may be modified by the Commission either for a limited time or for the duration of the term thereof, if in the judgment of the Commission such action will promote the public interest, convenience, and necessity, or the provisions of this chapter or of any treaty ratified by the United States will be more fully complied with. No such order of modification shall become final until the holder of the license or permit shall have been notified in writing of the proposed action and the grounds and reasons therefor, and shall be given reasonable opportunity, of at least thirty days, to protest such proposed order of modification; except that, where safety of life or property is involved, the Commission may by order provide, for a shorter period of notice.

(2) Any other licensee or permittee who believes its license or permit would be modified by the proposed action may also protest the proposed action before its effective date.

(3) A protest filed pursuant to this subsection shall be subject to the requirements of section 309 of this title for petitions to deny.

(b) In any case where a hearing is conducted pursuant to the provisions of this section, both the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Commission; except that, with respect to any issue that addresses the question of whether the proposed action would modify the license or permit of a person described in subsection (a)(2) of this section, such burdens shall be as determined by the Commission.

(June 19, 1934, ch. 652, title III, §316, as added July 16, 1952, ch. 879, §12, 66 Stat. 717; amended Pub. L. 98–214, §4(a), Dec. 8, 1983, 97 Stat. 1467.)

PRIOR PROVISIONS

A prior section 316 of act June 19, 1934, related to lotteries and similar devices, prior to repeal by act June 25, 1948, ch. 645, §21, 62 Stat. 862, eff. Sept. 1, 1948. See section 1304 of Title 18, Crimes and Criminal Procedure.

AMENDMENTS

1983—Subsec. (a). Pub. L. 98–214, §4(a)(1), (2), designated existing provisions as par. (1), substituted ''and shall be given reasonable opportunity, of at least thirty days, to protest such proposed order of modification; except that, where safety of life or property is involved, the Commission may by order provide, for a shorter period of notice'' for ''and shall have been given reasonable opportunity, in no event less than thirty days, to show cause by public hearing, if requested, why such order of modification should not issue: *Provided*, That where safety of life or property is involved, the Commission may by order provide for a shorter period of notice'', and added pars. (2) and (3).

Subsec. (b). Pub. L. 98–214, §4(a)(3), inserted ''; except that, with respect to any issue that addresses the question of whether the proposed action would modify the license or permit of a person described in subsection (a)(2) of this section, such burdens shall be as determined by the Commission''.

§317. Announcement of payment for broadcast

(a) Disclosure of person furnishing

(1) All matter broadcast by any radio station for which any money, service or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person: *Provided*, That ''service or other valuable consideration'' shall not include any service or property furnished without charge or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification in a broadcast of any person, product, service, trademark, or brand name beyond an identification which is reasonably related to the use of such service or property on the broadcast.

(2) Nothing in this section shall preclude the Commission from requiring that an appropriate announcement shall be made at the time of the broadcast in the case of any political program or any program involving the discussion of any controversial issue for which any films, records, transcriptions, talent, scripts, or other material or service of any kind have been furnished, without charge or at a nominal charge, directly or indirectly, as an inducement to the broadcast of such program.

(b) Disclosure to station of payments

In any case where a report has been made to a radio station, as required by section 508 of this title, of circumstances which would have required an announcement under this section had the consideration been received by such radio station, an appropriate announcement shall be made by such radio station.

(c) Acquiring information from station employees

The licensee of each radio station shall exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any program or program matter for broadcast, information to enable such licensee to make the announcement required by this section.

(d) Waiver of announcement

The Commission may waive the requirement of an announcement as provided in this section in any case or class of cases with respect to which it determines that the public interest, convenience, or necessity does not require the broadcasting of such announcement.

(e) Rules and regulations

The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section.

(June 19, 1934, ch. 652, title III, § 317, 48 Stat. 1089; Pub. L. 86–752, § 8(a), Sept. 13, 1960, 74 Stat. 895; Pub. L. 96–507, § 2(a), Dec. 8, 1980, 94 Stat. 2747.)

AMENDMENTS

1980—Subsec. (b). Pub. L. 96–507 conformed the reference to section 508 of this title to reflect the renumbering of that section by Pub. L. 96–507.

1960—Pub. L. 86–752 designated existing provisions as subsec. (a), inserting proviso clause, and added subsecs. (b) to (e).

§ 318. Transmitting apparatus; operator's license

The actual operation of all transmitting apparatus in any radio station for which a station license is required by this chapter shall be carried on only by a person holding an operator's license issued hereunder, and no person shall operate any such apparatus in such station except under and in accordance with an operator's license issued to him by the Commission: *Provided, however*, That the Commission if it shall find that the public interest, convenience, or necessity will be served thereby may waive or modify the foregoing provisions of this section for the operation of any station except (1) stations for which licensed operators are required by international agreement, (2) stations for which licensed operators are required for safety purposes, and (3) stations operated as common carriers on frequencies below thirty thousand kilocycles: *Provided further*, That the Commission shall have power to make special regulations governing the granting of licenses for the use of automatic radio devices and for the operation of such devices.

(June 19, 1934, ch. 652, title III, § 318, 48 Stat. 1089; Mar. 29, 1937, ch. 58, 50 Stat. 56; Pub. L. 86–609, § 1, July 7, 1960, 74 Stat. 363; Pub. L. 94–335, July 1, 1976, 90 Stat. 794; Pub. L. 102–538, title II, § 205, Oct. 27, 1992, 106 Stat. 3543; Pub. L. 103–414, title III, § 303(d), Oct. 25, 1994, 108 Stat. 4296.)

AMENDMENTS

1994—Pub. L. 103–414 made technical amendments to directory language of Pub. L. 102–538, § 205(1). See 1992 Amendment note below.

1992—Pub. L. 102–538, § 205(2), redesignated cl. (4) as (3).

Pub. L. 102–538, § 205(1), as amended by Pub. L. 103–414, struck out cl. (3) which read as follows: ''stations engaged in broadcasting (other than those engaged primarily in the function of rebroadcasting the signals of broadcast stations),''.

1976—Pub. L. 94–335 substituted ''engaged primarily in the function of rebroadcasting the signals of broadcast stations'' for ''engaged solely in the function of rebroadcasting the signals of television broadcast stations'' in parenthetical provisions of cl. (3).

1960—Pub. L. 86–609 inserted ''(other than those engaged solely in the function of rebroadcasting the signals of television broadcast stations)'' after ''engaged in broadcasting''.

1937—Act Mar. 29, 1937, inserted provisos.

§ 319. Construction permits

(a) Requirements

No license shall be issued under the authority of this chapter for the operation of any station unless a permit for its construction has been granted by the Commission. The application for a construction permit shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and the financial, technical, and other ability of the applicant to construct and operate the station, the ownership and location of the proposed station and of the station or stations with which it is proposed to communicate, the frequencies desired to be used, the hours of the day or other periods of time during which it is proposed to operate the station, the purpose for which the station is to be used, the type of transmitting apparatus to be used, the power to be used, the date upon which the station is expected to be completed and in operation, and such other information as the Commission may require. Such application shall be signed by the applicant in any manner or form, including by electronic means, as the Commission may prescribe by regulation.

(b) Time limitation; forfeiture

Such permit for construction shall show specifically the earliest and latest dates between which the actual operation of such station is expected to begin, and shall provide that said permit will be automatically forfeited if the station is not ready for operation within the time specified or within such further time as the Commission may allow, unless prevented by causes not under the control of the grantee.

(c) Licenses for operation

Upon the completion of any station for the construction or continued construction of which a permit has been granted, and upon it being made to appear to the Commission that all the terms, conditions, and obligations set forth in the application and permit have been fully met, and that no cause or circumstance arising or first coming to the knowledge of the Commission since the granting of the permit would, in the judgment of the Commission, make the operation of such station against the public interest, the Commission shall issue a license to the lawful holder of said permit for the operation of said station. Said license shall conform generally to the terms of said permit. The provisions of section 309(a)–(g) of this title shall not apply with respect to any station license the issuance of which is provided for and governed by the provisions of this subsection.

(d) Government, amateur, or mobile station; waiver

A permit for construction shall not be required for Government stations, amateur stations, or mobile stations. A permit for construction shall not be required for public coast stations, privately owned fixed microwave stations, or stations licensed to common carriers, unless the Commission determines that the public interest, convenience, and necessity would be served by requiring such permits for any such stations. With respect to any broadcasting station, the Commission shall not have any authority to waive the requirement of a permit for construction, except that the Commission may by regulation determine that a permit shall not be required for minor changes in the facilities of

authorized broadcast stations. With respect to any other station or class of stations, the Commission shall not waive the requirement for a construction permit unless the Commission determines that the public interest, convenience, and necessity would be served by such a waiver.

(June 19, 1934, ch. 652, title III, §319, 48 Stat. 1089; July 16, 1952, ch. 879, §13, 66 Stat. 718; Mar. 26, 1954, ch. 111, 68 Stat. 35; Pub. L. 86–609, §2, July 7, 1960, 74 Stat. 363; Pub. L. 86–752, §4(b), Sept. 13, 1960, 74 Stat. 892; Pub. L. 87–444, §4, Apr. 27, 1962, 76 Stat. 64; Pub. L. 97–259, title I, §§118, 119, Sept. 13, 1982, 96 Stat. 1095, 1096; Pub. L. 102–538, title II, §204(c), Oct. 27, 1992, 106 Stat. 3543; Pub. L. 104–104, title IV, §403(m), Feb. 8, 1996, 110 Stat. 132.)

AMENDMENTS

1996—Subsec. (d). Pub. L. 104–104 substituted ''With respect to any broadcasting station, the Commission shall not have any authority to waive the requirement of a permit for construction, except that the Commission may by regulation determine that a permit shall not be required for minor changes in the facilities of authorized broadcast stations. With respect to any other station or class of stations, the Commission shall not waive the requirement for a construction permit unless the Commission determines that the public interest, convenience, and necessity would be served by such a waiver.'' for ''With respect to any broadcasting station, the Commission shall not have any authority to waive the requirement of a permit for construction. With respect to any other station or class of stations, the Commission shall not waive such requirement unless the Commission determines that the public interest, convenience, and necessity would be served by such a waiver.''

1992—Subsec. (a). Pub. L. 102–538 inserted before period at end ''in any manner or form, including by electronic means, as the Commission may prescribe by regulation''.

1982—Subsec. (a). Pub. L. 97–259, §118, struck out ''the construction of which is begun or is continued after this chapter takes effect,'' after ''operation of any station''.

Subsec. (d). Pub. L. 97–259, §119, substituted provision that a permit for construction shall not be required for public coast stations, privately owned fixed microwave stations, or stations licensed to common carriers, unless the Commission determines that the public interest, convenience, and necessity would be served by requiring such permits for any such stations, that with respect to any broadcasting station, the Commission shall not have any authority to waive the requirement of a permit for construction, and that with respect to any other station or class of stations, the Commission shall not waive such requirement unless the Commission determines that the public interest, convenience, and necessity would be served by such a waiver, for provision that with respect to stations or classes of stations other than Government stations, amateur stations, mobile stations, and broadcasting stations, the Commission could waive the requirement of a permit for construction if it found that the public interest, convenience, or necessity would be served thereby, that such waiver would apply only to stations whose construction was begun subsequent to the effective date of the waiver, and that if the Commission found that the public interest, convenience, and necessity would be served thereby, it could waive the requirement of a permit for construction of a station that was engaged solely in rebroadcasting television signals if such station had been constructed on or before July 7, 1960.

1962—Subsec. (a). Pub. L. 87–444 struck out requirement that applications were to be signed under oath or affirmation.

1960—Subsec. (c). Pub. L. 86–752 inserted references to section 309(d)–(g).

Subsec. (d). Pub. L. 86–609 authorized the Commission to waive the requirement of a permit for construction of a station engaged solely in rebroadcasting television signals if such station was constructed on or before July 7, 1960.

1954—Subsec. (b). Act Mar. 26, 1954, struck out sentence providing that a construction permit should not be required for Government stations, amateur stations, or stations upon mobile vessels, railroad rolling stock, or aircraft, such provisions being covered by subsec. (d) of this section.

Subsec. (d). Act Mar. 26, 1954, added subsec. (d).

1952—Subsec. (a). Act July 16, 1952, §13(a), (b), struck out ''upon written application therefor'' after ''by the Commission'' in first sentence, struck out second sentence, and substituted in third sentence, ''The application for a construction permit shall set forth'' for ''This application shall set forth''.

Subsec. (b). Act July 16, 1952, §13(c), (d), struck out second sentence relating to assignment of rights under a permit, and struck out last two sentences, which are incorporated in subsec. (c).

Subsec. (c). Act July 16, 1952, §13(d), added subsec. (c).

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–752 effective ninety days after Sept. 13, 1960, see section 4(d)(1) of Pub. L. 86–752, set out as a note under section 309 of this title.

§320. Stations liable to interfere with distress signals; designation and regulation

The Commission is authorized to designate from time to time radio stations the communications or signals of which, in its opinion, are liable to interfere with the transmission or reception of distress signals of ships. Such stations are required to keep a licensed radio operator listening in on the frequencies designated for signals of distress and radio communications relating thereto during the entire period the transmitter of such station is in operation.

(June 19, 1934, ch. 652, title III, §320, 48 Stat. 1090.)

§321. Distress signals and communications; equipment on vessels; regulations

(a) The transmitting set in a radio station on shipboard may be adjusted in such a manner as to produce a maximum of radiation, irrespective of the amount of interference which may thus be caused, when such station is sending radio communications or signals of distress and radio communications relating thereto.

(b) All radio stations, including Government stations and stations on board foreign vessels when within the territorial waters of the United States, shall give absolute priority to radio communications or signals relating to ships in distress; shall cease all sending on frequencies which will interfere with hearing a radio communication or signal of distress, and, except when engaged in answering or aiding the ship in distress, shall refrain from sending any radio communications or signals until there is assurance that no interference will be caused with the radio communications or signals relating thereto, and shall assist the vessel in distress, so far as possible, by complying with its instructions.

(June 19, 1934, ch. 652, title III, §321, 48 Stat. 1090; May 20, 1937, ch. 229, §7, 50 Stat. 191.)

AMENDMENTS

1937—Subsec. (a). Act May 20, 1937, struck out provisions which required radio stations on shipboard to be

equipped to transmit radio communications or signals of distress on the frequency specified by the Commission, with apparatus capable of transmitting and receiving messages over a distance of at least 100 miles by day or night.

§ 322. Exchanging radio communications between land and ship stations and from ship to ship

Every land station open to general public service between the coast and vessels or aircraft at sea shall, within the scope of its normal operations, be bound to exchange radio communications or signals with any ship or aircraft station at sea; and each station on shipboard or aircraft at sea shall, within the scope of its normal operations, be bound to exchange radio communications or signals with any other station on shipboard or aircraft at sea or with any land station open to general public service between the coast and vessels or aircraft at sea: *Provided*, That such exchange of radio communication shall be without distinction as to radio systems or instruments adopted by each station.

(June 19, 1934, ch. 652, title III, § 322, 48 Stat. 1090; May 20, 1937, ch. 229, § 8, 50 Stat. 191.)

AMENDMENTS

1937—Act May 20, 1937, provided for radio communications with aircraft stations.

§ 323. Interference between Government and commercial stations

(a) At all places where Government and private or commercial radio stations on land operate in such close proximity that interference with the work of Government stations cannot be avoided when they are operating simultaneously, such private or commercial stations as do interfere with the transmission or reception of radio communications or signals by the Government stations concerned shall not use their transmitters during the first fifteen minutes of each hour, local standard time.

(b) The Government stations for which the above-mentioned division of time is established shall transmit radio communications or signals only during the first fifteen minutes of each hour, local standard time, except in case of signals or radio communications relating to vessels in distress and vessel requests for information as to course, location, or compass direction.

(June 19, 1934, ch. 652, title III, § 323, 48 Stat. 1090.)

§ 324. Use of minimum power

In all circumstances, except in case of radio communications or signals relating to vessels in distress, all radio stations, including those owned and operated by the United States, shall use the minimum amount of power necessary to carry out the communication desired.

(June 19, 1934, ch. 652, title III, § 324, 48 Stat. 1091.)

§ 325. False, fraudulent, or unauthorized transmissions

(a) False distress signals; rebroadcasting programs

No person within the jurisdiction of the United States shall knowingly utter or transmit, or cause to be uttered or transmitted, any false or fraudulent signal of distress, or communication relating thereto, nor shall any broadcasting station rebroadcast the program or any part thereof of another broadcasting station without the express authority of the originating station.

(b) Consent to retransmission of broadcasting station signals

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

(A) with the express authority of the originating station;

(B) under section 534 of this title, in the case of a station electing, in accordance with this subsection, to assert the right to carriage under such section; or

(C) under section 338 of this title, in the case of a station electing, in accordance with this subsection, to assert the right to carriage under such section.

(2) This subsection shall not apply—

(A) to retransmission of the signal of a noncommercial television broadcast station;

(B) to retransmission of the signal of a television broadcast station outside the station's local market by a satellite carrier directly to its subscribers, if—

(i) such station was a superstation on May 1, 1991;

(ii) as of July 1, 1998, such station was retransmitted by a satellite carrier under the statutory license of section 119 of title 17; and

(iii) the satellite carrier complies with any network nonduplication, syndicated exclusivity, and sports blackout rules adopted by the Commission under section 339(b) of this title;

(C) until December 31, 2009, to retransmission of the signals of network stations directly to a home satellite antenna, if the subscriber receiving the signal—

(i) is located in an area outside the local market of such stations; and

(ii) resides in an unserved household;

(D) to retransmission by a cable operator or other multichannel video provider, other than a satellite carrier, of the signal of a television broadcast station outside the station's local market if such signal was obtained from a satellite carrier and—

(i) the originating station was a superstation on May 1, 1991; and

(ii) as of July 1, 1998, such station was retransmitted by a satellite carrier under the statutory license of section 119 of title 17; or

(E) during the 6-month period beginning on November 29, 1999, to the retransmission of the signal of a television broadcast station within the station's local market by a satellite carrier directly to its subscribers under the statutory license of section 122 of title 17.

For purposes of this paragraph, the terms ''satellite carrier'' and ''superstation'' have the meanings given those terms, respectively, in

section 119(d) of title 17, as in effect on October 5, 1992, the term ''unserved household'' has the meaning given that term under section 119(d) of such title, and the term ''local market'' has the meaning given that term in section 122(j) of such title.

(3)(A) Within 45 days after October 5, 1992, the Commission shall commence a rulemaking proceeding to establish regulations to govern the exercise by television broadcast stations of the right to grant retransmission consent under this subsection and of the right to signal carriage under section 534 of this title, and such other regulations as are necessary to administer the limitations contained in paragraph (2). The Commission shall consider in such proceeding the impact that the grant of retransmission consent by television stations may have on the rates for the basic service tier and shall ensure that the regulations prescribed under this subsection do not conflict with the Commission's obligation under section 543(b)(1) of this title to ensure that the rates for the basic service tier are reasonable. Such rulemaking proceeding shall be completed within 180 days after October 5, 1992.

(B) The regulations required by subparagraph (A) shall require that television stations, within one year after October 5, 1992, and every three years thereafter, make an election between the right to grant retransmission consent under this subsection and the right to signal carriage under section 534 of this title. If there is more than one cable system which services the same geographic area, a station's election shall apply to all such cable systems.

(C) The Commission shall commence a rulemaking proceeding to revise the regulations governing the exercise by television broadcast stations of the right to grant retransmission consent under this subsection, and such other regulations as are necessary to administer the limitations contained in paragraph (2). Such regulations shall—

(i) establish election time periods that correspond with those regulations adopted under subparagraph (B) of this paragraph;

(ii) until January 1, 2010, prohibit a television broadcast station that provides retransmission consent from engaging in exclusive contracts for carriage or failing to negotiate in good faith, and it shall not be a failure to negotiate in good faith if the television broadcast station enters into retransmission consent agreements containing different terms and conditions, including price terms, with different multichannel video programming distributors if such different terms and conditions are based on competitive marketplace considerations; and

(iii) until January 1, 2010, prohibit a multichannel video programming distributor from failing to negotiate in good faith for retransmission consent under this section, and it shall not be a failure to negotiate in good faith if the distributor enters into retransmission consent agreements containing different terms and conditions, including price terms, with different broadcast stations if such different terms and conditions are based on competitive marketplace considerations.

(4) If an originating television station elects under paragraph (3)(B) to exercise its right to grant retransmission consent under this subsection with respect to a cable system, the provisions of section 534 of this title shall not apply to the carriage of the signal of such station by such cable system. If an originating television station elects under paragraph (3)(C) to exercise its right to grant retransmission consent under this subsection with respect to a satellite carrier, section 338 of this title shall not apply to the carriage of the signal of such station by such satellite carrier.

(5) The exercise by a television broadcast station of the right to grant retransmission consent under this subsection shall not interfere with or supersede the rights under section 338, 534, or 535 of this title of any station electing to assert the right to signal carriage under that section.

(6) Nothing in this section shall be construed as modifying the compulsory copyright license established in section 111 of title 17 or as affecting existing or future video programming licensing agreements between broadcasting stations and video programmers.

(7) For purposes of this subsection, the term—

(A) ''network station'' has the meaning given such term under section 119(d) of title 17; and

(B) ''television broadcast station'' means an over-the-air commercial or noncommercial television broadcast station licensed by the Commission under subpart E of part 73 of title 47, Code of Federal Regulations, except that such term does not include a low-power or translator television station.

(c) Broadcast to foreign countries for rebroadcast to United States; permit

No person shall be permitted to locate, use, or maintain a radio broadcast studio or other place or apparatus from which or whereby sound waves are converted into electrical energy, or mechanical or physical reproduction of sound waves produced, and caused to be transmitted or delivered to a radio station in a foreign country for the purpose of being broadcast from any radio station there having a power output of sufficient intensity and/or being so located geographically that its emissions may be received consistently in the United States, without first obtaining a permit from the Commission upon proper application therefor.

(d) Application for permit

Such application shall contain such information as the Commission may by regulation prescribe, and the granting or refusal thereof shall be subject to the requirements of section 309 of this title with respect to applications for station licenses or renewal or modification thereof, and the license or permission so granted shall be revocable for false statements in the application so required or when the Commission, after hearings, shall find its continuation no longer in the public interest.

(e) Enforcement proceedings against satellite carriers concerning retransmissions of television broadcast stations in the respective local markets of such carriers

(1) Complaints by television broadcast stations

If after the expiration of the 6-month period described under subsection (b)(2)(E) of this section a television broadcast station believes that a satellite carrier has retransmitted its signal to any person in the local market of such station in violation of subsection (b)(1) of this section, the station may file with the Commission a complaint providing—

(A) the name, address, and call letters of the station;

(B) the name and address of the satellite carrier;

(C) the dates on which the alleged retransmission occurred;

(D) the street address of at least one person in the local market of the station to whom the alleged retransmission was made;

(E) a statement that the retransmission was not expressly authorized by the television broadcast station; and

(F) the name and address of counsel for the station.

(2) Service of complaints on satellite carriers

For purposes of any proceeding under this subsection, any satellite carrier that retransmits the signal of any broadcast station shall be deemed to designate the Secretary of the Commission as its agent for service of process. A television broadcast station may serve a satellite carrier with a complaint concerning an alleged violation of subsection (b)(1) of this section through retransmission of a station within the local market of such station by filing the original and two copies of the complaint with the Secretary of the Commission and serving a copy of the complaint on the satellite carrier by means of two commonly used overnight delivery services, each addressed to the chief executive officer of the satellite carrier at its principal place of business, and each marked ''URGENT LITIGATION MATTER'' on the outer packaging. Service shall be deemed complete one business day after a copy of the complaint is provided to the delivery services for overnight delivery. On receipt of a complaint filed by a television broadcast station under this subsection, the Secretary of the Commission shall send the original complaint by United States mail, postage prepaid, receipt requested, addressed to the chief executive officer of the satellite carrier at its principal place of business.

(3) Answers by satellite carriers

Within five business days after the date of service, the satellite carrier shall file an answer with the Commission and shall serve the answer by a commonly used overnight delivery service and by United States mail, on the counsel designated in the complaint at the address listed for such counsel in the complaint.

(4) Defenses

(A) Exclusive defenses

The defenses under this paragraph are the exclusive defenses available to a satellite carrier against which a complaint under this subsection is filed.

(B) Defenses

The defenses referred to under subparagraph (A) are the defenses that—

(i) the satellite carrier did not retransmit the television broadcast station to any person in the local market of the station during the time period specified in the complaint;

(ii) the television broadcast station had, in a writing signed by an officer of the television broadcast station, expressly authorized the retransmission of the station by the satellite carrier to each person in the local market of the television broadcast station to which the satellite carrier made such retransmissions for the entire time period during which it is alleged that a violation of subsection (b)(1) of this section has occurred;

(iii) the retransmission was made after January 1, 2002, and the television broadcast station had elected to assert the right to carriage under section 338 of this title as against the satellite carrier for the relevant period; or

(iv) the station being retransmitted is a noncommercial television broadcast station.

(5) Counting of violations

The retransmission without consent of a particular television broadcast station on a particular day to one or more persons in the local market of the station shall be considered a separate violation of subsection (b)(1) of this section.

(6) Burden of proof

With respect to each alleged violation, the burden of proof shall be on a television broadcast station to establish that the satellite carrier retransmitted the station to at least one person in the local market of the station on the day in question. The burden of proof shall be on the satellite carrier with respect to all defenses other than the defense under paragraph (4)(B)(i).

(7) Procedures

(A) Regulations

Within 60 days after November 29, 1999, the Commission shall issue procedural regulations implementing this subsection which shall supersede procedures under section 312 of this title.

(B) Determinations

(i) In general

Within 45 days after the filing of a complaint, the Commission shall issue a final determination in any proceeding brought under this subsection. The Commission's final determination shall specify the number of violations committed by the satellite carrier. The Commission shall hear witnesses only if it clearly appears, based on written filings by the parties, that there is a genuine dispute about material facts. Except as provided in the preceding

sentence, the Commission may issue a final ruling based on written filings by the parties.

(ii) Discovery

The Commission may direct the parties to exchange pertinent documents, and if necessary to take prehearing depositions, on such schedule as the Commission may approve, but only if the Commission first determines that such discovery is necessary to resolve a genuine dispute about material facts, consistent with the obligation to make a final determination within 45 days.

(8) Relief

If the Commission determines that a satellite carrier has retransmitted the television broadcast station to at least one person in the local market of such station and has failed to meet its burden of proving one of the defenses under paragraph (4) with respect to such retransmission, the Commission shall be required to—

(A) make a finding that the satellite carrier violated subsection (b)(1) of this section with respect to that station; and

(B) issue an order, within 45 days after the filing of the complaint, containing—

(i) a cease-and-desist order directing the satellite carrier immediately to stop making any further retransmissions of the television broadcast station to any person within the local market of such station until such time as the Commission determines that the satellite carrier is in compliance with subsection (b)(1) of this section with respect to such station;

(ii) if the satellite carrier is found to have violated subsection (b)(1) of this section with respect to more than two television broadcast stations, a cease-and-desist order directing the satellite carrier to stop making any further retransmission of any television broadcast station to any person within the local market of such station, until such time as the Commission, after giving notice to the station, that the satellite carrier is in compliance with subsection (b)(1) of this section with respect to such stations; and

(iii) an award to the complainant of that complainant's costs and reasonable attorney's fees.

(9) Court proceedings on enforcement of Commission order

(A) In general

On entry by the Commission of a final order granting relief under this subsection—

(i) a television broadcast station may apply within 30 days after such entry to the United States District Court for the Eastern District of Virginia for a final judgment enforcing all relief granted by the Commission; and

(ii) the satellite carrier may apply within 30 days after such entry to the United States District Court for the Eastern District of Virginia for a judgment reversing the Commission's order.

(B) Appeal

The procedure for an appeal under this paragraph by the satellite carrier shall supersede any other appeal rights under Federal or State law. A United States district court shall be deemed to have personal jurisdiction over the satellite carrier if the carrier, or a company under common control with the satellite carrier, has delivered television programming by satellite to more than 30 customers in that district during the preceding 4-year period. If the United States District Court for the Eastern District of Virginia does not have personal jurisdiction over the satellite carrier, an enforcement action or appeal shall be brought in the United States District Court for the District of Columbia, which may find personal jurisdiction based on the satellite carrier's ownership of licenses issued by the Commission. An application by a television broadcast station for an order enforcing any cease-and-desist relief granted by the Commission shall be resolved on a highly expedited schedule. No discovery may be conducted by the parties in any such proceeding. The district court shall enforce the Commission order unless the Commission record reflects manifest error and an abuse of discretion by the Commission.

(10) Civil action for statutory damages

Within 6 months after issuance of an order by the Commission under this subsection, a television broadcast station may file a civil action in any United States district court that has personal jurisdiction over the satellite carrier for an award of statutory damages for any violation that the Commission has determined to have been committed by a satellite carrier under this subsection. Such action shall not be subject to transfer under section 1404(a) of title 28. On finding that the satellite carrier has committed one or more violations of subsection (b) of this section, the District Court shall be required to award the television broadcast station statutory damages of $25,000 per violation, in accordance with paragraph (5), and the costs and attorney's fees incurred by the station. Such statutory damages shall be awarded only if the television broadcast station has filed a binding stipulation with the court that such station will donate the full amount in excess of $1,000 of any statutory damage award to the United States Treasury for public purposes. Notwithstanding any other provision of law, a station shall incur no tax liability of any kind with respect to any amounts so donated. Discovery may be conducted by the parties in any proceeding under this paragraph only if and to the extent necessary to resolve a genuinely disputed issue of fact concerning one of the defenses under paragraph (4). In any such action, the defenses under paragraph (4) shall be exclusive, and the burden of proof shall be on the satellite carrier with respect to all defenses other than the defense under paragraph (4)(B)(i). A judgment under this paragraph may be enforced in any manner permissible under Federal or State law.

(11) Appeals

(A) In general

The nonprevailing party before a United States district court may appeal a decision under this subsection to the United States Court of Appeals with jurisdiction over that district court. The Court of Appeals shall not issue any stay of the effectiveness of any decision granting relief against a satellite carrier unless the carrier presents clear and convincing evidence that it is highly likely to prevail on appeal and only after posting a bond for the full amount of any monetary award assessed against it and for such further amount as the Court of Appeals may believe appropriate.

(B) Appeal

If the Commission denies relief in response to a complaint filed by a television broadcast station under this subsection, the television broadcast station filing the complaint may file an appeal with the United States Court of Appeals for the District of Columbia Circuit.

(12) Sunset

No complaint or civil action may be filed under this subsection after December 31, 2001. This subsection shall continue to apply to any complaint or civil action filed on or before such date.

(June 19, 1934, ch. 652, title III, § 325, 48 Stat. 1091; Pub. L. 102–385, § 6, Oct. 5, 1992, 106 Stat. 1482; Pub. L. 106–113, div. B, § 1000(a)(9) [title I, § 1009], Nov. 29, 1999, 113 Stat. 1536, 1501A–537; Pub. L. 108–447, div. J, title IX [title II, §§ 201, 207(a)], Dec. 8, 2004, 118 Stat. 3409, 3428.)

AMENDMENTS

2004—Subsec. (b)(2)(C). Pub. L. 108–447, § 201, substituted ''December 31, 2009'' for ''December 31, 2004''.

Subsec. (b)(3)(C). Pub. L. 108–447, § 207(a)(1), (2), in introductory provisions, substituted ''The'' for ''Within 45 days after November 29, 1999, the'' and struck out second sentence which read ''The Commission shall complete all actions necessary to prescribe such regulations within 1 year after November 29, 1999.''

Subsec. (b)(3)(C)(ii). Pub. L. 108–447, § 207(a)(4)(A), substituted ''January 1, 2010'' for ''January 1, 2006''.

Subsec. (b)(3)(C)(iii). Pub. L. 108–447, § 207(a)(3), (4)(B), (5), added cl. (iii).

1999—Subsec. (b)(1), (2). Pub. L. 106–113, § 1000(a)(9) [title I, § 1009(a)(1)], amended pars. (1) and (2) generally. Prior to amendment, pars. (1) and (2) read as follows:

''(1) Following the date that is one year after October 5, 1992, no cable system or other multichannel video programming distributor shall retransmit the signal of a broadcasting station, or any part thereof, except—

''(A) with the express authority of the originating station; or

''(B) pursuant to section 534 of this title, in the case of a station electing, in accordance with this subsection, to assert the right to carriage under such section.

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

''(A) retransmission of the signal of a noncommercial broadcasting station;

''(B) retransmission directly to a home satellite antenna of the signal of a broadcasting station that is not owned or operated by, or affiliated with, a broadcasting network, if such signal was retransmitted by a satellite carrier on May 1, 1991;

''(C) retransmission of the signal of a broadcasting station that is owned or operated by, or affiliated with, a broadcasting network directly to a home satellite antenna, if the household receiving the signal is an unserved household; or

''(D) retransmission by a cable operator or other multichannel video programming distributor of the signal of a superstation if such signal was obtained from a satellite carrier and the originating station was a superstation on May 1, 1991.

For purposes of this paragraph, the terms 'satellite carrier', 'superstation', and 'unserved household' have the meanings given those terms, respectively, in section 119(d) of title 17 as in effect on October 5, 1992.''

Subsec. (b)(3)(C). Pub. L. 106–113, § 1000(a)(9) [title I, § 1009(a)(2)], added subpar. (C).

Subsec. (b)(4). Pub. L. 106–113, § 1000(a)(9) [title I, § 1009(a)(3)], inserted at end ''If an originating television station elects under paragraph (3)(C) to exercise its right to grant retransmission consent under this subsection with respect to a satellite carrier, section 338 of this title shall not apply to the carriage of the signal of such station by such satellite carrier.''

Subsec. (b)(5). Pub. L. 106–113, § 1000(a)(9) [title I, § 1009(a)(4)], substituted ''338, 534, or 535 of this title'' for ''534 or 535 of this title''.

Subsec. (b)(7). Pub. L. 106–113, § 1000(a)(9) [title I, § 1009(a)(5)], added par. (7).

Subsec. (e). Pub. L. 106–113, § 1000(a)(9) [title I, § 1009(b)], added subsec. (e).

1992—Subsecs. (b) to (d). Pub. L. 102–385 added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 28 of Pub. L. 102–385 provided that: ''Except where otherwise expressly provided, the provisions of this Act [enacting sections 334, 335, 534 to 537, 544a, 548, and 555a of this title, amending this section and sections 332, 522, 532, 533, 541 to 544, 546, 551 to 555, and 558 of this title, and enacting provisions set out as notes under sections 521, 531, 543, and 554 of this title] and the amendments made thereby shall take effect 60 days after the date of enactment of this Act [Oct. 5, 1992].''

REGULATIONS

Pub. L. 108–447, div. J, title IX [title II, § 207(b)], Dec. 8, 2004, 118 Stat. 3428, provided that: ''The Federal Communications Commission shall prescribe regulations to implement the amendment made by subsection (a)(5) [amending this section] within 180 days after the date of enactment of this Act [Dec. 8, 2004].''

SEVERABILITY

Pub. L. 106–113, div. B, § 1000(a)(9) [title I, § 1010], Nov. 29, 1999, 113 Stat. 1536, 1501A–543, provided that: ''If any provision of section 325(b) of the Communications Act of 1934 (47 U.S.C. 325(b)), or the application of that provision to any person or circumstance, is held by a court of competent jurisdiction to violate any provision of the Constitution of the United States, then the other provisions of that section, and the application of that provision to other persons and circumstances, shall not be affected.''

DIGITAL TRANSITION SAVINGS PROVISION

Pub. L. 108–447, div. J, title IX [title II, § 212], Dec. 8, 2004, 118 Stat. 3431, provided that: ''Nothing in the dates by which requirements or other provisions are effective under this Act [probably means title IX of div. J of Pub. L. 108–447, see Short Title of 2004 Amendment note set out under section 101 of Title 17, Copyrights] or the amendments made by this Act shall be construed—

''(1) to impair the authority of the Federal Communications Commission to take any action with respect to the transition by television broadcasters to the digital television service; or

''(2) to require the Commission to take any such action.''

§ 326. Censorship

Nothing in this chapter shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication.

(June 19, 1934, ch. 652, title III, § 326, 48 Stat. 1091; June 25, 1948, ch. 645, § 21, 62 Stat. 862.)

AMENDMENTS

1948—Act June 25, 1948, repealed last sentence relating to use of indecent language. See section 1464 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1948 AMENDMENT

Amendment by act June 25, 1948, effective as of Sept. 1, 1948, see section 20 of that act.

§ 327. Naval stations; use for commercial messages; rates

The Secretary of the Navy is authorized, unless restrained by international agreement, under the terms and conditions and at rates prescribed by him, which rates shall be just and reasonable, and which, upon complaint, shall be subject to review and revision by the Commission, to use all radio stations and apparatus, wherever located, owned by the United States and under the control of the Navy Department, (a) for the reception and transmission of press messages offered by any newspaper published in the United States, its Territories or possessions, or published by citizens of the United States in foreign countries, or by any press association of the United States, and (b) for the reception and transmission of private commercial messages between ships, between ship and shore, between localities in Alaska and between Alaska and the continental United States: *Provided*, That the rates fixed for the reception and transmission of all such messages, other than press messages between the Pacific coast of the United States, Hawaii, Alaska, Guam, American Samoa, the Philippine Islands, and the Orient, and between the United States and the Virgin Islands, shall not be less than the rates charged by privately owned and operated stations for like messages and service: *Provided further*, That the right to use such stations for any of the purposes named in this section shall terminate and cease as between any countries or localities or between any locality and privately operated ships whenever privately owned and operated stations are capable of meeting the normal communication requirements between such countries or localities or between any locality and privately operated ships, and the Commission shall have notified the Secretary of the Navy thereof.

(June 19, 1934, ch. 652, title III, § 327, 48 Stat. 1091.)

REFERENCES IN TEXT

The Philippine Islands, referred to in text, were granted their independence by Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352, issued pursuant to section 1394 of Title 22, Foreign Relations and Intercourse, and set out under that section. They are now known as the Republic of the Philippines.

§ 328. Repealed. Pub. L. 103–414, title III, § 304(a)(10), Oct. 25, 1994, 108 Stat. 4297

Section, act June 19, 1934, ch. 652, title III, § 328, 48 Stat. 1092; Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352, related to representation of Canal Zone in international radio matters by Secretary of State.

§ 329. Administration of radio laws in Territories and possessions

The Commission is authorized to designate any officer or employee of any other department of the Government on duty in any Territory or possession of the United States to render therein such service in connection with the administration of this chapter as the Commission may prescribe and also to designate any officer or employee of any other department of the Government to render such services at any place within the United States in connection with the administration of this subchapter as may be necessary: *Provided*, That such designation shall be approved by the head of the department in which such person is employed.

(June 19, 1934, ch. 652, title III, § 329, 48 Stat. 1092; May 20, 1937, ch. 229, § 9, 50 Stat. 191.)

AMENDMENTS

1937—Act May 20, 1937, struck out provisions which prohibited designation of officers and employees in the Philippine Islands and Canal Zone and inserted provisions permitting designation of officers and employees within the United States.

§ 330. Prohibition against shipment of certain television receivers

(a) No person shall ship in interstate commerce, or import from any foreign country into the United States, for sale or resale to the public, apparatus described in subsection (s) of section 303 of this title unless it complies with rules prescribed by the Commission pursuant to the authority granted by that subsection: *Provided*, That this section shall not apply to carriers transporting such apparatus without trading in it.

(b) No person shall ship in interstate commerce, manufacture, assemble, or import from any foreign country into the United States, any apparatus described in section 303(u) of this title except in accordance with rules prescribed by the Commission pursuant to the authority granted by that section. Such rules shall provide performance and display standards for such built-in decoder circuitry. Such rules shall further require that all such apparatus be able to receive and display closed captioning which have been transmitted by way of line 21 of the vertical blanking interval and which conform to the signal and display specifications set forth in the Public Broadcasting System engineering report numbered E–7709–C dated May 1980, as amended by the Telecaption II Decoder Module Performance Specification published by the National Captioning Institute, November 1985. As new video technology is developed, the Commission shall take such action as the Commission determines appropriate to ensure that closed-captioning service continues to be available to consumers. This subsection shall not apply to carriers transporting such apparatus without trading it.

(c)(1) Except as provided in paragraph (2), no person shall ship in interstate commerce or manufacture in the United States any apparatus described in section 303(x) of this title except in accordance with rules prescribed by the Commission pursuant to the authority granted by that section.

(2) This subsection shall not apply to carriers transporting apparatus referred to in paragraph (1) without trading in it.

(3) The rules prescribed by the Commission under this subsection shall provide for the oversight by the Commission of the adoption of standards by industry for blocking technology. Such rules shall require that all such apparatus be able to receive the rating signals which have been transmitted by way of line 21 of the vertical blanking interval and which conform to the signal and blocking specifications established by industry under the supervision of the Commission.

(4) As new video technology is developed, the Commission shall take such action as the Commission determines appropriate to ensure that blocking service continues to be available to consumers. If the Commission determines that an alternative blocking technology exists that—

(A) enables parents to block programming based on identifying programs without ratings,

(B) is available to consumers at a cost which is comparable to the cost of technology that allows parents to block programming based on common ratings, and

(C) will allow parents to block a broad range of programs on a multichannel system as effectively and as easily as technology that allows parents to block programming based on common ratings,

the Commission shall amend the rules prescribed pursuant to section 303(x) of this title to require that the apparatus described in such section be equipped with either the blocking technology described in such section or the alternative blocking technology described in this paragraph.

(d) For the purposes of this section, and sections 303(s), 303(u), and 303(x) of this title—

(1) The term ''interstate commerce'' means (A) commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States and any place outside thereof which is within the United States, (B) commerce between points in the same State, the District of Columbia, the Commonwealth of Puerto Rico, or possession of the United States but through any place outside thereof, or (C) commerce wholly within the District of Columbia or any possession of the United States.

(2) The term ''United States'' means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States, but does not include the Canal Zone.

(June 19, 1934, ch. 652, title III, § 330, as added Pub. L. 87–529, § 2, July 10, 1962, 76 Stat. 151; amended Pub. L. 101–431, § 4, Oct. 15, 1990, 104 Stat. 961; Pub. L. 104–104, title V, § 551(d), Feb. 8, 1996, 110 Stat. 141.)

REFERENCES IN TEXT

For definition of Canal Zone, referred to in subsec. (d)(2), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–104, § 551(d)(1)(B), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 104–104, § 551(d)(2), in introductory provisions substituted ''and sections 303(s), 303(u), and 303(x) of this title'' for ''section 303(s) of this title, and section 303(u) of this title''.

Pub. L. 104–104, § 551(d)(1)(B), redesignated subsec. (c) as (d).

1990—Subsecs. (b), (c). Pub. L. 101–431 added subsec. (b), redesignated former subsec. (b) as (c), and substituted '', section 303(s) of this title, and section 303(u) of this title'' for ''and section 303(s) of this title''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–431 effective July 1, 1993, see section 5 of Pub. L. 101–431, set out as a note under section 303 of this title.

§ 331. Very high frequency stations and AM radio stations

(a) Very high frequency stations

It shall be the policy of the Federal Communications Commission to allocate channels for very high frequency commercial television broadcasting in a manner which ensures that not less than one such channel shall be allocated to each State, if technically feasible. In any case in which licensee of a very high frequency commercial television broadcast station notifies the Commission to the effect that such licensee will agree to the reallocation of its channel to a community within a State in which there is allocated no very high frequency commercial television broadcast channel at the time[1] such notification, the Commission shall, notwithstanding any other provision of law, order such reallocation and issue a license to such licensee for that purpose pursuant to such notification for a term of not to exceed 5 years as provided in section 307(d)[2] of this title.

(b) AM radio stations

It shall be the policy of the Commission, in any case in which the licensee of an existing AM daytime-only station located in a community with a population of more than 100,000 persons that lacks a local full-time aural station licensed to that community and that is located within a Class I station primary service area notifies the Commission that such licensee seeks to provide full-time service, to ensure that such a licensee is able to place a principal community contour signal over its entire community of license 24 hours a day, if technically feasible. The Commission shall report to the appropriate committees of Congress within 30 days after December 20, 1991, on how it intends to meet this policy goal.

(June 19, 1934, ch. 652, title III, § 331, as added Pub. L. 97–248, title III, § 355, Sept. 3, 1982, 96 Stat. 641; amended Pub. L. 102–243, § 4, Dec. 20, 1991, 105 Stat. 2402; Pub. L. 103–414, title III, § 303(a)(18), Oct. 25, 1994, 108 Stat. 4295.)

[1] So in original. Probably should be followed by ''of''.

[2] See References in Text note below.

REFERENCES IN TEXT

Subsec. (d) of section 307 of this title, referred to in subsec. (a), was redesignated subsec. (c) of section 307 by Pub. L. 97–259, title I, § 112(a), Sept. 13, 1982, 96 Stat. 1093.

CODIFICATION

December 20, 1991, referred to in subsec. (b), was in the original ''the date of enactment of this Act'', which was translated as meaning the date of enactment of Pub. L. 102–243, which enacted subsec. (b), to reflect the probable intent of Congress.

Another section 331 of act June 19, 1934 was renumbered section 332 and is classified to section 332 of this title.

PRIOR PROVISIONS

A prior section 331, act June 19, 1934, ch. 652, title III, § 331, as added Sept. 14, 1973, Pub. L. 93–107, § 1, 87 Stat. 350, related to broadcasting of games of professional sports clubs, prior to repeal by Pub. L. 93–107, § 2, Sept. 14, 1973, 87 Stat. 351, effective Dec. 31, 1975.

AMENDMENTS

1994—Pub. L. 103–414 amended section catchline generally.

1991—Pub. L. 102–243 inserted ''and AM radio stations'' in section catchline, designated existing provisions as subsec. (a) and inserted heading, and added subsec. (b).

§ 332. Mobile services

(a) Factors which Commission must consider

In taking actions to manage the spectrum to be made available for use by the private mobile services, the Commission shall consider, consistent with section 151 of this title, whether such actions will—

(1) promote the safety of life and property;

(2) improve the efficiency of spectrum use and reduce the regulatory burden upon spectrum users, based upon sound engineering principles, user operational requirements, and marketplace demands;

(3) encourage competition and provide services to the largest feasible number of users; or

(4) increase interservice sharing opportunities between private mobile services and other services.

(b) Advisory coordinating committees

(1) The Commission, in coordinating the assignment of frequencies to stations in the private mobile services and in the fixed services (as defined by the Commission by rule), shall have authority to utilize assistance furnished by advisory coordinating committees consisting of individuals who are not officers or employees of the Federal Government.

(2) The authority of the Commission established in this subsection shall not be subject to or affected by the provisions of part III of title 5 or section 1342 of title 31.

(3) Any person who provides assistance to the Commission under this subsection shall not be considered, by reason of having provided such assistance, a Federal employee.

(4) Any advisory coordinating committee which furnishes assistance to the Commission under this subsection shall not be subject to the provisions of the Federal Advisory Committee Act.

(c) Regulatory treatment of mobile services

(1) Common carrier treatment of commercial mobile services

(A) A person engaged in the provision of a service that is a commercial mobile service shall, insofar as such person is so engaged, be treated as a common carrier for purposes of this chapter, except for such provisions of subchapter II of this chapter as the Commission may specify by regulation as inapplicable to that service or person. In prescribing or amending any such regulation, the Commission may not specify any provision of section 201, 202, or 208 of this title, and may specify any other provision only if the Commission determines that—

(i) enforcement of such provision is not necessary in order to ensure that the charges, practices, classifications, or regulations for or in connection with that service are just and reasonable and are not unjustly or unreasonably discriminatory;

(ii) enforcement of such provision is not necessary for the protection of consumers; and

(iii) specifying such provision is consistent with the public interest.

(B) Upon reasonable request of any person providing commercial mobile service, the Commission shall order a common carrier to establish physical connections with such service pursuant to the provisions of section 201 of this title. Except to the extent that the Commission is required to respond to such a request, this subparagraph shall not be construed as a limitation or expansion of the Commission's authority to order interconnection pursuant to this chapter.

(C) The Commission shall review competitive market conditions with respect to commercial mobile services and shall include in its annual report an analysis of those conditions. Such analysis shall include an identification of the number of competitors in various commercial mobile services, an analysis of whether or not there is effective competition, an analysis of whether any of such competitors have a dominant share of the market for such services, and a statement of whether additional providers or classes of providers in those services would be likely to enhance competition. As a part of making a determination with respect to the public interest under subparagraph (A)(iii), the Commission shall consider whether the proposed regulation (or amendment thereof) will promote competitive market conditions, including the extent to which such regulation (or amendment) will enhance competition among providers of commercial mobile services. If the Commission determines that such regulation (or amendment) will promote competition among providers of commercial mobile services, such determination may be the basis for a Commission finding that such regulation (or amendment) is in the public interest.

(D) The Commission shall, not later than 180 days after August 10, 1993, complete a rulemaking required to implement this paragraph with respect to the licensing of personal com-

munications services, including making any determinations required by subparagraph (C).

(2) Non-common carrier treatment of private mobile services

A person engaged in the provision of a service that is a private mobile service shall not, insofar as such person is so engaged, be treated as a common carrier for any purpose under this chapter. A common carrier (other than a person that was treated as a provider of a private land mobile service prior to August 10, 1993) shall not provide any dispatch service on any frequency allocated for common carrier service, except to the extent such dispatch service is provided on stations licensed in the domestic public land mobile radio service before January 1, 1982. The Commission may by regulation terminate, in whole or in part, the prohibition contained in the preceding sentence if the Commission determines that such termination will serve the public interest.

(3) State preemption

(A) Notwithstanding sections 152(b) and 221(b) of this title, no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services. Nothing in this subparagraph shall exempt providers of commercial mobile services (where such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State) from requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the universal availability of telecommunications service at affordable rates. Notwithstanding the first sentence of this subparagraph, a State may petition the Commission for authority to regulate the rates for any commercial mobile service and the Commission shall grant such petition if such State demonstrates that—

(i) market conditions with respect to such services fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory; or

(ii) such market conditions exist and such service is a replacement for land line telephone exchange service for a substantial portion of the telephone land line exchange service within such State.

The Commission shall provide reasonable opportunity for public comment in response to such petition, and shall, within 9 months after the date of its submission, grant or deny such petition. If the Commission grants such petition, the Commission shall authorize the State to exercise under State law such authority over rates, for such periods of time, as the Commission deems necessary to ensure that such rates are just and reasonable and not unjustly or unreasonably discriminatory.

(B) If a State has in effect on June 1, 1993, any regulation concerning the rates for any commercial mobile service offered in such State on such date, such State may, no later than 1 year after August 10, 1993, petition the Commission requesting that the State be authorized to continue exercising authority over such rates. If a State files such a petition, the State's existing regulation shall, notwithstanding subparagraph (A), remain in effect until the Commission completes all action (including any reconsideration) on such petition. The Commission shall review such petition in accordance with the procedures established in such subparagraph, shall complete all action (including any reconsideration) within 12 months after such petition is filed, and shall grant such petition if the State satisfies the showing required under subparagraph (A)(i) or (A)(ii). If the Commission grants such petition, the Commission shall authorize the State to exercise under State law such authority over rates, for such period of time, as the Commission deems necessary to ensure that such rates are just and reasonable and not unjustly or unreasonably discriminatory. After a reasonable period of time, as determined by the Commission, has elapsed from the issuance of an order under subparagraph (A) or this subparagraph, any interested party may petition the Commission for an order that the exercise of authority by a State pursuant to such subparagraph is no longer necessary to ensure that the rates for commercial mobile services are just and reasonable and not unjustly or unreasonably discriminatory. The Commission shall provide reasonable opportunity for public comment in response to such petition, and shall, within 9 months after the date of its submission, grant or deny such petition in whole or in part.

(4) Regulatory treatment of communications satellite corporation

Nothing in this subsection shall be construed to alter or affect the regulatory treatment required by title IV of the Communications Satellite Act of 1962 [47 U.S.C. 741 et seq.] of the corporation authorized by title III of such Act [47 U.S.C. 731 et seq.].

(5) Space segment capacity

Nothing in this section shall prohibit the Commission from continuing to determine whether the provision of space segment capacity by satellite systems to providers of commercial mobile services shall be treated as common carriage.

(6) Foreign ownership

The Commission, upon a petition for waiver filed within 6 months after August 10, 1993, may waive the application of section 310(b) of this title 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) of this title.

(7) Preservation of local zoning authority

(A) General authority

Except as provided in this paragraph, nothing in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

(B) Limitations

(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof—

(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

(ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.

(iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

(iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.

(v) Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.

(C) Definitions

For purposes of this paragraph—

(i) the term ''personal wireless services'' means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services;

(ii) the term ''personal wireless service facilities'' means facilities for the provision of personal wireless services; and

(iii) the term ''unlicensed wireless service'' means the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services (as defined in section 303(v) of this title).

(8) Mobile services access

A person engaged in the provision of commercial mobile services, insofar as such person is so engaged, shall not be required to provide equal access to common carriers for the provision of telephone toll services. If the Commission determines that subscribers to such services are denied access to the provider of telephone toll services of the subscribers' choice, and that such denial is contrary to the public interest, convenience, and necessity, then the Commission shall prescribe regulations to afford subscribers unblocked access to the provider of telephone toll services of the subscribers' choice through the use of a carrier identification code assigned to such provider or other mechanism. The requirements for unblocking shall not apply to mobile satellite services unless the Commission finds it to be in the public interest to apply such requirements to such services.

(d) Definitions

For purposes of this section—

(1) the term ''commercial mobile service'' means any mobile service (as defined in section 153 of this title) that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission;

(2) the term ''interconnected service'' means service that is interconnected with the public switched network (as such terms are defined by regulation by the Commission) or service for which a request for interconnection is pending pursuant to subsection (c)(1)(B) of this section; and

(3) the term ''private mobile service'' means any mobile service (as defined in section 153 of this title) that is not a commercial mobile service or the functional equivalent of a commercial mobile service, as specified by regulation by the Commission.

(June 19, 1934, ch. 652, title III, §332, formerly §331, as added Pub. L. 97–259, title I, §120(a), Sept. 13, 1982, 96 Stat. 1096; renumbered §332, Pub. L. 102–385, §25(b), Oct. 5, 1992, 106 Stat. 1502; amended Pub. L. 103–66, title VI, §6002(b)(2)(A), Aug. 10, 1993, 107 Stat. 392; Pub. L. 104–104, §3(d)(2), title VII, §§704(a), 705, Feb. 8, 1996, 110 Stat. 61, 151, 153.)

REFERENCES IN TEXT

Provisions of part III of title 5, referred to in subsec. (b)(2), are classified to section 2101 et seq. of Title 5, Government Organization and Employees.

The Federal Advisory Committee Act, referred to in subsec. (b)(4), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5.

The Communications Satellite Act of 1962, referred to in subsec. (c)(4), is Pub. L. 87–624, Aug. 31, 1962, 76 Stat. 419, as amended. Titles III and IV of the Act are classified generally to subchapters III (§731 et seq.) and IV

(§ 741 et seq.), respectively, of chapter 6 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 701 of this title and Tables.

The Omnibus Budget Reconciliation Act of 1993, referred to in subsec. (c)(6), is Pub. L. 103–66, Aug. 10, 1993, 107 Stat. 312, as amended. For complete classification of this Act to the Code, see Tables.

CODIFICATION

In subsec. (b)(2), ''section 1342 of title 31'' substituted for ''section 3679(b) of the Revised Statutes (31 U.S.C. 665(b))'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1996—Subsec. (c)(7). Pub. L. 104–104, § 704(a), added par. (7).

Subsec. (c)(8). Pub. L. 104–104, § 705, added par. (8).

Subsec. (d)(1), (3). Pub. L. 104–104, § 3(d)(2), substituted ''section 153'' for ''section 153(n)''.

1993—Pub. L. 103–66 struck out ''Private land'' before ''mobile services'' in section catchline, struck out ''land'' before ''mobile services'' wherever appearing in subsecs. (a) and (b), added subsecs. (c) and (d), and struck out former subsec. (c) which related to service provided by specialized mobile radio, multiple licensed radio dispatch systems, and other radio dispatch systems; common carriers; and rate or entry regulations.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 6002(c) of Pub. L. 103–66 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 152, 153, and 309 of this title] are effective on the date of enactment of this Act [Aug. 10, 1993].

''(2) EFFECTIVE DATES OF MOBILE SERVICE AMENDMENTS.—The amendments made by subsection (b)(2) [amending this section and sections 152 and 153 of this title] shall be effective on the date of enactment of this Act [Aug. 10, 1993], except that—

''(A) section 332(c)(3)(A) of the Communications Act of 1934 [subsec. (c)(3)(A) of this section], as amended by such subsection, shall take effect 1 year after such date of enactment; and

''(B) any private land mobile service provided by any person before such date of enactment, and any paging service utilizing frequencies allocated as of January 1, 1993, for private land mobile services, shall, except for purposes of section 332(c)(6) of such Act [subsec. (c)(6) of this section], be treated as a private mobile service until 3 years after such date of enactment.''

AVAILABILITY OF PROPERTY

Section 704(c) of Pub. L. 104–104 provided that: ''Within 180 days of the enactment of this Act [Feb. 8, 1996], the President or his designee shall prescribe procedures by which Federal departments and agencies may make available on a fair, reasonable, and nondiscriminatory basis, property, rights-of-way, and easements under their control for the placement of new telecommunications services that are dependent, in whole or in part, upon the utilization of Federal spectrum rights for the transmission or reception of such services. These procedures may establish a presumption that requests for the use of property, rights-of-way, and easements by duly authorized providers should be granted absent unavoidable direct conflict with the department or agency's mission, or the current or planned use of the property, rights-of-way, and easements in question. Reasonable fees may be charged to providers of such telecommunications services for use of property, rights-of-way, and easements. The Commission shall provide technical support to States to encourage them to make property, rights-of-way, and easements under their jurisdiction available for such purposes.''

TRANSITIONAL RULEMAKING FOR MOBILE SERVICE PROVIDERS

Section 6002(d)(3) of Pub. L. 103–66 provided that: ''Within 1 year after the date of enactment of this Act [Aug. 10, 1993], the Federal Communications Commission—

''(A) shall issue such modifications or terminations of the regulations applicable (before the date of enactment of this Act) to private land mobile services as are necessary to implement the amendments made by subsection (b)(2) [amending this section and sections 152 and 153 of this title];

''(B) in the regulations that will, after such date of enactment, apply to a service that was a private land mobile service and that becomes a commercial mobile service (as a consequence of such amendments), shall make such other modifications or terminations as may be necessary and practical to assure that licensees in such service are subjected to technical requirements that are comparable to the technical requirements that apply to licensees that are providers of substantially similar common carrier services;

''(C) shall issue such other regulations as are necessary to implement the amendments made by subsection (b)(2); and

''(D) shall include, in such regulations, modifications, and terminations, such provisions as are necessary to provide for an orderly transition.''

§ 333. Willful or malicious interference

No person shall willfully or maliciously interfere with or cause interference to any radio communications of any station licensed or authorized by or under this chapter or operated by the United States Government.

(June 19, 1934, ch. 652, title III, § 333, as added Pub. L. 101–396, § 9, Sept. 28, 1990, 104 Stat. 850.)

§ 334. Limitation on revision of equal employment opportunity regulations

(a) Limitation

Except as specifically provided in this section, the Commission shall not revise—

(1) the regulations concerning equal employment opportunity as in effect on September 1, 1992 (47 C.F.R. 73.2080) as such regulations apply to television broadcast station licensees and permittees; or

(2) the forms used by such licensees and permittees to report pertinent employment data to the Commission.

(b) Midterm review

The Commission shall revise the regulations described in subsection (a) of this section to require a midterm review of television broadcast station licensees' employment practices and to require the Commission to inform such licensees of necessary improvements in recruitment practices identified as a consequence of such review.

(c) Authority to make technical revisions

The Commission may revise the regulations described in subsection (a) of this section to make nonsubstantive technical or clerical revisions in such regulations as necessary to reflect changes in technology, terminology, or Commission organization.

(June 19, 1934, ch. 652, title III, § 334, as added Pub. L. 102–385, § 22(f), Oct. 5, 1992, 106 Stat. 1499.)

EFFECTIVE DATE

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

§ 335. Direct broadcast satellite service obligations

(a) Proceeding required to review DBS responsibilities

The Commission shall, within 180 days after October 5, 1992, initiate a rulemaking proceeding to impose, on providers of direct broadcast satellite service, public interest or other requirements for providing video programming. Any regulations prescribed pursuant to such rulemaking shall, at a minimum, apply the access to broadcast time requirement of section 312(a)(7) of this title and the use of facilities requirements of section 315 of this title to providers of direct broadcast satellite service providing video programming. Such proceeding also shall examine the opportunities that the establishment of direct broadcast satellite service provides for the principle of localism under this chapter, and the methods by which such principle may be served through technological and other developments in, or regulation of, such service.

(b) Carriage obligations for noncommercial, educational, and informational programming

(1) Channel capacity required

The Commission shall require, as a condition of any provision, initial authorization, or authorization renewal for a provider of direct broadcast satellite service providing video programming, that the provider of such service reserve a portion of its channel capacity, equal to not less than 4 percent nor more than 7 percent, exclusively for noncommercial programming of an educational or informational nature.

(2) Use of unused channel capacity

A provider of such service may utilize for any purpose any unused channel capacity required to be reserved under this subsection pending the actual use of such channel capacity for noncommercial programming of an educational or informational nature.

(3) Prices, terms, and conditions; editorial control

A provider of direct broadcast satellite service shall meet the requirements of this subsection by making channel capacity available to national educational programming suppliers, upon reasonable prices, terms, and conditions, as determined by the Commission under paragraph (4). The provider of direct broadcast satellite service shall not exercise any editorial control over any video programming provided pursuant to this subsection.

(4) Limitations

In determining reasonable prices under paragraph (3)—

(A) the Commission shall take into account the nonprofit character of the programming provider and any Federal funds used to support such programming;

(B) the Commission shall not permit such prices to exceed, for any channel made available under this subsection, 50 percent of the total direct costs of making such channel available; and

(C) in the calculation of total direct costs, the Commission shall exclude—

(i) marketing costs, general administrative costs, and similar overhead costs of the provider of direct broadcast satellite service; and

(ii) the revenue that such provider might have obtained by making such channel available to a commercial provider of video programming.

(5) Definitions

For purposes of this subsection—

(A) The term ''provider of direct broadcast satellite service'' means—

(i) a licensee for a Ku-band satellite system under part 100 of title 47 of the Code of Federal Regulations; or

(ii) any distributor who controls a minimum number of channels (as specified by Commission regulation) using a Ku-band fixed service satellite system for the provision of video programming directly to the home and licensed under part 25 of title 47 of the Code of Federal Regulations.

(B) The term ''national educational programming supplier'' includes any qualified noncommercial educational television station, other public telecommunications entities, and public or private educational institutions.

(June 19, 1934, ch. 652, title III, § 335, as added Pub. L. 102–385, § 25(a), Oct. 5, 1992, 106 Stat. 1501.)

EFFECTIVE DATE

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

§ 336. Broadcast spectrum flexibility

(a) Commission action

If the Commission determines to issue additional licenses for advanced television services, the Commission—

(1) should limit the initial eligibility for such licenses to persons that, as of the date of such issuance, are licensed to operate a television broadcast station or hold a permit to construct such a station (or both); and

(2) shall adopt regulations that allow the holders of such licenses to offer such ancillary or supplementary services on designated frequencies as may be consistent with the public interest, convenience, and necessity.

(b) Contents of regulations

In prescribing the regulations required by subsection (a) of this section, the Commission shall—

(1) only permit such licensee or permittee to offer ancillary or supplementary services if the use of a designated frequency for such services is consistent with the technology or method designated by the Commission for the provision of advanced television services;

(2) limit the broadcasting of ancillary or supplementary services on designated frequencies so as to avoid derogation of any advanced television services, including high defi-

nition television broadcasts, that the Commission may require using such frequencies;

(3) apply to any other ancillary or supplementary service such of the Commission's regulations as are applicable to the offering of analogous services by any other person, except that no ancillary or supplementary service shall have any rights to carriage under section 534 or 535 of this title or be deemed a multichannel video programming distributor for purposes of section 548 of this title;

(4) adopt such technical and other requirements as may be necessary or appropriate to assure the quality of the signal used to provide advanced television services, and may adopt regulations that stipulate the minimum number of hours per day that such signal must be transmitted; and

(5) prescribe such other regulations as may be necessary for the protection of the public interest, convenience, and necessity.

(c) Recovery of license

If the Commission grants a license for advanced television services to a person that, as of the date of such issuance, is licensed to operate a television broadcast station or holds a permit to construct such a station (or both), the Commission shall, as a condition of such license, require that either the additional license or the original license held by the licensee be surrendered to the Commission for reallocation or reassignment (or both) pursuant to Commission regulation.

(d) Public interest requirement

Nothing in this section shall be construed as relieving a television broadcasting station from its obligation to serve the public interest, convenience, and necessity. In the Commission's review of any application for renewal of a broadcast license for a television station that provides ancillary or supplementary services, the television licensee shall establish that all of its program services on the existing or advanced television spectrum are in the public interest. Any violation of the Commission rules applicable to ancillary or supplementary services shall reflect upon the licensee's qualifications for renewal of its license.

(e) Fees

(1) Services to which fees apply

If the regulations prescribed pursuant to subsection (a) of this section permit a licensee to offer ancillary or supplementary services on a designated frequency—

(A) for which the payment of a subscription fee is required in order to receive such services, or

(B) for which the licensee directly or indirectly receives compensation from a third party in return for transmitting material furnished by such third party (other than commercial advertisements used to support broadcasting for which a subscription fee is not required),

the Commission shall establish a program to assess and collect from the licensee for such designated frequency an annual fee or other schedule or method of payment that promotes the objectives described in subparagraphs (A) and (B) of paragraph (2).

(2) Collection of fees

The program required by paragraph (1) shall—

(A) be designed (i) to recover for the public a portion of the value of the public spectrum resource made available for such commercial use, and (ii) to avoid unjust enrichment through the method employed to permit such uses of that resource;

(B) recover for the public an amount that, to the extent feasible, equals but does not exceed (over the term of the license) the amount that would have been recovered had such services been licensed pursuant to the provisions of section 309(j) of this title and the Commission's regulations thereunder; and

(C) be adjusted by the Commission from time to time in order to continue to comply with the requirements of this paragraph.

(3) Treatment of revenues

(A) General rule

Except as provided in subparagraph (B), all proceeds obtained pursuant to the regulations required by this subsection shall be deposited in the Treasury in accordance with chapter 33 of title 31.

(B) Retention of revenues

Notwithstanding subparagraph (A), the salaries and expenses account of the Commission shall retain as an offsetting collection such sums as may be necessary from such proceeds for the costs of developing and implementing the program required by this section and regulating and supervising advanced television services. Such offsetting collections shall be available for obligation subject to the terms and conditions of the receiving appropriations account, and shall be deposited in such accounts on a quarterly basis.

(4) Report

Within 5 years after February 8, 1996, the Commission shall report to the Congress on the implementation of the program required by this subsection, and shall annually thereafter advise the Congress on the amounts collected pursuant to such program.

(f) Preservation of low-power community television broadcasting

(1) Creation of class A licenses

(A) Rulemaking required

Within 120 days after November 29, 1999, the Commission shall prescribe regulations to establish a class A television license to be available to licensees of qualifying low-power television stations. Such regulations shall provide that—

(i) the license shall be subject to the same license terms and renewal standards as the licenses for full-power television stations except as provided in this subsection; and

(ii) each such class A licensee shall be accorded primary status as a television

broadcaster as long as the station continues to meet the requirements for a qualifying low-power station in paragraph (2).

(B) Notice to and certification by licensees

Within 30 days after November 29, 1999, the Commission shall send a notice to the licensees of all low-power television licenses that describes the requirements for class A designation. Within 60 days after November 29, 1999, licensees intending to seek class A designation shall submit to the Commission a certification of eligibility based on the qualification requirements of this subsection. Absent a material deficiency, the Commission shall grant certification of eligibility to apply for class A status.

(C) Application for and award of licenses

Consistent with the requirements set forth in paragraph (2)(A) of this subsection, a licensee may submit an application for class A designation under this paragraph within 30 days after final regulations are adopted under subparagraph (A) of this paragraph. Except as provided in paragraphs (6) and (7), the Commission shall, within 30 days after receipt of an application of a licensee of a qualifying low-power television station that is acceptable for filing, award such a class A television station license to such licensee.

(D) Resolution of technical problems

The Commission shall act to preserve the service areas of low-power television licensees pending the final resolution of a class A application. If, after granting certification of eligibility for a class A license, technical problems arise requiring an engineering solution to a full-power station's allotted parameters or channel assignment in the digital television Table of Allotments, the Commission shall make such modifications as necessary—

(i) to ensure replication of the full-power digital television applicant's service area, as provided for in sections 73.622 and 73.623 of the Commission's regulations (47 CFR 73.622, 73.623); and

(ii) to permit maximization of a full-power digital television applicant's service area consistent with such sections 73.622 and 73.623,

if such applicant has filed an application for maximization or a notice of its intent to seek such maximization by December 31, 1999, and filed a bona fide application for maximization by May 1, 2000. Any such applicant shall comply with all applicable Commission rules regarding the construction of digital television facilities.

(E) Change applications

If a station that is awarded a construction permit to maximize or significantly enhance its digital television service area, later files a change application to reduce its digital television service area, the protected contour of that station shall be reduced in accordance with such change modification.

(2) Qualifying low-power television stations

For purposes of this subsection, a station is a qualifying low-power television station if—

(A)(i) during the 90 days preceding November 29, 1999—

(I) such station broadcast a minimum of 18 hours per day;

(II) such station broadcast an average of at least 3 hours per week of programming that was produced within the market area served by such station, or the market area served by a group of commonly controlled low-power stations that carry common local programming produced within the market area served by such group; and

(III) such station was in compliance with the Commission's requirements applicable to low-power television stations; and

(ii) from and after the date of its application for a class A license, the station is in compliance with the Commission's operating rules for full-power television stations; or

(B) the Commission determines that the public interest, convenience, and necessity would be served by treating the station as a qualifying low-power television station for purposes of this section, or for other reasons determined by the Commission.

(3) Common ownership

No low-power television station authorized as of November 29, 1999, shall be disqualified for a class A license based on common ownership with any other medium of mass communication.

(4) Issuance of licenses for advanced television services to television translator stations and qualifying low-power television stations

The Commission is not required to issue any additional license for advanced television services to the licensee of a class A television station under this subsection, or to any licensee of any television translator station, but shall accept a license application for such services proposing facilities that will not cause interference to the service area of any other broadcast facility applied for, protected, permitted, or authorized on the date of filing of the advanced television application. Such new license or the original license of the applicant shall be forfeited after the end of the digital television service transition period, as determined by the Commission. A licensee of a low-power television station or television translator station may, at the option of licensee, elect to convert to the provision of advanced television services on its analog channel, but shall not be required to convert to digital operation until the end of such transition period.

(5) No preemption of section 337

Nothing in this subsection preempts or otherwise affects section 337 of this title.

(6) Interim qualification

(A) Stations operating within certain bandwidth

The Commission may not grant a class A license to a low-power television station for

operation between 698 and 806 megahertz, but the Commission shall provide to low-power television stations assigned to and temporarily operating in that bandwidth the opportunity to meet the qualification requirements for a class A license. If such a qualified applicant for a class A license is assigned a channel within the core spectrum (as such term is defined in MM Docket No. 87–286, February 17, 1998), the Commission shall issue a class A license simultaneously with the assignment of such channel.

(B) Certain channels off-limits

The Commission may not grant under this subsection a class A license to a low-power television station operating on a channel within the core spectrum that includes any of the 175 additional channels referenced in paragraph 45 of its February 23, 1998, Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order (MM Docket No. 87–268). Within 18 months after November 29, 1999, the Commission shall identify by channel, location, and applicable technical parameters those 175 channels.

(7) No interference requirement

The Commission may not grant a class A license, nor approve a modification of a class A license, unless the applicant or licensee shows that the class A station for which the license or modification is sought will not cause—

(A) interference within—

(i) the predicted Grade B contour (as of the date of the enactment of the Community Broadcasters Protection Act of 1999 [November 29, 1999], or November 1, 1999, whichever is later, or as proposed in a change application filed on or before such date) of any television station transmitting in analog format; or

(ii)(I) the digital television service areas provided in the DTV Table of Allotments; (II) the areas protected in the Commission's digital television regulations (47 CFR 73.622(e) and (f)); (III) the digital television service areas of stations subsequently granted by the Commission prior to the filing of a class A application; and (IV) stations seeking to maximize power under the Commission's rules, if such station has complied with the notification requirements in paragraph (1)(D);

(B) interference within the protected contour of any low-power television station or low-power television translator station that—

(i) was licensed prior to the date on which the application for a class A license, or for the modification of such a license, was filed;

(ii) was authorized by construction permit prior to such date; or

(iii) had a pending application that was submitted prior to such date; or

(C) interference within the protected contour of 80 miles from the geographic center of the areas listed in section 22.625(b)(1) or 90.303 of the Commission's regulations (47 CFR 22.625(b)(1) and 90.303) for frequencies in—

(i) the 470–512 megahertz band identified in section 22.621 or 90.303 of such regulations; or

(ii) the 482–488 megahertz band in New York.

(8) Priority for displaced low-power stations

Low-power stations that are displaced by an application filed under this section shall have priority over other low-power stations in the assignment of available channels.

(g) Evaluation

Within 10 years after the date the Commission first issues additional licenses for advanced television services, the Commission shall conduct an evaluation of the advanced television services program. Such evaluation shall include—

(1) an assessment of the willingness of consumers to purchase the television receivers necessary to receive broadcasts of advanced television services;

(2) an assessment of alternative uses, including public safety use, of the frequencies used for such broadcasts; and

(3) the extent to which the Commission has been or will be able to reduce the amount of spectrum assigned to licensees.

(h) Provision of digital data service by low-power television stations

(1) Within 60 days after receiving a request (made in such form and manner and containing such information as the Commission may require) under this subsection from a low-power television station to which this subsection applies, the Commission shall authorize the licensee or permittee of that station to provide digital data service subject to the requirements of this subsection as a pilot project to demonstrate the feasibility of using low-power television stations to provide high-speed wireless digital data service, including Internet access to unserved areas.

(2) The low-power television stations to which this subsection applies are as follows:

(A) KHLM–LP, Houston, Texas.
(B) WTAM–LP, Tampa, Florida.
(C) WWRJ–LP, Jacksonville, Florida.
(D) WVBG–LP, Albany, New York.
(E) KHHI–LP, Honolulu, Hawaii.
(F) KPHE–LP (K19DD), Phoenix, Arizona.
(G) K34FI, Bozeman, Montana.
(H) K65GZ, Bozeman, Montana.
(I) WXOB–LP, Richmond, Virginia.
(J) WIIW–LP, Nashville, Tennessee.
(K) A station and repeaters to be determined by the Federal Communications Commission for the sole purpose of providing service to communities in the Kenai Peninsula Borough and Matanuska Susitna Borough.
(L) WSPY–LP, Plano, Illinois.
(M) W24AJ, Aurora, Illinois.

(3) Notwithstanding any requirement of section 553 of title 5, the Commission shall promulgate regulations establishing the procedures, consistent with the requirements of paragraphs (4) and (5), governing the pilot projects for the provision of digital data services by certain low power television licensees within 120 days after the date of enactment of LPTV Digital Data Services Act.[1] The regulations shall set forth—

[1] See References in Text note below.

(A) requirements as to the form, manner, and information required for submitting requests to the Commission to provide digital data service as a pilot project;

(B) procedures for testing interference to digital television receivers caused by any pilot project station or remote transmitter;

(C) procedures for terminating any pilot project station or remote transmitter or both that causes interference to any analog or digital full-power television stations, class A television station, television translators or any other users of the core television band;

(D) specifications for reports to be filed quarterly by each low power television licensee participating in a pilot project;

(E) procedures by which a low power television licensee participating in a pilot project shall notify television broadcast stations in the same market upon commencement of digital data services and for ongoing coordination with local broadcasters during the test period; and

(F) procedures for the receipt and review of interference complaints on an expedited basis consistent with paragraph (5)(D).

(4) A low-power television station to which this subsection applies may not provide digital data service unless—

(A) the provision of that service, including any remote return-path transmission in the case of 2-way digital data service, does not cause any interference in violation of the Commission's existing rules, regarding interference caused by low power television stations to full-service analog or digital television stations, class A television stations, or television translator stations; and

(B) the station complies with the Commission's regulations governing safety, environmental, and sound engineering practices, and any other Commission regulation under paragraph (3) governing pilot program operations.

(5)(A) The Commission may limit the provision of digital data service by a low-power television station to which this subsection applies if the Commission finds that—

(i) the provision of 2-way digital data service by that station causes any interference that cannot otherwise be remedied; or

(ii) the provision of 1-way digital data service by that station causes any interference.

(B) The Commission shall grant any such station, upon application (made in such form and manner and containing such information as the Commission may require) by the licensee or permittee of that station, authority to move the station to another location, to modify its facilities to operate on a different channel, or to use booster or auxiliary transmitting locations, if the grant of authority will not cause interference to the allowable or protected service areas of full service digital television stations, National Television Standards Committee assignments, or television translator stations, and provided, however, no such authority shall be granted unless it is consistent with existing Commission regulations relating to the movement, modification, and use of non-class A low power television transmission facilities in order—

(i) to operate within television channels 2 through 51, inclusive; or

(ii) to demonstrate the utility of low-power television stations to provide high-speed 2-way wireless digital data service.

(C) The Commission shall require quarterly reports from each station authorized to provide digital data services under this subsection that include—

(i) information on the station's experience with interference complaints and the resolution thereof;

(ii) information on the station's market success in providing digital data service; and

(iii) such other information as the Commission may require in order to administer this subsection.

(D) The Commission shall resolve any complaints of interference with television reception caused by any station providing digital data service authorized under this subsection within 60 days after the complaint is received by the Commission.

(6) The Commission shall assess and collect from any low-power television station authorized to provide digital data service under this subsection an annual fee or other schedule or method of payment comparable to any fee imposed under the authority of this chapter on providers of similar services. Amounts received by the Commission under this paragraph may be retained by the Commission as an offsetting collection to the extent necessary to cover the costs of developing and implementing the pilot program authorized by this subsection, and regulating and supervising the provision of digital data service by low-power television stations under this subsection. Amounts received by the Commission under this paragraph in excess of any amount retained under the preceding sentence shall be deposited in the Treasury in accordance with chapter 33 of title 31.

(7) In this subsection, the term ''digital data service'' includes—

(A) digitally-based interactive broadcast service; and

(B) wireless Internet access, without regard to—

(i) whether such access is—

(I) provided on a one-way or a two-way basis;

(II) portable or fixed; or

(III) connected to the Internet via a band allocated to Interactive Video and Data Service; and

(ii) the technology employed in delivering such service, including the delivery of such service via multiple transmitters at multiple locations.

(8) Nothing in this subsection limits the authority of the Commission under any other provision of law.

(i) Definitions

As used in this section:

(1) Advanced television services

The term ''advanced television services'' means television services provided using digital or other advanced technology as further

defined in the opinion, report, and order of the Commission entitled ''Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service'', MM Docket 87–268, adopted September 17, 1992, and successor proceedings.

(2) Designated frequencies

The term ''designated frequency'' means each of the frequencies designated by the Commission for licenses for advanced television services.

(3) High definition television

The term ''high definition television'' refers to systems that offer approximately twice the vertical and horizontal resolution of receivers generally available on February 8, 1996, as further defined in the proceedings described in paragraph (1) of this subsection.

(June 19, 1934, ch. 652, title III, § 336, as added Pub. L. 104–104, title II, § 201, Feb. 8, 1996, 110 Stat. 107; Pub. L. 106–113, div. B, § 1000(a)(9) [title V, § 5008(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–595; Pub. L. 106–554, § 1(a)(4) [div. B, title I, § 143(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–235.)

REFERENCES IN TEXT

The date of enactment of LPTV Digital Data Services Act, referred to in subsec. (h)(3), probably means the date of enactment of Pub. L. 106–554, which enacted subsec. (h) of this section, and which was approved Dec. 21, 2000. There is no public law with that short title.

AMENDMENTS

2000—Subsecs. (h), (i). Pub. L. 106–554 added subsec. (h) and redesignated former subsec. (h) as (i).

1999—Subsecs. (f) to (h). Pub. L. 106–113 added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively.

TRANSITION TO DIGITAL TELEVISION

Pub. L. 107–188, title V, § 531, June 12, 2002, 116 Stat. 695, provided that:

''(a) PAIR ASSIGNMENT REQUIRED.—In order to further promote the orderly transition to digital television, and to promote the equitable allocation and use of digital channels by television broadcast permittees and licensees, the Federal Communications Commission, at the request of an eligible licensee or permittee, shall, within 90 days after the date of enactment of this Act [June 12, 2002], allot, if necessary, and assign a paired digital television channel to that licensee or permittee, provided that—

''(1) such channel can be allotted and assigned without further modification of the tables of allotments as set forth in sections 73.606 and 73.622 of the Commission's regulations (47 CFR 73.606, 73.622); and

''(2) such allotment and assignment is otherwise consistent with the Commission's rules (47 CFR part 73).

''(b) ELIGIBLE TRANSITION LICENSEE OR PERMITTEE.—For purposes of subsection (a), the term 'eligible licensee or permittee' means only a full power television broadcast licensee or permittee (or its successor in interest) that—

''(1) had an application pending for an analog television station construction permit as of October 24, 1991, which application was granted after April 3, 1997; and

''(2) as of the date of enactment of this Act [June 12, 2002], is the permittee or licensee of that station.

''(c) REQUIREMENTS ON LICENSEE OR PERMITTEE.—

''(1) CONSTRUCTION DEADLINE.—Any licensee or permittee receiving a paired digital channel pursuant to this section—

''(A) shall be required to construct the digital television broadcast facility within 18 months of the date on which the Federal Communications Commission issues a construction permit therefore, and

''(B) shall be prohibited from obtaining or receiving an extension of time from the Commission beyond the construction deadline established by paragraph (1).

''(2) PROHIBITION OF ANALOG OPERATION USING DIGITAL PAIR.—Any licensee or permittee receiving a paired digital channel pursuant to this section shall be prohibited from giving up its current paired analog assignment and becoming a single-channel broadcaster and operating in analog on such paired digital channel.

''(d) RELIEF RESTRICTED.—Any paired digital allotment and assignment made under this section shall not be available to any other applicant unless such applicant is an eligible licensee or permittee within the meaning of subsection (b).''

REPORTS ON PROVISION OF DIGITAL DATA SERVICE BY LOW-POWER TELEVISION STATIONS

Pub. L. 106–554, § 1(a)(4) [div. B, title I, § 143(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–238, provided that: ''The Federal Communications Commission shall submit a report to the Congress on June 30, 2001, and June 30, 2002, evaluating the utility of using low-power television stations to provide high-speed digital data service. The reports shall be based on the pilot projects authorized by section 336(h) of the Communications Act of 1934 (47 U.S.C. 336(h)).''

CONGRESSIONAL FINDINGS REGARDING LOW-POWER BROADCASTERS

Pub. L. 106–113, div. B, § 1000(a)(9) [title V, § 5008(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–594, provided that: ''Congress finds the following:

''(1) Since the creation of low-power television licenses by the Federal Communications Commission, a small number of license holders have operated their stations in a manner beneficial to the public good providing broadcasting to their communities that would not otherwise be available.

''(2) These low-power broadcasters have operated their stations in a manner consistent with the programming objectives and hours of operation of full-power broadcasters providing worthwhile services to their respective communities while under severe license limitations compared to their full-power counterparts.

''(3) License limitations, particularly the temporary nature of the license, have blocked many low-power broadcasters from having access to capital, and have severely hampered their ability to continue to provide quality broadcasting, programming, or improvements.

''(4) The passage of the Telecommunications Act of 1996 [Pub. L. 104–104, see Short Title of 1996 Amendment note set out under section 609 of this title] has added to the uncertainty of the future status of these stations by the lack of specific provisions regarding the permanency of their licenses, or their treatment during the transition to high definition, digital television.

''(5) It is in the public interest to promote diversity in television programming such as that currently provided by low-power television stations to foreign-language communities.''

EXECUTIVE ORDER NO. 13038

Ex. Ord. No. 13038, Mar. 11, 1997, 62 F.R. 12065, as amended by Ex. Ord. No. 13062, § 5, Sept. 29, 1997, 62 F.R. 51756; Ex. Ord. No. 13065, Oct. 22, 1997, 62 F.R. 55329; Ex. Ord. No. 13081, Apr. 30, 1998, 63 F.R. 24385; Ex. Ord. No. 13102, Sept. 25, 1998, 63 F.R. 52125, which established the Advisory Committee on the Public Interest Obligations of Digital Television Broadcasters, was revoked by Ex.

Ord. No. 13138, §3(b), Sept. 30, 1999, 64 F.R. 53880, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

§337. Allocation and assignment of new public safety services licenses and commercial licenses

(a) In general

Not later than January 1, 1998, the Commission shall allocate the electromagnetic spectrum between 746 megahertz and 806 megahertz, inclusive, as follows:

(1) 24 megahertz of that spectrum for public safety services according to the terms and conditions established by the Commission, in consultation with the Secretary of Commerce and the Attorney General; and

(2) 36 megahertz of that spectrum for commercial use to be assigned by competitive bidding pursuant to section 309(j) of this title.

(b) Assignment

The Commission shall commence assignment of licenses for public safety services created pursuant to subsection (a) of this section no later than September 30, 1998.

(c) Licensing of unused frequencies for public safety services

(1) Use of unused channels for public safety services

Upon application by an entity seeking to provide public safety services, the Commission shall waive any requirement of this chapter or its regulations implementing this chapter (other than its regulations regarding harmful interference) to the extent necessary to permit the use of unassigned frequencies for the provision of public safety services by such entity. An application shall be granted under this subsection if the Commission finds that—

(A) no other spectrum allocated to public safety services is immediately available to satisfy the requested public safety service use;

(B) the requested use is technically feasible without causing harmful interference to other spectrum users entitled to protection from such interference under the Commission's regulations;

(C) the use of the unassigned frequency for the provision of public safety services is consistent with other allocations for the provision of such services in the geographic area for which the application is made;

(D) the unassigned frequency was allocated for its present use not less than 2 years prior to the date on which the application is granted; and

(E) granting such application is consistent with the public interest.

(2) Applicability

Paragraph (1) shall apply to any application to provide public safety services that is pending or filed on or after August 5, 1997.

(d) Conditions on licenses

In establishing service rules with respect to licenses granted pursuant to this section, the Commission—

(1) shall establish interference limits at the boundaries of the spectrum block and service area;

(2) shall establish any additional technical restrictions necessary to protect full-service analog television service and digital television service during a transition to digital television service;

(3) may permit public safety services licensees and commercial licensees—

(A) to aggregate multiple licenses to create larger spectrum blocks and service areas; and

(B) to disaggregate or partition licenses to create smaller spectrum blocks or service areas; and

(4) shall establish rules insuring that public safety services licensees using spectrum reallocated pursuant to subsection (a)(1) of this section shall not be subject to harmful interference from television broadcast licensees.

(e) Removal and relocation of incumbent broadcast licensees

(1) Channels 52 to 69

Any full-power television station licensee that holds a television broadcast license to operate between 698 and 806 megahertz may not operate at that frequency after February 17, 2009.

(2) Incumbent qualifying low-power stations

After making any allocation or assignment under this section, the Commission shall seek to assure, consistent with the Commission's plan for allotments for digital television service, that each qualifying low-power television station is assigned a frequency below 698 megahertz to permit the continued operation of such station.

(f) Definitions

For purposes of this section:

(1) Public safety services

The term ''public safety services'' means services—

(A) the sole or principal purpose of which is to protect the safety of life, health, or property;

(B) that are provided—

(i) by State or local government entities; or

(ii) by nongovernmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services; and

(C) that are not made commercially available to the public by the provider.

(2) Qualifying low-power television stations

A station is a qualifying low-power television station if, during the 90 days preceding August 5, 1997—

(A) such station broadcast a minimum of 18 hours per day;

(B) such station broadcast an average of at least 3 hours per week of programming that was produced within the market area served by such station; and

(C) such station was in compliance with the requirements applicable to low-power television stations.

(June 19, 1934, ch. 652, title III, § 337, as added Pub. L. 105–33, title III, § 3004, Aug. 5, 1997, 111 Stat. 266; amended Pub. L. 106–79, title VIII, § 8124(a), Oct. 25, 1999, 113 Stat. 1262; Pub. L. 106–113, div. B, § 1000(a)(5) [title II, § 213(a)(1), (d)], Nov. 29, 1999, 113 Stat. 1536, 1501A–295, 1501A–297; Pub. L. 109–171, title III, § 3002(c)(1), Feb. 8, 2006, 120 Stat. 21.)

AMENDMENTS

2006—Subsec. (e)(1). Pub. L. 109–171, § 3002(c)(1)(A), substituted ''Channels 52 to 69'' for ''Channels 60 to 69'' in heading and substituted in text ''full-power television station licensee that'' for ''person who'', ''698 and 806 megahertz'' for ''746 and 806 megahertz'', and ''February 17, 2009'' for ''the date on which the digital television service transition period terminates, as determined by the Commission''.

Subsec. (e)(2). Pub. L. 109–171, § 3002(c)(1)(B), substituted ''698 megahertz'' for ''746 megahertz''.

1999—Subsec. (b). Pub. L. 106–113, § 1000(a)(5) [title II, § 213(a)(1)], substituted ''The Commission shall commence assignment of licenses for public safety services created pursuant to subsection (a) of this section no later than September 30, 1998.'' for ''The Commission shall—

''(1) commence assignment of the licenses for public safety services created pursuant to subsection (a) of this section no later than September 30, 1998; and''.

Subsec. (b)(2). Pub. L. 106–79, which struck out par. (2) reading ''commence competitive bidding for the commercial licenses created pursuant to subsection (a) of this section after January 1, 2001.'', was repealed by Pub. L. 106–113, § 1000(a)(5) [title II, § 213(d)].

INTERFERENCE PROTECTION

Pub. L. 107–195, § 6, June 19, 2002, 116 Stat. 717, provided that:

''(a) INTERFERENCE WAIVERS.—In granting a request by a television broadcast station licensee assigned to any of channels 52–69 to utilize any channel of channels 2–51 that is assigned for digital broadcasting in order to continue analog broadcasting during the transition to digital broadcasting, the Federal Communications Commission may not, either at the time of the grant or thereafter, waive or otherwise reduce—

''(1) the spacing requirements provided for analog broadcasting licensees within channels 2–51 as required by section 73.610 of the Commission's rules (and the table contained therein) (47 CFR 73.610), or

''(2) the interference standards provided for digital broadcasting licensees within channels 2–51 as required by sections 73.622 and 73.623 of such rules (47 CFR 73.622, 73.623),

if such waiver or reduction will result in any degradation in or loss of service, or an increased level of interference, to any television household except as the Commission's rules would otherwise expressly permit, exclusive of any waivers previously granted.

''(b) EXCEPTION FOR PUBLIC SAFETY CHANNEL CLEARING.—The restrictions in subsection (a) shall not apply to a station licensee that is seeking authority (either by waiver or otherwise) to vacate the frequencies that constitute television channel 63, 64, 68, or 69 in order to make such frequencies available for public safety purposes pursuant to the provisions of section 337 of the Communications Act of 1934 (47 U.S.C. 337).''

COMPETITIVE BIDDING PROCESS FOR COMMERCIAL LICENSES FOR ASSIGNED FREQUENCIES

Pub. L. 106–113, div. B, § 1000(a)(5) [title II, § 213], Nov. 29, 1999, 113 Stat. 1536, 1501A–295, as amended by Pub. L. 107–195, § 3(b)(3), June 19, 2002, 116 Stat. 717, provided that:

''(a) REVISED SCHEDULE FOR COMPETITIVE BIDDING OF SPECTRUM.—(1) [Amended subsec. (b) of this section.]

''[(2), (3) Repealed. Pub. L. 107–195, § 3(b)(3), June 19, 2002, 116 Stat. 717.]

''(4)(A) To expedite the assignment by competitive bidding of the frequencies identified in section 337(a)(2) of the Communications Act of 1934 (47 U.S.C. 337(a)(2)), the rules governing such frequencies shall be effective immediately upon publication in the Federal Register without regard to sections 553(d), 801(a)(3), 804(2), and 806(a) of title 5, United States Code.

''(B) Chapter 6 of title 5, United States Code, section 3 of the Small Business Act (15 U.S.C. 632), and sections 3507 and 3512 of title 44, United States Code, shall not apply to the rules and competitive bidding procedures governing the frequencies described in subparagraph (A).

''(5) Notwithstanding section 309(b) of the Communications Act of 1934 (47 U.S.C. 309(b)), no application for an instrument of authorization for the frequencies described in paragraph (4) may be granted by the Federal Communications Commission earlier than 7 days following issuance of public notice by the Commission of the acceptance for filing of such application or of any substantial amendment thereto.

''(6) Notwithstanding section 309(d)(1) of the Communications Act of 1934 (47 U.S.C. 309(d)(1)), the Federal Communications Commission may specify a period (which shall be not less than 5 days following issuance of the public notice described in paragraph (5)) for the filing of petitions to deny any application for an instrument of authorization for the frequencies described in paragraph (4).

''(b) REPORTS.—(1) Not later than 30 days after the date of the enactment of this Act [Nov. 29, 1999], the Director of the Office of Management and Budget and the Federal Communications Commission shall each submit to the appropriate congressional committees a report which shall—

''(A) set forth the anticipated schedule (including specific dates) for—

''(i) preparing and conducting the competitive bidding process required by subsection (a); and

''(ii) depositing the receipts of the competitive bidding process;

''(B) set forth each significant milestone in the rulemaking process with respect to the competitive bidding process; and

''(C) include an explanation of the effect of each requirement in subsection (a) on the schedule for the competitive bidding process and any post-bidding activities (including the deposit of receipts) when compared with the schedule for the competitive bidding and any post-bidding activities (including the deposit of receipts) that would otherwise have occurred under section 337(b)(2) of the Communications Act of 1934 (47 U.S.C. 337(b)(2)) if not for the enactment of subsection (a).

''(2) Not later than 60 days after the date of the enactment of this Act [Nov. 29, 1999], the Federal Communications Commission shall submit to the appropriate congressional committees a report which shall set forth for each spectrum auction held by the Commission since January 1, 1998, information on—

''(A) the time required for each stage of preparation for the auction;

''(B) the date of the commencement and of the completion of the auction;

''(C) the time which elapsed between the date of the completion of the auction and the date of the first deposit of receipts from the auction in the Treasury; and

''(D) the amounts, summarized by month, of all subsequent deposits in a Treasury receipt account from the auction.

''(3) Not later than October 31, 2000, the Federal Communications Commission shall submit to the appropriate congressional committees a report which shall—

''(A) describe the course of the competitive bidding process required by subsection (a) through September 30, 2000, including the amount of any receipts from the competitive bidding process deposited in the Treasury as of September 30, 2000; and

''(B) if the course of the competitive bidding process has included any deviations from the schedule set

forth under paragraph (1)(A), an explanation for such deviations from the schedule.

''(4) Each report required by this subsection shall be prepared by the agency concerned without influence of any other Federal department or agency.

''(5) In this subsection, the term ''appropriate congressional committees'' means the following:

''(A) The Committees on Appropriations, the Budget, and Commerce, Science, and Transportation of the Senate.

''(B) The Committees on Appropriations, the Budget, and Commerce of the House of Representatives.

''(c) CONSTRUCTION.—Nothing in this section shall be construed to supersede the requirements placed on the Federal Communications Commission by section 337(d)(4) of the Communications Act of 1934 (47 U.S.C. 337(d)(4)).

''(d) REPEAL OF SUPERSEDED PROVISIONS.—Section 8124 of the Department of Defense Appropriations Act, 2000 [Pub. L. 106–79, amending this section and enacting provisions formerly set out under this section] is repealed.''

Pub. L. 106–79, title VIII, § 8124, Oct. 25, 1999, 113 Stat. 1262, related to the establishment of a competitive bidding process for commercial licenses and required reports to Congressional committees, prior to repeal by Pub. L. 106–113, div. B, § 1000(a)(5) [title II, § 213(d)], Nov. 29, 1999, 113 Stat. 1536, 1501A–297.

§ 338. Carriage of local television signals by satellite carriers

(a) Carriage obligations

(1) In general

Each satellite carrier providing, under section 122 of title 17, secondary transmissions to subscribers located within the local market of a television broadcast station of a primary transmission made by that station shall carry upon request the signals of all television broadcast stations located within that local market, subject to section 325(b) of this title.

(2) Remedies for failure to carry

In addition to the remedies available to television broadcast stations under section 501(f) of title 17, the Commission may use the Commission's authority under this chapter to assure compliance with the obligations of this subsection, but in no instance shall a Commission enforcement proceeding be required as a predicate to the pursuit of a remedy available under such section 501(f).

(3) [1] Low power station carriage optional

No low power television station whose signals are provided under section 119(a)(14) of title 17 shall be entitled to insist on carriage under this section, regardless of whether the satellite carrier provides secondary transmissions of the primary transmissions of other stations in the same local market pursuant to section 122 of such title, nor shall any such carriage be considered in connection with the requirements of subsection (c) of this section.

(3) [1] Effective date

No satellite carrier shall be required to carry local television broadcast stations under paragraph (1) until January 1, 2002.

(4) Carriage of signals of local stations in certain markets

A satellite carrier that offers multichannel video programming distribution service in the United States to more than 5,000,000 subscribers shall (A) within 1 year after December 8, 2004, retransmit the signals originating as analog signals of each television broadcast station located in any local market within a State that is not part of the contiguous United States, and (B) within 30 months after December 8, 2004, retransmit the signals originating as digital signals of each such station. The retransmissions of such stations shall be made available to substantially all of the satellite carrier's subscribers in each station's local market, and the retransmissions of the stations in at least one market in the State shall be made available to substantially all of the satellite carrier's subscribers in areas of the State that are not within a designated market area. The cost to subscribers of such retransmissions shall not exceed the cost of retransmissions of local television stations in other States. Within 1 year after December 8, 2004, the Commission shall promulgate regulations concerning elections by television stations in such State between mandatory carriage pursuant to this section and retransmission consent pursuant to section 325(b) of this title, which shall take into account the schedule on which local television stations are made available to viewers in such State.

(b) Good signal required

(1) Costs

A television broadcast station asserting its right to carriage under subsection (a) of this section shall be required to bear the costs associated with delivering a good quality signal to the designated local receive facility of the satellite carrier or to another facility that is acceptable to at least one-half the stations asserting the right to carriage in the local market.

(2) Regulations

The regulations issued under subsection (g) of this section shall set forth the obligations necessary to carry out this subsection.

(c) Duplication not required

(1) Commercial stations

Notwithstanding subsection (a)(1) of this section, a satellite carrier shall not be required to carry upon request the signal of any local commercial television broadcast station that substantially duplicates the signal of another local commercial television broadcast station which is secondarily transmitted by the satellite carrier within the same local market, or to carry upon request the signals of more than one local commercial television broadcast station in a single local market that is affiliated with a particular television network unless such stations are licensed to communities in different States.

(2) Noncommercial stations

The Commission shall prescribe regulations limiting the carriage requirements under subsection (a) of this section of satellite carriers with respect to the carriage of multiple local noncommercial television broadcast stations. To the extent possible, such regulations shall provide the same degree of carriage by sat-

[1] So in original. Two pars. (3) have been enacted.

ellite carriers of such multiple stations as is provided by cable systems under section 535 of this title.

(d) Channel positioning

No satellite carrier shall be required to provide the signal of a local television broadcast station to subscribers in that station's local market on any particular channel number or to provide the signals in any particular order, except that the satellite carrier shall retransmit the signal of the local television broadcast stations to subscribers in the stations' local market on contiguous channels and provide access to such station's signals at a nondiscriminatory price and in a nondiscriminatory manner on any navigational device, on-screen program guide, or menu.

(e) Compensation for carriage

A satellite carrier shall not accept or request monetary payment or other valuable consideration in exchange either for carriage of local television broadcast stations in fulfillment of the requirements of this section or for channel positioning rights provided to such stations under this section, except that any such station may be required to bear the costs associated with delivering a good quality signal to the local receive facility of the satellite carrier.

(f) Remedies

(1) Complaints by broadcast stations

Whenever a local television broadcast station believes that a satellite carrier has failed to meet its obligations under subsections (b) through (e) of this section, such station shall notify the carrier, in writing, of the alleged failure and identify its reasons for believing that the satellite carrier failed to comply with such obligations. The satellite carrier shall, within 30 days after such written notification, respond in writing to such notification and comply with such obligations or state its reasons for believing that it is in compliance with such obligations. A local television broadcast station that disputes a response by a satellite carrier that it is in compliance with such obligations may obtain review of such denial or response by filing a complaint with the Commission. Such complaint shall allege the manner in which such satellite carrier has failed to meet its obligations and the basis for such allegations.

(2) Opportunity to respond

The Commission shall afford the satellite carrier against which a complaint is filed under paragraph (1) an opportunity to present data and arguments to establish that there has been no failure to meet its obligations under this section.

(3) Remedial actions; dismissal

Within 120 days after the date a complaint is filed under paragraph (1), the Commission shall determine whether the satellite carrier has met its obligations under subsections (b) through (e) of this section. If the Commission determines that the satellite carrier has failed to meet such obligations, the Commission shall order the satellite carrier to take appropriate remedial action. If the Commission determines that the satellite carrier has fully met the requirements of such subsections, the Commission shall dismiss the complaint.

(g) Carriage of local stations on a single dish

(1) Single dish

Each satellite carrier that retransmits the analog signals of local television broadcast stations in a local market shall retransmit such analog signals in such market by means of a single reception antenna and associated equipment.

(2) Exception

If the carrier retransmits signals in the digital television service, the carrier shall retransmit such digital signals in such market by means of a single reception antenna and associated equipment, but such antenna and associated equipment may be separate from the single reception antenna and associated equipment used for analog television service signals.

(3) Effective date

The requirements of paragraphs (1) and (2) of this subsection shall apply on and after 18 months after December 8, 2004.

(4) Notice of disruptions

A carrier that is providing signals of a local television broadcast station in a local market under this section on December 8, 2004, shall, not later than 15 months after December 8, 2004, provide to the licensees for such stations and the carrier's subscribers in such local market a notice that displays prominently and conspicuously a clear statement of—

(A) any reallocation of signals between different reception antennas and associated equipment that the carrier intends to make in order to comply with the requirements of this subsection;

(B) the need, if any, for subscribers to obtain an additional reception antenna and associated equipment to receive such signals; and

(C) any cessation of carriage or other material change in the carriage of signals as a consequence of the requirements of this paragraph.

(h) Additional notices to subscribers, networks, and stations concerning signal carriage

(1) Notices to and elections by subscribers concerning grandfathered signals

Any carrier that provides a distant signal of a network station to a subscriber pursuant[2] section 339(a)(2)(A) of this title shall—

(A) within 60 days after the local signal of a network station of the same television network is available pursuant to section 338 of this title, or within 60 days after December 8, 2004, whichever is later, send a notice to the subscriber—

(i) offering to substitute the local network signal for the duplicating distant network signal; and

(ii) informing the subscriber that, if the subscriber fails to respond in 60 days, the

[2] So in original. Probably should be followed by ''to''.

subscriber will lose the distant network signal but will be permitted to subscribe to the local network signal; and

(B) if the subscriber—

(i) elects to substitute such local network signal within such 60 days, switch such subscriber to such local network signal within 10 days after the end of such 60-day period; or

(ii) fails to respond within such 60 days, terminate the distant network signal within 10 days after the end of such 60-day period.

(2) Notice to station licensees of commencement of local-into-local service

(A) Notice required

Within 180 days after December 8, 2004, the Commission shall revise the regulations under this section relating to notice to broadcast station licensees to comply with the requirements of this paragraph.

(B) Contents of commencement notice

The notice required by such regulations shall inform each television broadcast station licensee within any local market in which a satellite carrier proposes to commence carriage of signals of stations from that market, not later than 60 days prior to the commencement of such carriage—

(i) of the carrier's intention to launch local-into-local service under this section in a local market, the identity of that local market, and the location of the carrier's proposed local receive facility for that local market;

(ii) of the right of such licensee to elect carriage under this section or grant retransmission consent under section 325(b) of this title;

(iii) that such licensee has 30 days from the date of the receipt of such notice to make such election; and

(iv) that failure to make such election will result in the loss of the right to demand carriage under this section for the remainder of the 3-year cycle of carriage under section 325 of this title.

(C) Transmission of notices

Such regulations shall require that each satellite carrier shall transmit the notices required by such regulation via certified mail to the address for such television station licensee listed in the consolidated database system maintained by the Commission.

(i) Privacy rights of satellite subscribers

(1) Notice

At the time of entering into an agreement to provide any satellite service or other service to a subscriber and at least once a year thereafter, a satellite carrier shall provide notice in the form of a separate, written statement to such subscriber which clearly and conspicuously informs the subscriber of—

(A) the nature of personally identifiable information collected or to be collected with respect to the subscriber and the nature of the use of such information;

(B) the nature, frequency, and purpose of any disclosure which may be made of such information, including an identification of the types of persons to whom the disclosure may be made;

(C) the period during which such information will be maintained by the satellite carrier;

(D) the times and place at which the subscriber may have access to such information in accordance with paragraph (5); and

(E) the limitations provided by this section with respect to the collection and disclosure of information by a satellite carrier and the right of the subscriber under paragraphs (7) and (9) to enforce such limitations.

In the case of subscribers who have entered into such an agreement before the effective date of this subsection, such notice shall be provided within 180 days of such date and at least once a year thereafter.

(2) Definitions

For purposes of this subsection, other than paragraph (9)—

(A) the term ''personally identifiable information'' does not include any record of aggregate data which does not identify particular persons;

(B) the term ''other service'' includes any wire or radio communications service provided using any of the facilities of a satellite carrier that are used in the provision of satellite service; and

(C) the term ''satellite carrier'' includes, in addition to persons within the definition of satellite carrier, any person who—

(i) is owned or controlled by, or under common ownership or control with, a satellite carrier; and

(ii) provides any wire or radio communications service.

(3) Prohibitions

(A) Consent to collection

Except as provided in subparagraph (B), a satellite carrier shall not use any facilities used by the satellite carrier to collect personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned.

(B) Exceptions

A satellite carrier may use such facilities to collect such information in order to—

(i) obtain information necessary to render a satellite service or other service provided by the satellite carrier to the subscriber; or

(ii) detect unauthorized reception of satellite communications.

(4) Disclosure

(A) Consent to disclosure

Except as provided in subparagraph (B), a satellite carrier shall not disclose personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned

and shall take such actions as are necessary to prevent unauthorized access to such information by a person other than the subscriber or satellite carrier.

(B) Exceptions

A satellite carrier may disclose such information if the disclosure is—

(i) necessary to render, or conduct a legitimate business activity related to, a satellite service or other service provided by the satellite carrier to the subscriber;

(ii) subject to paragraph (9), made pursuant to a court order authorizing such disclosure, if the subscriber is notified of such order by the person to whom the order is directed;

(iii) a disclosure of the names and addresses of subscribers to any satellite service or other service, if—

(I) the satellite carrier has provided the subscriber the opportunity to prohibit or limit such disclosure; and

(II) the disclosure does not reveal, directly or indirectly, the—

(aa) extent of any viewing or other use by the subscriber of a satellite service or other service provided by the satellite carrier; or

(bb) the nature of any transaction made by the subscriber over any facilities used by the satellite carrier; or

(iv) to a government entity as authorized under chapter 119, 121, or 206 of title 18, except that such disclosure shall not include records revealing satellite subscriber selection of video programming from a satellite carrier.

(5) Access by subscriber

A satellite subscriber shall be provided access to all personally identifiable information regarding that subscriber which is collected and maintained by a satellite carrier. Such information shall be made available to the subscriber at reasonable times and at a convenient place designated by such satellite carrier. A satellite subscriber shall be provided reasonable opportunity to correct any error in such information.

(6) Destruction of information

A satellite carrier shall destroy personally identifiable information if the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under paragraph (5) or pursuant to a court order.

(7) Penalties

Any person aggrieved by any act of a satellite carrier in violation of this section may bring a civil action in a United States district court. The court may award—

(A) actual damages but not less than liquidated damages computed at the rate of $100 a day for each day of violation or $1,000, whichever is higher;

(B) punitive damages; and

(C) reasonable attorneys' fees and other litigation costs reasonably incurred.

The remedy provided by this subsection shall be in addition to any other lawful remedy available to a satellite subscriber.

(8) Rule of construction

Nothing in this subchapter shall be construed to prohibit any State from enacting or enforcing laws consistent with this section for the protection of subscriber privacy.

(9) Court orders

Except as provided in paragraph (4)(B)(iv), a governmental entity may obtain personally identifiable information concerning a satellite subscriber pursuant to a court order only if, in the court proceeding relevant to such court order—

(A) such entity offers clear and convincing evidence that the subject of the information is reasonably suspected of engaging in criminal activity and that the information sought would be material evidence in the case; and

(B) the subject of the information is afforded the opportunity to appear and contest such entity's claim.

(j) Regulations by Commission

Within 1 year after November 29, 1999, the Commission shall issue regulations implementing this section following a rulemaking proceeding. The regulations prescribed under this section shall include requirements on satellite carriers that are comparable to the requirements on cable operators under sections 534(b)(3) and (4) and 535(g)(1) and (2) of this title.

(k) Definitions

As used in this section:

(1) Distributor

The term ''distributor'' means an entity which contracts to distribute secondary transmissions from a satellite carrier and, either as a single channel or in a package with other programming, provides the secondary transmission either directly to individual subscribers or indirectly through other program distribution entities.

(2) Local receive facility

The term ''local receive facility'' means the reception point in each local market which a satellite carrier designates for delivery of the signal of the station for purposes of retransmission.

(3) Local market

The term ''local market'' has the meaning given that term under section 122(j) of title 17.

(4) Low power television station

The term ''low power television station'' means a low power television station as defined under section 74.701(f) of title 47, Code of Federal Regulations, as in effect on June 1, 2004. For purposes of this paragraph, the term ''low power television station'' includes a low power television station that has been accorded primary status as a Class A television licensee under section 73.6001(a) of title 47, Code of Federal Regulations.

(5) Satellite carrier

The term ''satellite carrier'' has the meaning given such term under section 119(d) of title 17.

(6) Secondary transmission

The term ''secondary transmission'' has the meaning given such term in section 119(d) of title 17.

(7) Subscriber

The term ''subscriber'' has the meaning given that term under section 122(j) of title 17.

(8) Television broadcast station

The term ''television broadcast station'' has the meaning given such term in section 325(b)(7) of this title.

(June 19, 1934, ch. 652, title III, §338, as added Pub. L. 106–113, div. B, §1000(a)(9) [title I, §1008(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–531; amended Pub. L. 108–447, div. J, title IX [title II, §§203, 205, 206(a), 210], Dec. 8, 2004, 118 Stat. 3414, 3424, 3425, 3429.)

REFERENCES IN TEXT

For the effective date of this subsection, referred to in subsec. (i)(1), as 60 days after Dec. 8, 2004, see section 206(b) of Pub. L. 108–447, set out as an Effective Date of 2004 Amendment note below.

AMENDMENTS

2004—Subsec. (a)(1) to (3). Pub. L. 108–447, §203(b)(1), added pars. (1) and (2) and the par. (3) relating to low power station carriage and struck out former pars. (1) and (2) which required each satellite carrier providing secondary transmissions within the local market of a television broadcast station of a primary transmission made by that station to carry upon request the signals of all television broadcast stations within that local market and provided for remedies for failure to carry.

Subsec. (a)(4). Pub. L. 108–447, §210, added par. (4).

Subsec. (c)(1). Pub. L. 108–447, §203(b)(2), substituted ''subsection (a)(1)'' for ''subsection (a)''.

Subsecs. (g), (h). Pub. L. 108–447, §§203(a)(2), 205, added subsecs. (g) and (h). Former subsecs. (g) and (h) redesignated (j) and (k), respectively.

Subsec. (i). Pub. L. 108–447, §206(a), added subsec. (i).

Subsec. (j). Pub. L. 108–447, §203(a)(1), redesignated subsec. (g) as (j).

Subsec. (k). Pub. L. 108–447, §203(a)(1), redesignated subsec. (h) as (k).

Subsec. (k)(4) to (8). Pub. L. 108–447, §203(b)(3), added par. (4) and redesignated former pars. (4) to (7) as (5) to (8), respectively.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–447, div. J, title IX [title II, §206(b)], Dec. 8, 2004, 118 Stat. 3428, provided that: ''Section 338(i) of the Communications Act of 1934 (47 U.S.C. 338(i)) as amended by subsection (a) of this section shall be effective 60 days after the date of enactment of this Act [Dec. 8, 2004].''

RURAL LOCAL TELEVISION SIGNALS

Pub. L. 106–113, div. B, §1000(a)(9) [title II], Nov. 29, 1999, 113 Stat. 1536, 1501A–544, provided that:

''SEC. 2001. SHORT TITLE.

''This title may be cited as the 'Rural Local Broadcast Signal Act'.

''SEC. 2002. LOCAL TELEVISION SERVICE IN UNSERVED AND UNDERSERVED MARKETS.

''(a) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act [Nov. 29, 1999], the Federal Communications Commission ('the Commission') shall take all actions necessary to make a determination regarding licenses or other authorizations for facilities that will utilize, for delivering local broadcast television station signals to satellite television subscribers in unserved and underserved local television markets, spectrum otherwise allocated to commercial use.

''(b) RULES.—

''(1) FORM OF BUSINESS.—To the extent not inconsistent with the Communications Act of 1934 [47 U.S.C. 151 et seq.] and the Commission's rules, the Commission shall permit applicants under subsection (a) to engage in partnerships, joint ventures, and similar operating arrangements for the purpose of carrying out subsection (a).

''(2) HARMFUL INTERFERENCE.—The Commission shall ensure that no facility licensed or authorized under subsection (a) causes harmful interference to the primary users of that spectrum or to public safety spectrum use.

''(3) LIMITATION ON COMMISSION.—Except as provided in paragraphs (1) and (2), the Commission may not restrict any entity granted a license or other authorization under subsection (a) from using any reasonable compression, reformatting, or other technology.

''(c) REPORT.—Not later than January 1, 2001, the Commission shall report to the Agriculture, Appropriations, and the Judiciary Committees of the Senate and the House of Representatives, the Senate Committee on Commerce, Science, and Transportation, and the House of Representatives Committee on Commerce [now Committee on Energy and Commerce], on the extent to which licenses and other authorizations under subsection (a) have facilitated the delivery of local signals to satellite television subscribers in unserved and underserved local television markets. The report shall include—

''(1) an analysis of the extent to which local signals are being provided by direct-to-home satellite television providers and by other multichannel video program distributors;

''(2) an enumeration of the technical, economic, and other impediments each type of multichannel video programming distributor has encountered; and

''(3) recommendations for specific measures to facilitate the provision of local signals to subscribers in unserved and underserved markets by direct-to-home satellite television providers and by other distributors of multichannel video programming service.''

§339. Carriage of distant television stations by satellite carriers

(a) Provisions relating to carriage of distant signals

(1) Carriage permitted

(A) In general

Subject to section 119 of title 17, any satellite carrier shall be permitted to provide the signals of no more than two network stations in a single day for each television network to any household not located within the local markets of those network stations.

(B) Additional service

In addition to signals provided under subparagraph (A), any satellite carrier may also provide service under the statutory license of section 122 of title 17, to the local market within which such household is located. The service provided under section 122 of such title may be in addition to the two signals provided under section 119 of such title.

Such two network stations may be comprised of both the analog signal and digital signal of not more than two network stations.

(2) Replacement of distant signals with local signals

Notwithstanding any other provision of paragraph (1), the following rules shall apply after December 8, 2004:

(A) Rules for grandfathered subscribers to analog signals

(i) For those receiving distant analog signals

In the case of a subscriber of a satellite carrier who is eligible to receive the analog signal of a network station solely by reason of section 119(e) of title 17 (in this subparagraph referred to as a ''distant analog signal''), and who, as of October 1, 2004, is receiving the distant analog signal of that network station, the following shall apply:

(I) In a case in which the satellite carrier makes available to the subscriber the analog signal of a local network station affiliated with the same television network pursuant to section 338 of this title, the carrier may only provide the secondary transmissions of the distant analog signal of a station affiliated with the same network to that subscriber—

(aa) if, within 60 days after receiving the notice of the satellite carrier under section 338(h)(1) of this title, the subscriber elects to retain the distant analog signal; but

(bb) only until such time as the subscriber elects to receive such local analog signal.

(II) Notwithstanding subclause (I), the carrier may not retransmit the distant analog signal to any subscriber who is eligible to receive the analog signal of a network station solely by reason of section 119(e) of title 17, unless such carrier, within 60 days after December 8, 2004, submits to that television network the list and statement required by subparagraph (F)(i).

(ii) For those not receiving distant analog signals

In the case of any subscriber of a satellite carrier who is eligible to receive the distant analog signal of a network station solely by reason of section 119(e) of title 17 and who did not receive a distant analog signal of a station affiliated with the same network on October 1, 2004, the carrier may not provide the secondary transmissions of the distant analog signal of a station affiliated with the same network to that subscriber.

(B) Rules for other subscribers to analog signals

In the case of a subscriber of a satellite carrier who is eligible to receive the analog signal of a network station under this section (in this subparagraph referred to as a ''distant analog signal''), other than subscribers to whom subparagraph (A) applies, the following shall apply:

(i) In a case in which the satellite carrier makes available to that subscriber, on January 1, 2005, the analog signal of a local network station affiliated with the same television network pursuant to section 338 of this title, the carrier may only provide the secondary transmissions of the distant analog signal of a station affiliate with the same network to that subscriber if the subscriber's satellite carrier, not later than March 1, 2005, submits to that television network the list and statement required by subparagraph (F)(i).

(ii) In a case in which the satellite carrier does not make available to that subscriber, on January 1, 2005, the analog signal of a local network station pursuant to section 338 of this title, the carrier may only provide the secondary transmissions of the distant analog signal of a station affiliated with the same network to that subscriber if—

(I) that subscriber seeks to subscribe to such distant analog signal before the date on which such carrier commences to carry pursuant to section 338 of this title the analog signals of stations from the local market of such local network station; and

(II) the satellite carrier, within 60 days after such date, submits to each television network the list and statement required by subparagraph (F)(ii).

(C) Future applicability

A satellite carrier may not provide a distant analog signal (within the meaning of subparagraph (A) or (B)) to a person who—

(i) is not a subscriber lawfully receiving such secondary transmission as of December 8, 2004; and

(ii) at the time such person seeks to subscribe to receive such secondary transmission, resides in a local market where the satellite carrier makes available to that person the analog signal of a local network station affiliated with the same television network pursuant to section 338 of this title, and the retransmission of such signal by such carrier can reach such subscriber.

(D) Special rules for distant digital signals

(i) Eligibility

In the case of a subscriber of a satellite carrier who, with respect to a local network station—

(I) is a subscriber whose household is located outside the coverage area of the analog signal of such station as predicted by the model specified in subsection (c)(3) of this section for the signal intensity required under section 73.683(a) of title 47 of the Code of Federal Regulations, or a successor regulation;

(II) is in an unserved household as determined under section 119(d)(1)(A) of title 17; or

(III) is, after the date on which the conditions required by clause (vii) are met with respect to such station, determined under clause (vi) of this subparagraph to be unable to receive a digital signal of such local network station that exceeds the signal intensity standard specified in such clause;

such subscriber is eligible to receive the digital signal of a distant network station

affiliated with the same network under this section (in this subparagraph referred to as a ''distant digital signal'') subject to the provisions of this subparagraph.

(ii) Pre-enactment distant digital signal subscribers

Any eligible subscriber under this subparagraph who is a lawful subscriber to such a distant digital signal as of the date of enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004 [December 8, 2004] may continue to receive such distant digital signal, whether or not such subscriber elects to subscribe to local digital signals.

(iii) Local-to-local analog markets

In a case in which the satellite carrier makes available to an eligible subscriber under this subparagraph the analog signal of a local network station pursuant to section 338 of this title, the carrier may only provide the distant digital signal of a station affiliated with the same network to that subscriber if—

(I) in the case of any local market in the 48 contiguous States of the United States, the distant digital signal is the secondary transmission of a station whose prime time network programming is generally broadcast simultaneously with, or later than, the prime time network programming of the affiliate of the same network in the local market;

(II) in any local market, the retransmission of the distant digital signal of the distant station occupies at least the equivalent bandwidth (as such term is defined by the Commission under section 340(h)(4) of this title) as the digital signal broadcast by such station; and

(III) the subscriber subscribes to the analog signal of such local network station within 60 days after such signal is made available by the satellite carrier, and adds to or replaces such analog signal with the digital signal from such local network station within 60 days after such signal is made available by the satellite carrier, except that such distant digital signal may continue to be provided to a subscriber who cannot be reached by the satellite transmission of the local digital signal.

(iv) Local-to-local digital markets

After the date on which a satellite carrier makes available the digital signal of a local network station, the carrier may not offer the distant digital signal of a network station affiliated with the same television network to any new subscriber to such distant digital signal after such date, except that such distant digital signal may be provided to a new subscriber who cannot be reached by the satellite transmission of the local digital signal.

(v) Non-local-to-local markets

After December 8, 2004, if the satellite carrier does not make available the digital signal of a local network station in a local market, the satellite carrier may offer a new subscriber after such date who is eligible under this subparagraph a distant digital signal from a station affiliated with the same network and, in the case of any local market in the 48 contiguous States of the United States, whose prime time network programming is generally broadcast simultaneously with, or later than, the prime time network programming of the affiliate of the same network in the local market, except that—

(I) such carrier may continue to provide such distant digital signal to such a subscriber after the date on which the carrier makes available the digital signal of a local network station affiliated with such network only if such subscriber subscribes to the digital signal from such local network station; and

(II) the limitation contained in subclause (I) of this clause shall not apply to a subscriber that cannot be reached by the satellite transmission of the local digital signal.

(vi) Signal testing for digital signals

(I) A subscriber shall be eligible for a distant digital signal under clause (i)(III) if such subscriber is determined, based on a test conducted in accordance with section 73.686(d) of title 47, Code of Federal Regulations, or any successor regulation, not to be able to receive a signal that exceeds the signal intensity standard in section 73.622(e)(1) of title 47, Code of Federal Regulations, as in effect on December 8, 2004.

(II) Such test shall be conducted, upon written request for a digital signal strength test by the subscriber to the satellite carrier, within 30 days after the date the subscriber submits such request for the test. Such test shall be conducted by a qualified and independent person selected by the satellite carrier and the network station or stations, or who has been previously approved by the satellite carrier and by each affected network station but not previously disapproved. A tester may not be so disapproved for a test after the tester has commenced such test.

(III) Unless the satellite carrier and the network station or stations otherwise agree, the costs of conducting the test shall be borne as follows:

(aa) If the subscriber is not eligible for a distant digital signal under clause (i)(I) of this subparagraph (by reason of being outside of the coverage area of the analog signal), the satellite carrier may request the station licensee for a waiver.

(bb) If the licensee agrees to a waiver, or fails to respond to a waiver request within 30 days, the subscriber may receive such distant digital signal.

(cc) If the licensee refuses to grant a waiver, the subscriber may request the satellite carrier to conduct the test.

(dd) If the satellite carrier requests the test and—

(AA) the station's signal is determined to exceed such signal intensity standard, the costs of the test shall be borne by the satellite carrier; and

(BB) the station's signal is determined to not exceed such signal intensity standard, the costs of the test shall be borne by the licensee.

(ee) If the satellite carrier does not request the test, or fails to respond within 30 days, the subscriber may request the test be conducted under the supervision of the carrier, and the costs of the test shall be borne by the subscriber in accordance with regulations prescribed by the Commission. Such regulations shall also require the carrier to notify the subscriber of the typical costs of such test.

(vii) Trigger events for use of testing

A subscriber shall not be eligible for a distant digital signal under clause (i)(III) pursuant to a test conducted under clause (vii) until—

(I) in the case of a subscriber whose household is located within the area predicted to be served (by the predictive model for analog signals under subsection (b)(3) of this section) by the signal of a local network station and who is seeking a distant digital signal of a station affiliated with the same network as that local network station—

(aa) April 30, 2006, if such local network station is within the top 100 television markets and—

(AA) has received a tentative digital television service channel designation that is the same as such station's current digital television service channel; or

(BB) has been found by the Commission to have lost interference protection; or

(bb) July 15, 2007, for any other local network stations, other than translator stations licensed to broadcast on December 8, 2004; or

(II) in the case of a translator station, 1 year after the date on which the Commission completes all actions necessary for the allocation and assignment of digital television licenses to television translator stations.

(viii) Testing waivers

Upon request by a local network station, the Commission may grant a waiver with respect to such station to the beginning of testing under clause (vii), and prohibit subscribers from receiving digital signal strength testing with respect to such station. Such a request shall be filed not less than 5 months prior to the implementation deadline specified in such clause, and the Commission shall act on such request by such implementation deadline. Such a waiver shall expire at the end of not more than 6 months, except that a waiver may be renewed upon a proper showing. The Commission may only grant such a request upon submission of clear and convincing evidence that the station's digital signal coverage is limited due to the unremediable presence of one or more of the following:

(I) the need for international coordination or approvals;

(II) clear zoning or environmental legal impediments;

(III) force majeure;

(IV) the station experiences a substantial decrease in its digital signal coverage area due to necessity of using side-mounted antenna;

(V) substantial technical problems that result in a station experiencing a substantial decrease in its coverage area solely due to actions to avoid interference with emergency response providers; or

(VI) no satellite carrier is providing the retransmission of the analog signals of local network stations under section 338 of this title in the local market.

Under no circumstances may such a waiver be based upon financial exigency.

(ix) Special waiver provision for translators

Upon request by a television translator station, the Commission may grant, for not more than 3 years, a waiver with respect to such station to the beginning of testing under clause (vii), and prohibit subscribers from receiving digital signal strength testing with respect to such station, if the Commission determines that the translator station is not broadcasting a digital signal due to one or more of the following:

(I) frequent occurrence of inclement weather; or

(II) mountainous terrain at the transmitter tower location.

(x) Savings provision

Nothing in this subparagraph shall be construed to affect a satellite carrier's obligations under section 338 of this title.

(xi) Definition

For purposes of clause (viii), the term ''emergency response providers'' means Federal, State, or local governmental and nongovernmental emergency public safety, law enforcement, fire, emergency response, emergency medical (including hospital emergency facilities), and related personnel, organizations, agencies, or authorities.

(E) Authority to grant station-specific waivers

This paragraph shall not prohibit a retransmission of a distant analog signal or distant digital signal (within the meaning of subparagraph (A), (B), or (D)) of any distant network station to any subscriber to whom the signal of a local network station affiliated with the same network is available, if and to the extent that such local network

station has affirmatively granted a waiver from the requirements of this paragraph to such satellite carrier with respect to retransmission of such distant network station to such subscriber.

(F) Notices to networks of distant signal subscribers

(i) Within 60 days after December 8, 2004, each satellite carrier that provides a distant signal of a network station to a subscriber pursuant to subparagraph (A) or (B)(i) of this paragraph shall submit to each network—

(I) a list, aggregated by designated market area, identifying each subscriber provided such a signal by—

(aa) name;

(bb) address (street or rural route number, city, State, and zip code); and

(cc) the distant network signal or signals received; and

(II) a statement that, to the best of the carrier's knowledge and belief after having made diligent and good faith inquiries, the subscriber is qualified under the existing law to receive the distant network signal or signals pursuant to subparagraph (A) or (B)(i) of this paragraph.

(ii) Within 60 days after the date a satellite carrier commences to carry pursuant to section 338 of this title the signals of stations from a local market, such a satellite carrier that provides a distant signal of a network station to a subscriber pursuant to subparagraph (B)(ii) of this paragraph shall submit to each network—

(I) a list identifying each subscriber in that local market provided such a signal by—

(aa) name;

(bb) address (street or rural route number, city, State, and zip code); and

(cc) the distant network signal or signals received; and

(II) a statement that, to the best of the carrier's knowledge and belief after having made diligent and good faith inquiries, the subscriber is qualified under the existing law to receive the distant network signal or signals pursuant to subparagraph (B)(ii) of this paragraph.

(G) Other provisions not affected

This paragraph shall not affect the eligibility of a subscriber to receive secondary transmissions under section 340 of this title or as an unserved household included under section 119(a)(12) of title 17.

(H) Available defined

For purposes of this paragraph, a satellite carrier makes available a local signal to a subscriber or person if the satellite carrier offers that local signal to other subscribers who reside in the same zip code as that subscriber or person.

(3) Penalty for violation

Any satellite carrier that knowingly and willfully provides the signals of television stations to subscribers in violation of this subsection shall be liable for a forfeiture penalty under section 503 of this title in the amount of $50,000 for each violation or each day of a continuing violation, except that paragraph (2)(D) of this subsection, relating to the provision of distant digital signals, shall be enforceable under the provisions of section 340(f) of this title.

(b) Extension of network nonduplication, syndicated exclusivity, and sports blackout to satellite retransmission

(1) Extension of protections

Within 45 days after November 29, 1999, the Commission shall commence a single rulemaking proceeding to establish regulations that—

(A) apply network nonduplication protection (47 CFR 76.92) syndicated exclusivity protection (47 CFR 76.151), and sports blackout protection (47 CFR 76.67) to the retransmission of the signals of nationally distributed superstations by satellite carriers to subscribers; and

(B) to the extent technically feasible and not economically prohibitive, apply sports blackout protection (47 CFR 76.67) to the retransmission of the signals of network stations by satellite carriers to subscribers.

(2) Deadline for action

The Commission shall complete all actions necessary to prescribe regulations required by this section so that the regulations shall become effective within 1 year after November 29, 1999.

(c) Eligibility for retransmission

(1) Study of digital strength testing procedures

(A) Study required

Not later than 1 year after December 8, 2004, the Federal Communications Commission shall complete an inquiry regarding whether, for purposes of identifying if a household is unserved by an adequate digital signal under section 119(d)(10) of title 17, the digital signal strength standard in section 73.622(e)(1) of title 47, Code of Federal Regulations, or the testing procedures in section 73.686(d) of title 47, Code of Federal Regulations, such statutes or regulations should be revised to take into account the types of antennas that are available to consumers.

(B) Study considerations

In conducting the study under this paragraph, the Commission shall consider whether—

(i) to account for the fact that an antenna can be mounted on a roof or placed in a home and can be fixed or capable of rotating;

(ii) section 73.686(d) of title 47, Code of Federal Regulations, should be amended to create different procedures for determining if the requisite digital signal strength is present than for determining if the requisite analog signal strength is present;

(iii) a standard should be used other than the presence of a signal of a certain strength to ensure that a household can

receive a high-quality picture using antennas of reasonable cost and ease of installation;

(iv) to develop a predictive methodology for determining whether a household is unserved by an adequate digital signal under section 119(d)(10) of title 17;

(v) there is a wide variation in the ability of reasonably priced consumer digital television sets to receive over-the-air signals, such that at a given signal strength some may be able to display high-quality pictures while others cannot, whether such variation is related to the price of the television set, and whether such variation should be factored into setting a standard for determining whether a household is unserved by an adequate digital signal; and

(vi) to account for factors such as building loss, external interference sources, or undesired signals from both digital television and analog television stations using either the same or adjacent channels in nearby markets, foliage, and man-made clutter.

(C) Report

Not later than 1 year after December 8, 2004, the Federal Communications Commission shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing—

(i) the results of the study under this paragraph; and

(ii) recommendations, if any, as to what changes should be made to Federal statutes or regulations.

(2) Waivers

A subscriber who is denied the retransmission of a signal of a network station under section 119 of title 17 may request a waiver from such denial by submitting a request, through such subscriber's satellite carrier, to the network station asserting that the retransmission is prohibited. The network station shall accept or reject a subscriber's request for a waiver within 30 days after receipt of the request. The subscriber shall be permitted to receive such retransmission under section 119(d)(10)(B) of title 17, if such station agrees to the waiver request and files with the satellite carrier a written waiver with respect to that subscriber allowing the subscriber to receive such retransmission. If a television network station fails to accept or reject a subscriber's request for a waiver within the 30-day period after receipt of the request, that station shall be deemed to agree to the waiver request and have filed such written waiver.

(3) Establishment of improved predictive model required

Within 180 days after November 29, 1999, the Commission shall take all actions necessary, including any reconsideration, to develop and prescribe by rule a point-to-point predictive model for reliably and presumptively determining the ability of individual locations to receive signals in accordance with the signal intensity standard in effect under section 119(d)(10)(A) of title 17. In prescribing such model, the Commission shall rely on the Individual Location Longley-Rice model set forth by the Federal Communications Commission in Docket No. 98–201 and ensure that such model takes into account terrain, building structures, and other land cover variations. The Commission shall establish procedures for the continued refinement in the application of the model by the use of additional data as it becomes available.

(4) Objective verification

(A) In general

If a subscriber's request for a waiver under paragraph (2) is rejected and the subscriber submits to the subscriber's satellite carrier a request for a test verifying the subscriber's inability to receive a signal that meets the signal intensity standard in effect under section 119(d)(10)(A) of title 17, the satellite carrier and the network station or stations asserting that the retransmission is prohibited with respect to that subscriber shall select a qualified and independent person to conduct a test in accordance with section 73.686(d) of its regulations (47 CFR 73.686(d)), or any successor regulation. Such test shall be conducted within 30 days after the date the subscriber submits a request for the test. If the written findings and conclusions of a test conducted in accordance with such section (or any successor regulation) demonstrate that the subscriber does not receive a signal that meets or exceeds the signal intensity standard in effect under section 119(d)(10)(A) of title 17, the subscriber shall not be denied the retransmission of a signal of a network station under section 119 of title 17.

(B) Designation of tester and allocation of costs

If the satellite carrier and the network station or stations asserting that the retransmission is prohibited are unable to agree on such a person to conduct the test, the person shall be designated by an independent and neutral entity designated by the Commission by rule. Unless the satellite carrier and the network station or stations otherwise agree, the costs of conducting the test under this paragraph shall be borne by the satellite carrier, if the station's signal meets or exceeds the signal intensity standard in effect under section 119(d)(10)(A) of title 17, or by the network station, if its signal fails to meet or exceed such standard.

(C) Avoidance of undue burden

Commission regulations prescribed under this paragraph shall seek to avoid any undue burden on any party.

(D) Reduction of verification burdens

Within 1 year after December 8, 2004, the Commission shall by rule exempt from the verification requirements of subparagraph (A) any request for a test made by a subscriber to a satellite carrier to whom the retransmission of the signals of local broadcast stations is available under section 338 of this title from such carrier.

(E) Exception

A satellite carrier may refuse to engage in the testing process. If the carrier does so refuse, a subscriber in a local market in which the satellite carrier does not offer the signals of local broadcast stations under section 338 of this title may, at his or her own expense, authorize a signal intensity test to be performed pursuant to the procedures specified by the Commission in section 73.686(d) of title 47, Code of Federal Regulations, by a tester who is approved by the satellite carrier and by each affected network station, or who has been previously approved by the satellite carrier and by each affected network station but not previously disapproved. A tester may not be so disapproved for a test after the tester has commenced such test. The tester shall give 5 business days advance written notice to the satellite carrier and to the affected network station or stations. A signal intensity test conducted in accordance with this subparagraph shall be determinative of the signal strength received at that household for purposes of determining whether the household is capable of receiving a Grade B intensity signal.

(5) Definition

Notwithstanding subsection (d)(4) of this section, for purposes of paragraphs (2) and (4) of this subsection, the term ''satellite carrier'' includes a distributor (as defined in section 119(d)(1) of title 17), but only if the satellite distributor's relationship with the subscriber includes billing, collection, service activation, and service deactivation.

(d) Definitions

For the purposes of this section:

(1) Local market

The term ''local market'' has the meaning given that term under section 122(j) of title 17.

(2) Nationally distributed superstation

The term ''nationally distributed superstation'' means a television broadcast station, licensed by the Commission, that—

(A) is not owned or operated by or affiliated with a television network that, as of January 1, 1995, offered interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated television licensees in 10 or more States;

(B) on May 1, 1991, was retransmitted by a satellite carrier and was not a network station at that time; and

(C) was, as of July 1, 1998, retransmitted by a satellite carrier under the statutory license of section 119 of title 17.

(3) Network station

The term ''network station'' has the meaning given such term under section 119(d) of title 17.

(4) Satellite carrier

The term ''satellite carrier'' has the meaning given such term under section 119(d) of title 17.

(5) Television network

The term ''television network'' means a television network in the United States which offers an interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated broadcast stations in 10 or more States.

(June 19, 1934, ch. 652, title III, §339, as added Pub. L. 106–113, div. B, §1000(a)(9) [title I, §1008(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–534; amended Pub. L. 106–553, §1(a)(2) [title X, §1008], Dec. 21, 2000, 114 Stat. 2762, 2762A–140; Pub. L. 108–447, div. J, title IX [title II, §§204, 209], Dec. 8, 2004, 118 Stat. 3416, 3429.)

AMENDMENTS

2004—Subsec. (a)(1). Pub. L. 108–447, §204(a)(1), inserted at end ''Such two network stations may be comprised of both the analog signal and digital signal of not more than two network stations.''

Subsec. (a)(2). Pub. L. 108–447, §204(a)(3), added par. (2). Former par. (2) redesignated (3).

Subsec. (a)(3). Pub. L. 108–447, §204(a)(4), which directed amendment of par. (3) by inserting '', except that paragraph (2)(D) of this subsection, relating to the provision of distant digital signals, shall be enforceable under the provisions of section 340(f) of this title'' at end, was executed by making the insertion before period at end, to reflect the probable intent of Congress.

Pub. L. 108–447, §204(a)(2), redesignated par. (2) as (3).

Subsec. (c)(1). Pub. L. 108–447, §204(b), added par. (1) and struck out heading and text of former par. (1). Text read as follows: ''For the purposes of identifying an unserved household under section 119(d)(10) of title 17, within 1 year after November 29, 1999, the Commission shall conclude an inquiry to evaluate all possible standards and factors for determining eligibility for retransmissions of the signals of network stations, and, if appropriate—

''(A) recommend modifications to the Grade B intensity standard for analog signals set forth in section 73.683(a) of its regulations (47 CFR 73.683(a)), or recommend alternative standards or factors for purposes of determining such eligibility; and

''(B) make a further recommendation relating to an appropriate standard for digital signals.''

Subsec. (c)(4)(D), (E). Pub. L. 108–447, §209, added subpars. (D) and (E).

2000—Subsec. (c)(5). Pub. L. 106–553 added par. (5).

§340. Significantly viewed signals permitted to be carried

(a) Significantly viewed stations

In addition to the broadcast signals that subscribers may receive under section[1] 338 and 339 of this title, a satellite carrier is also authorized to retransmit to a subscriber located in a community the signal of any station located outside the local market in which such subscriber is located, to the extent such signal—

(1) has, before December 8, 2004, been determined by the Federal Communications Commission to be a signal a cable operator may carry as significantly viewed in such community, except to the extent that such signal is prevented from being carried by a cable system in such community under the Commission's network nonduplication and syndicated exclusivity rules; or

(2) is, after December 8, 2004, determined by the Commission to be significantly viewed in

[1] So in original. Probably should be ''sections''.

such community in accordance with the same standards and procedures concerning shares of viewing hours and audience surveys as are applicable under the rules, regulations, and authorizations of the Commission to determining with respect to a cable system whether signals are significantly viewed in a community.

(b) Limitations

(1) Analog service limited to subscribers taking local-into-local service

With respect to a signal that originates as an analog signal of a network station, this section shall apply only to retransmissions to subscribers of a satellite carrier who receive retransmissions of a signal that originates as an analog signal of a local network station from that satellite carrier pursuant to section 338 of this title.

(2) Digital service limitations

With respect to a signal that originates as a digital signal of a network station, this section shall apply only if—

(A) the subscriber receives from the satellite carrier pursuant to section 338 of this title the retransmission of the digital signal of a network station in the subscriber's local market that is affiliated with the same television network; and

(B) either—

(i) the retransmission of the local network station occupies at least the equivalent bandwidth as the digital signal retransmitted pursuant to this section; or

(ii) the retransmission of the local network station is comprised of the entire bandwidth of the digital signal broadcast by such local network station.

(3) Limitation not applicable where no network affiliates

The limitations in paragraphs (1) and (2) shall not prohibit a retransmission under this section to a subscriber located in a local market in which there are no network stations affiliated with the same television network as the station whose signal is being retransmitted pursuant to this section.

(4) Authority to grant station-specific waivers

Paragraphs (1) and (2) shall not prohibit a retransmission of a network station to a subscriber if and to the extent that the network station in the local market in which the subscriber is located, and that is affiliated with the same television network, has privately negotiated and affirmatively granted a waiver from the requirements of paragraph[2] (1) and (2) to such satellite carrier with respect to retransmission of the significantly viewed station to such subscriber.

(c) Publication and modifications of lists; regulations

(1) In general

The Commission shall—

(A) within 60 days after December 8, 2004—

(i) publish a list of the stations that are eligible for retransmission under subsection (a)(1) of this section and the communities in which such stations are eligible for such retransmission; and

(ii) commence a rulemaking proceeding to implement this section by publication of a notice of proposed rulemaking;

(B) adopt rules pursuant to such rulemaking within 1 year after December 8, 2004.

(2) Public availability of list

The Commission shall make readily available to the public in electronic form, on the Internet website of the Commission or other comparable facility, a list of the stations that are eligible for retransmission under subsection (a) of this section and the communities in which such stations are eligible for such retransmission. The Commission shall update such list within 10 business days after the date on which the Commission issues an order making any modification of such stations and communities.

(3) Modifications

In addition to cable operators and television broadcast station licensees, the Commission shall permit a satellite carrier to petition for decisions and orders—

(A) by which stations may be added to those that are eligible for retransmission under subsection (a) of this section, and by which communities may be added in which such stations are eligible for such retransmission; and

(B) by which network nonduplication or syndicated exclusivity regulations are applied to the retransmission in accordance with subsection (e) of this section.

(d) Effect on other obligations and rights

(1) No effect on carriage obligations

Carriage of a signal under this section is not mandatory, and any right of a station licensee to have the signal of such station carried under section 338 of this title is not affected by the eligibility of such station to be carried under this section.

(2) Retransmission consent rights not affected

The eligibility of the signal of a station to be carried under this section does not affect any right of the licensee of such station to grant (or withhold) retransmission consent under section 325(b)(1) of this title.

(e) Network nonduplication and syndicated exclusivity

(1) Not applicable except as provided by commission regulations

Signals eligible to be carried under this section are not subject to the Commission's regulations concerning network nonduplication or syndicated exclusivity unless, pursuant to regulations adopted by the Commission, the Commission determines to permit network nonduplication or syndicated exclusivity to apply within the appropriate zone of protection.

(2) Limitation

Nothing in this subsection or Commission regulations shall permit the application of network nonduplication or syndicated exclu-

[2] So in original. Probably should be ''paragraphs''.

sivity regulations to the retransmission of distant signals of network stations that are carried by a satellite carrier pursuant to a statutory license under section 119(a)(2)(A) or (B) of title 17, with respect to persons who reside in unserved households, under[3] 119(a)(4)(A), or under section 119(a)(12), of such title.

(f) Enforcement

(1) Orders and damages

Upon complaint, the Commission shall issue a cease and desist order to any satellite carrier found to have violated this section in carrying any television broadcast station. Such order may, if a complaining station requests damages—

(A) provide for the award of damages to a complaining station that establishes that the violation was committed in bad faith, in an amount up to $50 per subscriber, per station, per day of the violation; and

(B) provide for the award of damages to a prevailing satellite carrier if the Commission determines that the complaint was frivolous, in an amount up to $50 per subscriber alleged to be in violation, per station alleged, per day of the alleged violation.

(2) Commission decision

The Commission shall issue a final determination resolving a complaint brought under this subsection not later than 180 days after the submission of a complaint under this subsection. The Commission may hear witnesses if it clearly appears, based on written filings by the parties, that there is a genuine dispute about material facts. Except as provided in the preceding sentence, the Commission may issue a final ruling based on written filings by the parties.

(3) Remedies in addition

The remedies under this subsection are in addition to any remedies available under title 17.

(4) No effect on copyright proceedings

Any determination, action, or failure to act of the Commission under this subsection shall have no effect on any proceeding under title 17 and shall not be introduced in evidence in any proceeding under that title. In no instance shall a Commission enforcement proceeding under this subsection be required as a predicate to the pursuit of a remedy available under title 17.

(g) Notices concerning significantly viewed stations

Each satellite carrier that proposes to commence the retransmission of a station pursuant to this section in any local market shall—

(1) not less than 60 days before commencing such retransmission, provide a written notice to any television broadcast station in such local market of such proposal; and

(2) designate on such carrier's website all significantly viewed signals carried pursuant to section 340 of this title and the communities in which the signals are carried.

[3] So in original. Probably should be followed by ''section''.

(h) Additional corresponding changes in regulations

(1) Community-by-community elections

The Commission shall, no later than October 30, 2005, revise section 76.66 of its regulations (47 CFR 76.66), concerning satellite broadcast signal carriage, to permit (at the next cycle of elections under section 325 of this title) a television broadcast station that is located in a local market into which a satellite carrier retransmits a television broadcast station pursuant to section 338 of this title, to elect, with respect to such satellite carrier, between retransmission consent pursuant to such section 325 of this title and mandatory carriage pursuant to section 338 of this title separately for each county within such station's local market, if—

(A) the satellite carrier has notified the station, pursuant to paragraph (3), that it intends to carry another affiliate of the same network pursuant to this section during the relevant election period in the station's local market; or

(B) on the date notification under paragraph (3) was due, the satellite carrier was retransmitting into the station's local market pursuant to this section an affiliate of the same television network.

(2) Unified negotiations

In revising its regulations as required by paragraph (1), the Commission shall provide that any such station shall conduct a unified negotiation for the entire portion of its local market for which retransmission consent is elected.

(3) Additional provisions

The Commission shall, no later than October 30, 2005, revise its regulations to provide the following:

(A) Notifications by satellite carrier

A satellite carrier's retransmission of television broadcast stations pursuant to this section shall be subject to the following limitations:

(i) In any local market in which the satellite carrier provides service pursuant to section 338 of this title on December 8, 2004, the carrier may notify a television broadcast station in that market, at least 60 days prior to any date on which the station must thereafter make an election under section 76.66 of the Commission's regulations (47 CFR 76.66), of—

(I) each affiliate of the same television network that the carrier reserves the right to retransmit into that station's local market pursuant to this section during the next election cycle under such section of such regulations; and

(II) for each such affiliate, the communities into which the satellite carrier reserves the right to make such retransmissions.

(ii) In any local market in which the satellite carrier commences service pursuant to section 338 of this title after December 8, 2004, the carrier may notify a station in

that market, at least 60 days prior to the introduction of such service in that market, and thereafter at least 60 days prior to any date on which the station must thereafter make an election under section 76.66 of the Commission's regulations (47 CFR 76.66), of each affiliate of the same television network that the carrier reserves the right to retransmit into that station's local market during the next election cycle under such section of such regulations.

(iii) Beginning with the 2005 election cycle, a satellite carrier may only retransmit pursuant to this section during the pertinent election period a signal—

(I) as to which it has provided the notifications set forth in clauses (i) and (ii); or

(II) that it was retransmitting into the local market under this section as of the date such notifications were due.

(B) Harmonization of elections and retransmission consent agreements

If a satellite carrier notifies a television broadcast station that it reserves the right to retransmit an affiliate of the same television network during the next election cycle pursuant to this section, the station may choose between retransmission consent and mandatory carriage for any portion of the 3-year election cycle that is not covered by an existing retransmission consent agreement.

(i) Definitions

As used in this section:

(1) Local market; satellite carrier; subscriber; television broadcast station

The terms ''local market'', ''satellite carrier'', ''subscriber'', and ''television broadcast station'' have the meanings given such terms in section 338(k) of this title.

(2) Network station; television network

The terms ''network station'' and ''television network'' have the meanings given such terms in section 339(d) of this title.

(3) Community

The term ''community'' means—

(A) a county or a cable community, as determined under the rules, regulations, and authorizations of the Commission applicable to determining with respect to a cable system whether signals are significantly viewed; or

(B) a satellite community, as determined under such rules, regulations, and authorizations (or revisions thereof) as the Commission may prescribe in implementing the requirements of this section.

(4) Bandwidth

The terms ''equivalent bandwidth'' and ''entire bandwidth'' shall be defined by the Commission by regulation, except that this paragraph shall not be construed—

(A) to prevent a satellite operator from using compression technology;

(B) to require a satellite operator to use the identical bandwidth or bit rate as the local or distant broadcaster whose signal it is retransmitting;

(C) to require a satellite operator to use the identical bandwidth or bit rate for a local network station as it does for a distant network station;

(D) to affect a satellite operator's obligations under subsection (a)(1) of this section; or

(E) to affect the definitions of ''program related'' and ''primary video''.

(June 19, 1934, ch. 652, title III, § 340, as added Pub. L. 108–447, div. J, title IX [title II, § 202(a)], Dec. 8, 2004, 118 Stat. 3409.)

§ 341. Carriage of television signals to certain subscribers

(a)(1) IN GENERAL.—A cable operator or satellite carrier may elect to retransmit, to subscribers in an eligible county—

(A) any television broadcast stations that are located in the State in which the county is located and that any cable operator or satellite carrier was retransmitting to subscribers in the county on January 1, 2004; or

(B) up to 2 television broadcast stations located in the State in which the county is located, if the number of television broadcast stations that the cable operator or satellite carrier is authorized to carry under paragraph (1) is less than 3.

(2) DEEMED SIGNIFICANTLY VIEWED.—A station described in subsection (a) of this section is deemed to be significantly viewed in the eligible county within the meaning of section 76.54 of the Commission's regulations (47 CFR 76.54).

(3) DEFINITION OF ELIGIBLE COUNTY.—For purposes of this section, the term ''eligible county'' means any 1 of 4 counties that—

(A) are all in a single State;

(B) on January 1, 2004, were each in designated market areas in which the majority of counties were located in another State or States; and

(C) as a group had a combined total of 41,340 television households according to the U.S. Television Household Estimates by Nielsen Media Research for 2003–2004.

(4) LIMITATION.—Carriage of a station under this section shall be at the option of the cable operator or satellite carrier.

(b) CERTAIN MARKETS.—Notwithstanding any other provision of law, a satellite carrier may not carry the signal of a television station into an adjacent local market that is comprised of only a portion of a county, other than to unserved households located in that county.

(June 19, 1934, ch. 652, title III, § 341, as added Pub. L. 108–447, div. J, title IX [title II, § 211], Dec. 8, 2004, 118 Stat. 3430.)

PART II—RADIO EQUIPMENT AND RADIO OPERATORS ON BOARD SHIP

§ 351. Ship radio stations and operations

(a) Except as provided in section 352 hereof it shall be unlawful—

(1) For any ship of the United States, other than a cargo ship of less than three hundred

gross tons, to be navigated in the open sea outside of a harbor or port, or for any ship of the United States or any foreign country, other than a cargo ship of less than three hundred gross tons, to leave or attempt to leave any harbor or port of the United States for a voyage in the open sea, unless such ship is equipped with an efficient radio station in operating condition, as specified by subparagraphs (A) and (B) of this paragraph, in charge of and operated by one or more radio officers or operators, adequately installed and protected so as to insure proper operation, and so as not to endanger the ship and radio station as hereinafter provided, and, in the case of a ship of the United States, unless there is on board a valid station license issued in accordance with this chapter.

(A) Passenger ships irrespective of size and cargo ships of one thousand six hundred gross tons and upward shall be equipped with a radio-telegraph station complying with the provisions of this part;

(B) Cargo ships of three hundred gross tons and upward but less than one thousand six hundred gross tons, unless equipped with a radio-telegraph station complying with the provisions of this part, shall be equipped with a radiotelephone station complying with the provisions of this part.

(2) For any ship of the United States of one thousand six hundred gross tons and upward to be navigated in the open sea outside of a harbor or port, or for any such ship of the United States or any foreign country to leave or attempt to leave any harbor or port of the United States for a voyage in the open sea, unless such ship is equipped with efficient radio direction finding apparatus approved by the Commission, properly adjusted in operating condition as hereinafter provided.

(b) A ship which is not subject to the provisions of this part at the time of its departure on a voyage shall not become subject to such provisions on account of any deviation from its intended voyage due to stress of weather or any other cause over which neither the master, the owner, nor the charterer (if any) has control.

(June 19, 1934, ch. 652, title III, § 351, as added May 20, 1937, ch. 229, § 10(b), 50 Stat. 192; amended Aug. 13, 1954, ch. 729, § 1(a), 68 Stat. 704; Pub. L. 89–121, § 2, Aug. 13, 1965, 79 Stat. 512.)

AMENDMENTS

1965—Subsec. (a). Pub. L. 89–121 substituted "radio station" for "radio installation", broadened coverage so as to extend to vessels over 300 tons rather than 500 tons, required passenger ships irrespective of size and cargo ships over 1600 tons to be equipped with a radio telegraph station and cargo ships over 300 tons, unless equipped with a radiotelegraph station, to be equipped with a radiotelephone station, and eliminated provisions which empowered the Commission to defer the application of the provisions of paragraphs (1) and (2) of this subsection for periods not beyond Jan. 1, 1955, and Nov. 19, 1954, respectively.

1954—Subsec. (a)(1). Act Aug. 13, 1954, broadened coverage so as to extend to vessels over 500 tons rather than 1,600 tons.

Subsec. (a)(2). Act Aug. 13, 1954, broadened coverage so as to extend to any United States flag vessel of 1,600 gross tons or over rather than any passenger vessel of 5,000 gross tons or over.

EFFECTIVE DATE

Section 16 of act May 20, 1937, provided that: "This Act [enacting this part, amending sections 151, 153, 154, 303, 321, 322, 329, 402, 504, and 602 of this title, and repealing sections 484 to 487 of former Title 46, Shipping] shall take effect upon approval [May 20, 1937] provided that the Commission may defer the application of all or any part of sections 351 to 355 [sections 351 to 355 of this title], inclusive, for a period not to exceed six months after approval, in regard to any ship or classes of ships of the United States which are not subject to the provisions of the safety convention, if it is found impracticable to obtain the necessary equipment or make the required installations."

JOINT STUDIES OF NEED FOR SAFETY DEVICES ON CERTAIN CARGO SHIPS; REPORT

Act Aug. 3, 1956, ch. 913, 70 Stat. 967, authorized the Federal Communications Commission, the United States Coast Guard, and the Federal Maritime Administration, acting jointly, to make a full and complete study and investigation with respect to the need for installing automatic radiotelegraph call selectors on cargo ships of the United States carrying less than two radio operators, and other such safety devices, and the feasibility thereof, and required a report to the Congress not later than Mar. 1, 1957.

§ 352. Exemptions

(a) Vessels excepted

The provisions of this part shall not apply to—

(1) A ship of war;

(2) A ship of the United States belonging to and operated by the Government, except a ship of the Maritime Administration of the Department of Transportation, the Inland and Coastwise Waterways Service, or the Panama Canal Company;

(3) A foreign ship belonging to a country which is a party to any Safety Convention in force between the United States and that country which ship carries a valid certificate exempting said ship from the radio provisions of that Convention, or which ship conforms to the radio requirements of such Convention or Regulations and has on board a valid certificate to that effect, or which ship is not subject to the radio provisions of any such Convention;

(4) Yachts of less than six hundred gross tons not subject to the radio provisions of the Safety Convention;

(5) Vessels in tow;

(6) A ship navigating solely on any bays, sounds, rivers, or protected waters within the jurisdiction of the United States, or to a ship leaving or attempting to leave any harbor or port of the United States for a voyage solely on any bays, sounds, rivers, or protected waters within the jurisdiction of the United States;

(7) A ship navigating solely on the Great Lakes of North America and the River Saint Lawrence as far east as a straight line drawn from Cap des Rosiers to West Point, Anticosti Island, and on the north side of Anticosti Island, the sixty-third meridian, or to a ship leaving or attempting to leave any harbor or port of the United States for a voyage solely on such waters and within such area;

(8) A ship which is navigated during the course of a voyage both on the Great Lakes of North America and in the open sea, during the

period while such ship is being navigated within the Great Lakes of North America and their connecting and tributary waters as far east as the lower exit of the Saint Lambert lock at Montreal in the Province of Quebec, Canada.

(b) Radio station unreasonable or unnecessary

Except for nuclear ships, the Commission may, if it considers that the route or the conditions of the voyage or other circumstances are such as to render a radio station unreasonable or unnecessary for the purposes of this part, exempt from the provisions of this part any ship or class of ships which falls within any of the following descriptions:

(1) Passenger ships which in the course of their voyage do not go more than twenty nautical miles from the nearest land or, alternatively, do not go more than two hundred nautical miles between two consecutive ports;

(2) Cargo ships which in the course of their voyage do not go more than one hundred and fifty nautical miles from the nearest land;

(3) Passenger vessels of less than one hundred gross tons not subject to the radio provisions of the Safety Convention;

(4) Sailing ships.

(c) Unforeseeable equipment failures

If, because of unforeseeable failure of equipment, a ship is unable to comply with the equipment requirements of this part without undue delay of the ship, the mileage limitations set forth in paragraphs (1) and (2) of subsection (b) of this section shall not apply: *Provided*, That exemption of the ship is found to be reasonable or necessary in accordance with subsection (b) of this section to permit the ship to proceed to a port where the equipment deficiency may be remedied.

(d) Radio direction finding apparatus unreasonable or unnecessary

Except for nuclear ships, and except for ships of five thousand gross tons and upward which are subject to the Safety Convention, the Commission may exempt from the requirements, for radio direction finding apparatus, of this part and of the Safety Convention, any ship which falls within the descriptions set forth in paragraphs (1), (2), (3), and (4) of subsection (b) of this section, if it considers that the route or conditions of the voyage or other circumstances are such as to render such apparatus unreasonable or unnecessary.

(June 19, 1934, ch. 652, title III, § 352, as added May 20, 1937, ch. 229, § 10(b), 50 Stat. 192; amended Sept. 26, 1950, ch. 1049, § 2(a)(2), 64 Stat. 1038; Aug. 13, 1954, ch. 729, § 1(b), (c), 68 Stat. 705; Pub. L. 89–121, § 3, Aug. 13, 1965, 79 Stat. 512; Pub. L. 97–31, § 12(151), Aug. 6, 1981, 95 Stat. 167.)

REFERENCES IN TEXT

Panama Canal Company, referred to in subsec. (a)(2), deemed to refer to Panama Canal Commission, see section 3602(b)(5) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1981—Subsec. (a)(2). Pub. L. 97–31 substituted ''Maritime Administration of the Department of Transportation'' for ''United States Maritime Commission''. For prior transfers of functions, see Transfer of Functions note set out below.

1965—Pub. L. 89–121, § 3(a), added pars. (6) to (8) and struck out former par. (6) which made the provisions of this part inapplicable to a vessel navigating solely on the Great Lakes, or on any bays, sounds, rivers, or protected waters within the jurisdiction of the United States, or to a vessel leaving or attempting to leave any harbor or port of the United States for a voyage solely on the Great Lakes, or on any bays, sounds, rivers, or protected waters within the jurisdiction of the United States.

Subsec. (b). Pub. L. 89–121, § 3(b), excepted nuclear ships and substituted ''or, alternatively, do not go more than two hundred nautical miles'' for ''or more than two hundred nautical miles''.

Subsec. (d). Pub. L. 89–121, § 3(c), added subsec. (d).

1954—Subsec. (a)(3). Act Aug. 13, 1954, § 1(b), substituted ''any Safety Convention in force between the United States and that country'' for ''the Safety Convention and'' and inserted at end ''or which ship is not subject to the radio provisions of any such Convention''.

Subsec. (c). Act Aug. 13, 1954, § 1(c), added subsec. (c).

1950—Subsec. (a)(2). Act Sept. 26, 1950, substituted ''Panama Canal Company'' for ''Panama Railroad Company''.

EFFECTIVE DATE

Section effective May 20, 1937, unless deferred by the Commission, see section 16 of act May 20, 1937, set out as a note under section 351 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 21 of 1950 and Reorg. Plan No. 7 of 1961, set out in the Appendix to Title 5, Government Organization and Employees.

§ 353. Radio equipment and operators

(a) Two radio officers required

Each cargo ship which in accordance with this part is equipped with a radiotelegraph station and which is not equipped with a radiotelegraph auto alarm, and each passenger ship required by this part to be equipped with a radiotelegraph station, shall, for safety purposes, carry at least two radio officers.

(b) One radio officer required

A cargo ship which in accordance with this part is equipped with a radiotelegraph station, which is equipped with a radiotelegraph auto alarm, shall, for safety purposes, carry at least one radio officer who shall have had at least six months' previous service in the aggregate as a radio officer in a station on board a ship or ships of the United States.

(c) Required watches

Each ship of the United States which in accordance with this part is equipped with a radiotelegraph station shall, while being navigated in the open sea outside of a harbor or port, keep a continuous watch by means of radio officers whenever the station is not being used for authorized traffic: *Provided*, That, in lieu thereof, on a cargo ship equipped with a radiotelegraph auto alarm in proper operating condition, a watch of at least eight hours per day, in the aggregate, shall be maintained by means of a radio officer.

(d) Hours of watch

The Commission shall, when it finds it necessary for safety purposes, have authority to

prescribe the particular hours of watch on a ship of the United States which in accordance with this part is equipped with a radiotelegraph station.

(e) Operational status of auto alarms in open sea

On all ships of the United States equipped with a radiotelegraph auto alarm, said apparatus shall be in operation at all times while the ship is being navigated in the open sea outside of a harbor or port when the radio officer is not on watch.

(June 19, 1934, ch. 652, title III, §353, as added May 20, 1937, ch. 229, §10(b), 50 Stat. 193; amended July 8, 1941, ch. 278, 55 Stat. 579; June 22, 1943, ch. 137, 57 Stat. 161; July 25, 1947, ch. 327, §2(a), 61 Stat. 451; Aug. 13, 1954, ch. 729, §1(d), 68 Stat. 705; Pub. L. 89–121, §4, Aug. 13, 1965, 79 Stat. 513.)

AMENDMENTS

1965—Pub. L. 89–121, among other changes, substituted wherever appearing ''radiotelegraph station'' for ''radiotelegraph installation'', ''radiotelegraph auto alarm'' for ''auto-alarm'', and ''radio officer'' and ''radio officers'' for ''qualified operator'' and ''qualified operators'', required a continuous watch to be kept when the radiotelegraph station is not being used for authorized traffic, and inserted ''while being navigated in the open sea'' in two places.

1954—Act Aug. 13, 1954, amended section to make clear that it applies only to ships equipped with a radiotelegraph installation, not those fitted with a radiotelephone installation.

1943—Subsec. (b). Act June 22, 1943, substituted ''the termination of such emergency or such earlier date as Congress by concurrent resolution may designate'' for ''June 30, 1943''.

1941—Subsec. (b). Act July 8, 1941, inserted exception respecting national emergency.

PARTIAL REPEAL EFFECTIVE JULY 1, 1948

Acts July 8, 1941, and June 22, 1943, which amended subsec. (b) of this section by adding the clause authorizing suspension or modification of the service requirement during the emergency, were repealed, effective July 1, 1948, by act July 25, 1947, which provided that such acts should remain in full force and effect until such date.

EFFECTIVE DATE

Section effective May 20, 1937, unless deferred by the Commission, see section 16 of act May 20, 1937, set out as a note under section 351 of this title.

APPROVAL OF OPERATORS BY SECRETARY OF NAVY DURING WAR

Act Dec. 17, 1941, ch. 588, 55 Stat. 808, as amended June 28, 1943, ch. 174, 57 Stat. 244; June 13, 1945, ch. 190, 59 Stat. 259; 1946 Reorg. Plan No. 3, §101, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, prohibiting employment of radio operators who were disapproved by the Secretary of the Navy during World War II, was repealed by act July 25, 1947, ch. 327, §1, 61 Stat. 449.

§353a. Operators and watches on radiotelephone equipped ships

(a) Each cargo ship which in accordance with this part is equipped with a radiotelephone station shall, for safety purposes, carry at least one operator who may be the master, an officer, or a member of the crew.

(b) Each cargo ship of the United States which in accordance with this part is equipped with a radiotelephone station shall, while being navigated in the open sea outside of a harbor or port, maintain continuous watch whenever the station is not being used for authorized traffic.

(June 19, 1934, ch. 652, title III, §354, as added Aug. 13, 1954, ch. 729, §2(b), 68 Stat. 706; amended Pub. L. 89–121, §5, Aug. 13, 1965, 79 Stat. 514.)

AMENDMENTS

1965—Pub. L. 89–121 substituted ''radiotelephone station'' for ''radiotelephone installation'' in two places, and ''one operator who may be the master, an officer, or a member of the crew'' for ''one qualified operator who may be a member of the crew holding only a certificate for radio telephony'', inserted ''in the open sea'' before ''outside of a harbor'', and required a continuous watch whenever the station is not being used for authorized traffic.

§354. Technical requirements of equipment on radiotelegraph equipped ships

The radiotelegraph station and the radio direction finding apparatus required by section 351 of this title shall comply with the following requirements:

(a) The radiotelegraph station shall include a main installation and a reserve installation, electrically separate and electrically independent of each other: *Provided*, That, in installations on cargo ships of three hundred gross tons and upward but less than one thousand six hundred gross tons, and in installations on cargo ships of one thousand six hundred gross tons and upward installed prior to November 19, 1952, if the main transmitter complies with all the requirements for the reserve transmitter, the latter may be omitted.

(b) The radiotelegraph station shall be so located that no harmful interference from extraneous mechanical or other noise will be caused to the proper reception of radio signals, and shall be placed in the upper part of the ship in a position of the greatest possible safety and as high as practicable above the deepest load waterline. The location of the radiotelegraph operating room or rooms shall be approved by the Commandant of the Coast Guard. The radiotelegraph installation shall be installed in such a position that it will be protected against the harmful effects of water or extremes of temperature, and shall be readily accessible both for immediate use in case of distress and for repair.

(c) The radiotelegraph operating room shall be of sufficient size and of adequate ventilation to enable the main and reserve radiotelegraph installations to be operated efficiently, and shall not be used for any purpose which will interfere with the operation of the radiotelegraph station. The sleeping accommodation of at least one radio officer shall be situated as near as practicable to the radiotelegraph operating room. In ships the keels of which are laid on or after May 26, 1965, this sleeping accommodation shall not be within the radiotelegraph operating room.

(d) The main and reserve installations shall be capable of transmitting and receiving on the frequencies, and using the classes of emission, designated by the Commission pursuant to law for the purposes of distress and safety of navigation.

(e) The main and reserve installations shall, when connected to the main antenna, have a

minimum normal range of two hundred nautical miles and one hundred nautical miles, respectively; that is, they must be capable of transmitting and receiving clearly perceptible signals from ship to ship by day and under normal conditions and circumstances over the specified ranges.

(f) Sufficient electrical energy shall be available at all times to operate the main installation over the normal range required by subsection (e) of this section as well as for the purpose of charging any batteries forming part of the radiotelegraph station.

(g) The reserve installation shall include a source of electrical energy independent of the propelling power of the ship and of any other electrical system and shall be capable of being put into operation rapidly and of working for at least six continuous hours. The reserve source of energy and its switchboard shall be as high as practicable in the ship and readily accessible to the radio officer.

(h) There shall be provided between the bridge of the ship and the radiotelegraph operating room, and between the bridge and the location of the radio direction finding apparatus, when such apparatus is not located on the bridge, an efficient two-way system for calling and voice communication which shall be independent of any other communication system in the ship.

(i) The radio direction finding apparatus shall be efficient and capable of receiving signals with the minimum of receiver noise and of taking bearings from which the true bearing and direction may be determined. It shall be capable of receiving signals on the radiotelegraph frequencies assigned by the radio regulations annexed to the International Telecommunication Convention in force for the purposes of distress, direction finding, and maritime radio beacons, and, in installations made after May 26, 1965, such other frequencies as the Commission may for safety purposes designate.

(June 19, 1934, ch. 652, title III, § 355, formerly § 354, as added May 20, 1937, ch. 229, § 10(b), 50 Stat. 193; amended 1946 Reorg. Plan No. 3, §§ 101–104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; renumbered § 355 and amended Aug. 13, 1954, ch. 729, § 2(a)(1), (c), 68 Stat. 706; Pub. L. 89–121, § 6, Aug. 13, 1965, 79 Stat. 514.)

AMENDMENTS

1965—Pub. L. 89–121 substituted ''radiotelegraph station'' for ''radio installation'' in opening provisions.

Subsec. (a). Pub. L. 89–121, among other changes, substituted ''radiotelegraph station'' for ''radio installation'', required the main installation and the reserve installation to be electrically separate and independent of each other, and included cargo ships between 300 and 500 tons within the ships that may omit the reserve transmitter if the main transmitter complies with all the requirements for the reserve transmitter.

Subsec. (b). Pub. L. 89–121 required the radiotelegraph station to be so located that no harmful interference will be caused to the proper reception of radio signals, and to be installed in such a position that it will be protected against the harmful effects of water or extremes of temperature, and will be readily accessible both for immediate use in case of distress and for repair.

Subsec. (c). Pub. L. 89–121 added subsec. (c) and redesignated former subsec. (c) as (d).

Subsec. (d). Pub. L. 89–121 redesignated former subsec. (c) as (d), and substituted ''main and reserve installations shall be capable of transmitting and receiving on the frequencies, and using the classes of emission, designated'' for ''main and emergency or reserve installations shall be capable of transmitting and receiving on the frequencies and types of waves designated''. Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 89–121 redesignated former subsec. (d) as (e), and inserted provisions requiring the reserve installation to have a minimum normal range of 100 nautical miles. Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 89–121 redesignated former subsec. (e) as (f), and substituted ''electrical energy'' for ''power'' and ''operate the main installation over the normal range required by subsection (e) of this section as well as for the purpose of charging any batteries forming part of the radiotelegraph station'' for ''operate the main radio installation efficiently under normal conditions over the range specified in subsection (d) of this section''. Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 89–121 redesignated former subsec. (f) as (g), directed that the reserve source of energy and its switchboard shall be as high as practicable in the ship and readily accessible to the radio officer, and eliminated provisions which stated that for the emergency or reserve installation the normal range shall be at least 100 nautical miles. Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 89–121 redesignated former subsec. (g) as (h), and substituted provisions requiring the method of communication between the bridge and the radiotelegraph room and the location of the radio direction finding apparatus to be an efficient two-way system for calling and voice communication for provisions which required an efficient means of communication. Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 89–121 redesignated former subsec. (h) as (i), and substituted provisions requiring the apparatus to be capable of receiving signals with the minimum of receiver noise for provisions which required the apparatus to be capable of receiving clearly perceptible signals.

1954—Act Aug. 13, 1954, § 2(a)(1), amended credit to section by changing section number from ''354'' to ''355'' of act June 19, 1934.

Subsec. (a). Act Aug. 13, 1954, § 2(c), provided for a ''reserve radiotelegraph installation'' instead of merely a ''reserve installation''.

EFFECTIVE DATE

Section effective May 20, 1937, unless deferred by the Commission, see section 16 of act May 20, 1937, set out as a note under section 351 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Coast Guard transferred to Department of Transportation, and functions, powers, and duties relating to Coast Guard of Secretary of the Treasury and of all other officers and offices of Department of the Treasury transferred to Secretary of Transportation by Pub. L. 89–670, § 6(b)(1), Oct. 15, 1966, 80 Stat. 938. Section 6(b)(2) of Pub. L. 89–670, however, provided that notwithstanding such transfer of functions, Coast Guard shall operate as part of Navy in time of war or when President directs as provided in section 3 of Title 14, Coast Guard. See section 108 of Title 49, Transportation.

For transfer of functions of other officers, employees, and agencies of Department of the Treasury, with cer-

tain exceptions, to Secretary of the Treasury with power to delegate, see Reorg. Plan No. 26 of 1950, §§1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Functions of Coast Guard, and Commandant of Coast Guard, excepted from transfer when Coast Guard is operating as part of Navy under sections 1 and 3 of Title 14.

''Commandant of the Coast Guard'' substituted in subsec. (b) for ''Bureau of Marine Inspection and Navigation, Department of Commerce'' on authority of Reorg. Plan No. 3 of 1946, §§101–104, set out in the Appendix to Title 5.

§354a. Technical requirements of equipment on radiotelephone equipped ships

Cargo ships of three hundred gross tons and upward but less than one thousand six hundred gross tons may, in lieu of the radiotelegraph station prescribed by section 354 of this title, be equipped with a radiotelephone station complying with the following requirements:

(a) The radiotelephone station shall be in the upper part of the ship, so located that it is sheltered to the greatest possible extent from noise which might impair the correct reception of messages and signals, and, unless such station is situated on the bridge, there shall be efficient communication with the bridge.

(b) The radiotelephone installation shall be capable of transmitting and receiving on the frequencies, and using the classes of emission, designated by the Commission pursuant to law for the purposes of distress and safety of navigation.

(c) The radiotelephone installation shall have a minimum normal range of one hundred and fifty nautical miles; that is, it shall be capable of transmitting and receiving clearly perceptible signals from ship to ship by day and under normal conditions and circumstances over this range.

(d) There shall be available at all times a main source of electrical energy sufficient to operate the installation over the normal range required by subsection (c) of this section. If batteries are provided they shall have sufficient capacity to operate the transmitter and receiver for at least six continuous hours under normal working conditions. In installations made on or after November 19, 1952, a reserve source of electrical energy shall be provided in the upper part of the ship unless the main source of energy is so situated.

(June 19, 1934, ch. 652, title III, §356, as added Aug. 13, 1954, ch. 729, §2(d), 68 Stat. 706; amended Pub. L. 89–121, §7, Aug. 13, 1965, 79 Stat. 515.)

AMENDMENTS

1965—Pub. L. 89–121 limited the opening provisions to cargo ships of 300 gross tons and upwards.

Subsec. (a). Pub. L. 89–121 required the radiotelephone station to be so located that it is sheltered to the greatest possible extent from noise which might impair the correct reception of messages and signals.

Subsec. (b). Pub. L. 89–121 substituted ''on the frequencies, and using the classes of emission, designated'' for ''on the frequencies and with types of emissions designated''.

Subsec. (c). Pub. L. 89–121 substituted ''radiotelephone installation'' for ''transmitter'' and inserted provisions requiring the installation to be capable of receiving clearly perceptible signals over the minimum normal range.

Subsec. (d). Pub. L. 89–121 substituted ''a main source of electrical energy'' for ''a source of energy'', ''at least six continuous hours'' for ''at least six hours continuously'', and ''installations made on or after November 19, 1952, a reserve source of electrical energy'' for ''in installations an emergency source of energy''.

§355. Survival craft

Every ship required to be provided with survival craft radio by treaty to which the United States is a party, by statute, or by regulation made in conformity with a treaty, convention, or statute, shall be fitted with efficient radio equipment appropriate to such requirement under such rules and regulations as the Commission may find necessary for safety of life. For purposes of this section, ''radio equipment'' shall include portable as well as nonportable apparatus.

(June 19, 1934, ch. 652, title III, §357, formerly §355, as added May 20, 1937, ch. 229, §10(b), 50 Stat. 194; renumbered §357 and amended Aug. 13, 1954, ch. 729, §2(a)(1), (e), 68 Stat. 706, 707; Pub. L. 89–121, §8, Aug. 13, 1965, 79 Stat. 516.)

AMENDMENTS

1965—Pub. L. 89–121 substituted ''survival craft'' for ''lifeboat''.

1954—Act Aug. 13, 1954, §2(a)(1), amended credit to section by changing section number from ''355'' to ''357'' of act June 19, 1934.

Act Aug. 13, 1954, §2(e), provided that lifeboats be equipped with ''radio equipment'' rather than a ''radio installation'' and defined ''radio equipment'' as including portable as well as nonportable apparatus.

EFFECTIVE DATE

Section effective May 20, 1937, unless deferred by the Commission, see section 16 of act May 20, 1937, set out as a note under section 351 of this title.

§356. Approval of installations by Commission

Insofar as is necessary to carry out the purposes and requirements of this part, the Commission shall have authority, for any ship subject to this part—

(1) To approve the details as to the location and manner of installations of the equipment required by this part or of equipment necessitated by reason of the purposes and requirements of this part.

(2) To approve installations, apparatus, and spare parts necessary to comply with the purposes and requirements of this part.

(3) To prescribe such additional equipment as may be determined to be necessary to supplement that specified in this part, for the proper functioning of the radio installation installed in accordance with this part or for the proper conduct of radio communication in time of emergency or distress.

(June 19, 1934, ch. 652, title III, §358, formerly §356, as added May 20, 1937, ch. 229, §10(b), 50 Stat. 194; renumbered §358, Aug. 13, 1954, ch. 729, §2(a)(1), 68 Stat. 706; amended Pub. L. 103–414, title III, §303(a)(19), Oct. 25, 1994, 108 Stat. 4295.)

REFERENCES IN TEXT

This part, referred to in text, commences with section 351 of this title.

AMENDMENTS

1994—Pub. L. 103–414 struck out ''(a)'' before ''Insofar as''.

EFFECTIVE DATE

Section effective May 20, 1937, see section 16 of act May 20, 1937, set out as a note under section 351 of this title.

§ 357. Safety information

(a) Transmission of information concerning safety at sea

The master of every ship of the United States, equipped with radio transmitting apparatus, which meets with dangerous ice, a dangerous derelict, a tropical storm, or any other direct danger to navigation, or encounters subfreezing air temperatures associated with gale force winds causing severe ice accretion on superstructures, or winds of force 10 or above on the Beaufort scale for which no storm warning has been received, shall cause to be transmitted all pertinent information relating thereto to ships in the vicinity and to the appropriate authorities on land, in accordance with rules and regulations issued by the Commission. When they consider it necessary, such authorities of the United States shall promptly bring the information received by them to the knowledge of those concerned, including interested foreign authorities.

(b) Charges for transmission of safety information

No charge shall be made by any ship or station in the mobile service of the United States for the transmission, receipt, or relay of the information designated in subsection (a) of this section originating on a ship of the United States or of a foreign country.

(c) Reimbursement by Commission

The transmission by any ship of the United States, made in compliance with subsection (a) of this section, to any station which imposes a charge for the reception, relay, or forwarding of the required information, shall be free of cost to the ship concerned and any communication charges incurred by the ship for transmission, relay, or forwarding of the information may be certified to the Commission for reimbursement out of moneys appropriated to the Commission for that purpose.

(d) Charges for transmission of distress messages

No charge shall be made by any ship or station in the mobile service of the United States for the transmission of distress messages and replies thereto in connection with situations involving the safety of life and property at sea.

(e) Free services

Notwithstanding any other provision of law, any station or carrier may render free service in connection with situations involving the safety of life and property, including hydrographic reports, weather reports, reports regarding aids to navigation and medical assistance to injured or sick persons on ships and aircraft at sea. All free service permitted by this subsection shall be subject to such rules and regulations as the Commission may prescribe, which rules may limit such free service to the extent which the Commission finds desirable in the public interest.

(June 19, 1934, ch. 652, title III, § 359, formerly § 357, as added May 20, 1937, ch. 229, § 10(b), 50 Stat. 195; renumbered § 359, Aug. 13, 1954, ch. 729, § 2(a)(1), 68 Stat. 706; amended Pub. L. 89–121, § 9, Aug. 13, 1965, 79 Stat. 516.)

AMENDMENTS

1965—Subsec. (a). Pub. L. 89–121 directed the master of every ship of the United States equipped with radio transmitting apparatus which encounters subfreezing air temperatures associated with gale force winds causing severe ice accretion on superstructures, or winds of force 10 or above on the Beaufort scale for which no storm warning has been received to transmit the pertinent information relating thereto.

EFFECTIVE DATE

Section effective May 20, 1937, see section 16 of act May 20, 1937, set out as a note under section 351 of this title.

§ 358. Master's control over operations

The radio installation, the operators, the regulation of their watches, the transmission and receipt of messages, and the radio service of the ship except as they may be regulated by law or international agreement, or by rules and regulations made in pursuance thereof, shall in the case of a ship of the United States be under the supreme control of the master.

(June 19, 1934, ch. 652, title III, § 360, formerly § 358, as added May 20, 1937, ch. 229, § 10(b), 50 Stat. 195; renumbered § 360, ch. 729, § 2(a)(1), Aug. 13, 1954, 68 Stat. 706.)

EFFECTIVE DATE

Section effective May 20, 1937, see section 16 of act May 20, 1937, set out as a note under section 351 of this title.

§ 359. Certificates of compliance; issuance, modification, and cancellation

(a) Each vessel of the United States to which the Safety Convention applies shall comply with the radio and communication provisions of said Convention at all times while the vessel is in use, in addition to all other requirements of law, and shall have on board an appropriate certificate as prescribed by the Safety Convention.

(b) Appropriate certificates concerning the radio particulars provided for in said Convention shall be issued upon proper request to any vessel which is subject to the radio provisions of the Safety Convention and is found by the Commission to comply therewith. Cargo ship safety radio telegraphy certificates, cargo ship safety radiotelephony certificates, and exemption certificates with respect to radio particulars shall be issued by the Commission. Other certificates concerning the radio particulars provided for in the said Convention shall be issued by the Commandant of the Coast Guard or whatever other agency is authorized by law to do so upon request of the Commission made after proper inspection or determination of the facts. If the holder of a certificate violates the radio provisions of the Safety Convention or the provisions of this chapter, or the rules, regulations, or conditions prescribed by the Commission, and if the effective administration of the Safety Convention or of this part so requires, the Commission, after hearing in accordance with law, is authorized to modify or cancel a certificate which it

has issued, or to request the modification or cancellation of a certificate which has been issued by another agency upon the Commission's request. Upon receipt of such request for modification or cancellation, the Commandant of the Coast Guard, or whatever agency is authorized by law to do so, shall modify or cancel the certificate in accordance therewith.

(June 19, 1934, ch. 652, title III, §361, formerly §359, as added May 20, 1937, ch. 229, §10(b), 50 Stat. 195; renumbered §361 and amended Aug. 13, 1954, ch. 729, §2(a)(1), (f), 68 Stat. 706, 707; Pub. L. 89–121, §10, Aug. 13, 1965, 79 Stat. 516.)

REFERENCES IN TEXT

This part, referred to in subsec. (b), commences with section 351 of this title.

AMENDMENTS

1965—Subsec. (b). Pub. L. 89–121 substituted "Cargo ship safety radio telegraphy certificates, cargo ship safety radiotelephony certificates, and exemption certificates with respect to radio particulars shall be issued" for "Safety Radiotelegraphy Certificates and Safety Radiotelephony Certificates, as prescribed by the said Convention, and Exemption Certificates issued in lieu of such certificates, shall be issued."

1954—Act Aug. 13, 1954, §2(a)(1), amended credit to section by changing section number from "359" to "361" of act June 19, 1934.

Subsec. (b). Act Aug. 13, 1954, §2(f), amended subsection generally to provide, among other changes, that certificates of compliance be issued "upon request to any vessel" and to provide that safety radiotelegraph certificates and safety radiotelephony certificates and certain exemption certificates be issued by the Federal Communications Commission.

EFFECTIVE DATE

Section effective May 20, 1937, see section 16 of act May 20, 1937, set out as a note under section 351 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Coast Guard transferred to Department of Transportation, and functions, powers, and duties relating to Coast Guard of Secretary of the Treasury and of all other officers and offices of Department of the Treasury transferred to Secretary of Transportation by Pub. L. 89–670, §6(b)(1), Oct. 15, 1966, 80 Stat. 938. Section 6(b)(2) of Pub. L. 89–670, however, provided that notwithstanding such transfer of functions, Coast Guard shall operate as part of Navy in time of war or when President directs as provided in section 3 of Title 14, Coast Guard. See section 108 of Title 49, Transportation.

§360. Station licenses; inspection of equipment by Commission

(a) In addition to any other provisions required to be included in a radio station license, the station license of each ship of the United States subject to this subchapter shall include particulars with reference to the items specifically required by this subchapter.

(b) Every ship of the United States that is subject to this part shall have the equipment and apparatus prescribed therein inspected at least once each year by the Commission or an entity designated by the Commission. If, after such inspection, the Commission is satisfied that all relevant provisions of this chapter and the station license have been complied with, the fact shall be so certified on the station license by the Commission. The Commission shall make such additional inspections at frequent intervals as the Commission determines may be necessary to ensure compliance with the requirements of this chapter. The Commission may, upon a finding that the public interest could be served thereby—

(1) waive the annual inspection required under this section for a period of up to 90 days for the sole purpose of enabling a vessel to complete its voyage and proceed to a port in the United States where an inspection can be held; or

(2) waive the annual inspection required under this section for a vessel that is in compliance with the radio provisions of the Safety Convention and that is operating solely in waters beyond the jurisdiction of the United States: *Provided*, That such inspection shall be performed within 30 days of such vessel's return to the United States.

(June 19, 1934, ch. 652, title III, §362, formerly §360, as added May 20, 1937, ch. 229, §10(b), 50 Stat. 196; renumbered §362, Aug. 13, 1954, ch. 729, §2(a)(1), 68 Stat. 706; amended Pub. L. 87–811, Oct. 15, 1962, 76 Stat. 922; Pub. L. 104–104, title IV, §403(n), Feb. 8, 1996, 110 Stat. 132.)

REFERENCES IN TEXT

This part, referred to in subsec. (b), commences with section 351 of this title.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–104 amended subsec. (b) generally, revising structure of subsec. so as to contain 2 pars. and adding provisions relating to inspection by an entity designated by Commission, waiver of inspection for up to 90 days, and waiver for vessels in compliance with radio provisions of Safety Convention that are outside the jurisdiction of the United States.

1962—Subsec. (b). Pub. L. 87–811 empowered the Commission to waive the annual inspection from the time of first arrival at a United States port from a foreign port, for the sole purpose of enabling the vessel to proceed coastwise to another port in the United States where an inspection can be held, and limiting such waiver to not more than a period of 30 days.

EFFECTIVE DATE

Section effective May 20, 1937, see section 16 of act May 20, 1937, set out as a note under section 351 of this title.

§361. Control by Commission; review of decisions

Nothing in this subchapter shall be interpreted as lessening in any degree the control of the Commission over all matters connected with the radio equipment and its operation on shipboard and its decision and determination in regard to the radio requirements, installations, or exemptions from prescribed radio requirements shall be final, subject only to review in accordance with law.

(June 19, 1934, ch. 652, title III, §363, formerly §361, as added May 20, 1937, ch. 229, §10(b), 50

Stat. 196; renumbered § 363, Aug. 13, 1954, ch. 729, § 2(a)(1), 68 Stat. 706.)

EFFECTIVE DATE

Section effective May 20, 1937, see section 16 of act May 20, 1937, set out as a note under section 351 of this title.

§ 362. Forfeitures; recovery

The following forfeitures shall apply to this part, in addition to the penalties and forfeitures provided by subchapter V of this chapter:

(a) Any ship that leaves or attempts to leave any harbor or port of the United States in violation of the provisions of this part, or the rules and regulations of the Commission made in pursuance thereof, or any ship of the United States that is navigated outside of any harbor or port in violation of any of the provisions of this part, or the rules and regulations of the Commission made in pursuance thereof, shall forfeit to the United States the sum of $5,000, recoverable by way of suit or libel. Each such departure or attempted departure, and in the case of a ship of the United States each day during which such navigation occurs shall constitute a separate offense.

(b) Every willful failure on the part of the master of a ship of the United States to enforce or to comply with the provisions of this chapter or the rules and regulations of the Commission as to equipment, operators, watches, or radio service shall cause him to forfeit to the United States the sum of $1,000.

(June 19, 1934, ch. 652, title III, § 364, formerly § 362, as added May 20, 1937, ch. 229, § 10(b), 50 Stat. 196; renumbered § 364, Aug. 13, 1954, ch. 729, § 2(a)(1), 68 Stat. 706; amended Pub. L. 101–239, title III, § 3002(g), Dec. 19, 1989, 103 Stat. 2131.)

REFERENCES IN TEXT

This part, referred to in text, commences with section 351 of this title.

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–239, § 3002(g)(1), substituted "$5,000" for "$500".

Subsec. (b). Pub. L. 101–239, § 3002(g)(2), substituted "$1,000" for "$100".

EFFECTIVE DATE

Section effective May 20, 1937, see section 16 of act May 20, 1937, set out as a note under section 351 of this title.

§ 363. Automated ship distress and safety systems

Notwithstanding any provision of this chapter or any other provision of law or regulation, a 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 shall not be required to be equipped with a radio telegraphy station operated by one or more radio officers or operators. This section shall take effect for each vessel upon a determination by the United States Coast Guard that such vessel has the equipment required to implement the Global Maritime Distress and Safety System installed and operating in good working condition.

(June 19, 1934, ch. 652, title III, § 365, as added Pub. L. 104–104, title II, § 206, Feb. 8, 1996, 110 Stat. 114.)

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

PART III—RADIO INSTALLATIONS ON VESSELS CARRYING PASSENGERS FOR HIRE

§ 381. Vessels transporting more than six passengers for hire required to be equipped with radiotelephone

Except as provided in section 382 of this title, it shall be unlawful for any vessel of the United States, transporting more than six passengers for hire, to be navigated in the open sea or any tidewater within the jurisdiction of the United States adjacent or contiguous to the open sea, unless such vessel is equipped with an efficient radiotelephone installation in operating condition.

(June 19, 1934, ch. 652, title III, § 381, as added Aug. 6, 1956, ch. 973, § 1, 70 Stat. 1047; amended Pub. L. 103–414, title III, § 303(a)(20)(A), Oct. 25, 1994, 108 Stat. 4295.)

AMENDMENTS

1994—Pub. L. 103–414 inserted section catchline.

EFFECTIVE DATE

Section 4 of act Aug. 6, 1956, provided that: "The amendments made herein [enacting this part and amending sections 153 and 504 of this title] shall take effect March 1, 1957."

§ 382. Vessels excepted from radiotelephone requirement

The provisions of this part shall not apply to—

(1) vessels which are equipped with a radio installation in accordance with the provisions of part II of this subchapter, or in accordance with the radio requirements of the Safety Convention; and

(2) vessels of the United States belonging to and operated by the Government, and

(3) vessels navigating on the Great Lakes.

(June 19, 1934, ch. 652, title III, § 382, as added Aug. 6, 1956, ch. 973, § 1, 70 Stat. 1048; amended Pub. L. 103–414, title III, § 303(a)(20)(B), Oct. 25, 1994, 108 Stat. 4295; Pub. L. 104–104, title IV, § 403(h)(2), Feb. 8, 1996, 110 Stat. 131.)

REFERENCES IN TEXT

Part II of this subchapter, referred to in par. (1), is classified to section 351 et seq. of this title.

AMENDMENTS

1996—Par. (2). Pub. L. 104–104 struck out "except a vessel of the United States Maritime Administration, the Inland and Coastwise Waterways Service, or the Panama Canal Company," after "the Government,".

1994—Pub. L. 103–414 inserted section catchline.

EFFECTIVE DATE

Section effective Mar. 1, 1957, see section 4 of act Aug. 6, 1956, set out as a note under section 381 of this title.

§ 383. Exemptions by Commission

The Commission shall exempt from the provisions of this part any vessel, or class of vessels, in the case of which the route or conditions of the voyage, or other conditions or circumstances, are such as to render a radio installation unreasonable, unnecessary, or ineffective, for the purposes of this chapter.

(June 19, 1934, ch. 652, title III, § 383, as added Aug. 6, 1956, ch. 973, § 1, 70 Stat. 1048; amended Pub. L. 103–414, title III, § 303(a)(20)(C), Oct. 25, 1994, 108 Stat. 4295.)

AMENDMENTS

1994—Pub. L. 103–414 inserted section catchline.

EFFECTIVE DATE

Section effective Mar. 1, 1957, see section 4 of act Aug. 6, 1956, set out as a note under section 381 of this title.

§ 384. Authority of Commission; operations, installations, and additional equipment

The Commission shall have authority with respect to any vessel subject to this part—

(1) to specify operating and technical conditions and characteristics including frequencies, emissions, power, communication capability and range, of installations required by reason of this part;

(2) to approve the details as to the location and manner of installation of the equipment required by this part; or of equipment necessitated by reason of the purposes and requirements of this part;

(3) to approve installations, apparatus and spare parts necessary to comply with the purposes and requirements of this part;

(4) to prescribe such additional equipment as may be determined to be necessary to supplement that specified herein for the proper functioning of the radio installation installed in accordance with this part or for the proper conduct of radio communication in time of emergency or distress.

(June 19, 1934, ch. 652, title III, § 384, as added Aug. 6, 1956, ch. 973, § 1, 70 Stat. 1048; amended Pub. L. 103–414, title III, § 303(a)(20)(D), Oct. 25, 1994, 108 Stat. 4295.)

AMENDMENTS

1994—Pub. L. 103–414 inserted section catchline.

EFFECTIVE DATE

Section effective Mar. 1, 1957, see section 4 of act Aug. 6, 1956, set out as a note under section 381 of this title.

§ 385. Inspections

The Commission or an entity designated by the Commission shall make such inspections as may be necessary to insure compliance with the requirements of this part. In accordance with such other provisions of law as apply to Government contracts, the Commission may enter into contracts with any person for the purpose of carrying out such inspections and certifying compliance with those requirements, and may, as part of any such contract, allow any such person to accept reimbursement from the license holder for travel and expense costs of any employee conducting an inspection or certification.

(June 19, 1934, ch. 652, title III, § 385, as added Aug. 6, 1956, ch. 973, § 1, 70 Stat. 1048; amended Pub. L. 103–414, title III, § 303(a)(20)(E), Oct. 25, 1994, 108 Stat. 4295; Pub. L. 104–104, title IV, § 403(*o*), Feb. 8, 1996, 110 Stat. 132.)

AMENDMENTS

1996—Pub. L. 104–104 inserted ''or an entity designated by the Commission'' after ''The Commission'' and inserted at end ''In accordance with such other provisions of law as apply to Government contracts, the Commission may enter into contracts with any person for the purpose of carrying out such inspections and certifying compliance with those requirements, and may, as part of any such contract, allow any such person to accept reimbursement from the license holder for travel and expense costs of any employee conducting an inspection or certification.''

1994—Pub. L. 103–414 inserted section catchline.

EFFECTIVE DATE

Section effective Mar. 1, 1957, see section 4 of act Aug. 6, 1956, set out as a note under section 381 of this title.

§ 386. Forfeitures

The following forfeitures shall apply to this part in addition to penalties and forfeitures provided by subchapter V of this chapter:

(a) Any vessel of the United States that is navigated in violation of the provisions of this part or of the rules and regulations of the Commission made in pursuance thereof shall forfeit to the United States the sum of $5,000 recoverable by way of suit or libel. Each day during which such navigation occurs shall constitute a separate offense.

(b) Every willful failure on the part of the master of a vessel of the United States to enforce or to comply with the provisions of this part or the rules and regulations of the Commission made in pursuance thereof shall cause him to forfeit to the United States the sum of $1,000.

(June 19, 1934, ch. 652, title III, § 386, as added Aug. 6, 1956, ch. 973, § 1, 70 Stat. 1048; amended Pub. L. 101–239, title III, § 3002(h), Dec. 19, 1989, 103 Stat. 2131; Pub. L. 103–414, title III, § 303(a)(20)(F), Oct. 25, 1994, 108 Stat. 4295.)

AMENDMENTS

1994—Pub. L. 103–414 inserted section catchline.

1989—Subsec. (a). Pub. L. 101–239, § 3002(h)(1), substituted ''$5,000'' for ''$500''.

Subsec. (b). Pub. L. 101–239, § 3002(h)(2), substituted ''$1,000'' for ''$100''.

EFFECTIVE DATE

Section effective Mar. 1, 1957, see section 4 of act Aug. 6, 1956, set out as a note under section 381 of this title.

PART IV—ASSISTANCE FOR PLANNING AND CONSTRUCTION OF PUBLIC TELECOMMUNICATIONS FACILITIES; TELECOMMUNICATIONS DEMONSTRATIONS; CORPORATION FOR PUBLIC BROADCASTING; GENERAL PROVISIONS

SUBPART A—ASSISTANCE FOR PLANNING AND CONSTRUCTION OF PUBLIC TELECOMMUNICATIONS FACILITIES

§ 390. Declaration of purpose

The purpose of this subpart is to assist, through matching grants, in the planning and construction of public telecommunications fa-

cilities in order to achieve the following objectives: (1) extend delivery of public telecommunications services to as many citizens of the United States as possible by the most efficient and economical means, including the use of broadcast and nonbroadcast technologies; (2) increase public telecommunications services and facilities available to, operated by, and owned by minorities and women; and (3) strengthen the capability of existing public television and radio stations to provide public telecommunications services to the public.

(June 19, 1934, ch. 652, title III, § 390, as added Pub. L. 87–447, May 1, 1962, 76 Stat. 64; amended Pub. L. 90–129, title I, § 103(a), title II, § 201(2), Nov. 7, 1967, 81 Stat. 365, 367; Pub. L. 94–309, § 2(c), June 5, 1976, 90 Stat. 683; Pub. L. 95–567, title I, § 101, Nov. 2, 1978, 92 Stat. 2405.)

AMENDMENTS

1978—Pub. L. 95–567 expanded scope of section to authorize construction financing for telecommunications facilities other than television and radio broadcasting, and assistance in the planning, as well as the construction, of such facilities, and substituted provisions relating to the objectives of this subpart for former provision relating to the demonstration of the use of telecommunication technologies for the distribution of information.

1976—Pub. L. 94–309 designated existing phrase relating to assistance in the construction of noncommercial educational broadcasting facilities as cl. (1) and added cl. (2).

1967—Pub. L. 90–129 inserted ''noncommercial'' and ''or radio'' and substituted ''subpart'' for ''part'', respectively.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 403 of Pub. L. 95–567 provided that: ''The provisions of this Act [enacting section 395 of this title, amending this section and sections 391, 392, 393, 394, and 396 to 398 of this title, repealing sections 392a and 395 of this title, and enacting provisions set out as notes under this section, sections 392 and 396 of this title, and section 5316 of Title 5, Government Organization and Employees], and the amendments made by this Act, shall take effect on the date of the enactment of this Act [Nov. 2, 1978].''

GRANTS

Pub. L. 100–584, § 3, Nov. 3, 1988, 102 Stat. 2970, provided that: ''The Administrator [of the National Telecommunications and Information Administration] shall enter into discussions with the Federal Communications Commission for the purposes of determining the feasibility of awarding public telecommunications facilities program grants for low-power television stations and television translator stations on a conditional basis pending the award by the Commission of licenses for such stations. The Administrator shall also work with the Commission to establish a schedule for the expedited and coordinated consideration, on a regular basis, of future grant requests and license applications for low-power television stations and television translator stations. The Administrator shall, within ninety days after the date of enactment of this Act [Nov. 3, 1988], report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives on the progress made in carrying out the requirements of this section.''

STUDY OF EDUCATIONAL AND INSTRUCTIONAL BROADCASTING

Pub. L. 90–129, title III, §§ 301–303, Nov. 7, 1967, 81 Stat. 373, authorized the Secretary of Health, Education, and Welfare to conduct, directly or by contract, and in consultation with other interested Federal agencies, a comprehensive study of instructional television and radio (including broadcast, closed circuit, community antenna television, and instructional television fixed services and two-way communication of data links and computers) and their relationship to each other and to instructional materials such as videotapes, films, discs, computers, and other educational materials or devices, and such other aspects thereof as may be of assistance in determining whether and what Federal aid should be provided for instructional radio and television and the form that aid should take, and which may aid communities, institutions, or agencies in determining whether and to what extent such activities should be used. The study was required to be submitted to the President for transmittal to the Congress on or before June 30, 1969.

§ 391. Authorization of appropriations

There are authorized to be appropriated $42,000,000 for each of the fiscal years 1992, 1993, and 1994, to be used by the Secretary of Commerce to assist in the planning and construction of public telecommunications facilities as provided in this subpart. Sums appropriated under this subpart for any fiscal year shall remain available until expended for payment of grants for projects for which applications approved by the Secretary pursuant to this subpart have been submitted within such fiscal year. Sums appropriated under this subpart may be used by the Secretary to cover the cost of administering the provisions of this subpart.

(June 19, 1934, ch. 652, title III, § 391, as added Pub. L. 87–447, May 1, 1962, 76 Stat. 65; amended Pub. L. 90–129, title I, § 101, Nov. 7, 1967, 81 Stat. 365; Pub. L. 91–97, § 2, Oct. 27, 1969, 83 Stat. 146; Pub. L. 92–411, § 2, Aug. 29, 1972, 86 Stat. 643; Pub. L. 93–84, § 1(c), Aug. 6, 1973, 87 Stat. 219; Pub. L. 94–309, § 3, June 5, 1976, 90 Stat. 683; Pub. L. 95–567, title I, § 102, Nov. 2, 1978, 92 Stat. 2405; Pub. L. 97–35, title XII, § 1222, Aug. 13, 1981, 95 Stat. 725; Pub. L. 99–272, title V, § 5001(a), Apr. 7, 1986, 100 Stat. 117; Pub. L. 100–626, § 2, Nov. 7, 1988, 102 Stat. 3207; Pub. L. 102–356, § 2, Aug. 26, 1992, 106 Stat. 949.)

AMENDMENTS

1992—Pub. L. 102–356 substituted provisions authorizing appropriations of $42,000,000 for each of the fiscal years 1992, 1993, and 1994 for provisions authorizing appropriations of $40,000,000 for each of the fiscal years 1979, 1980, and 1981, $20,000,000 for fiscal year 1982, $15,000,000 for fiscal year 1983, $12,000,000 for fiscal year 1984, $24,000,000 for fiscal year 1986, $28,000,000 for fiscal year 1987, $32,000,000 for fiscal year 1988, $36,000,000 for fiscal year 1989, $39,000,000 for fiscal year 1990, and $42,000,000 for fiscal year 1991.

1988—Pub. L. 100–626 struck out ''and'' after ''fiscal year 1987,'' and inserted ''$36,000,000 for fiscal year 1989, $39,000,000 for fiscal year 1990, and $42,000,000 for fiscal year 1991,'' after ''fiscal year 1988,''.

1986—Pub. L. 99–272 struck out ''and'' after ''1983,'' and inserted '', $24,000,000 for fiscal year 1986, $28,000,000 for fiscal year 1987, and $32,000,000 for fiscal year 1988,'' after ''1984,''.

1981—Pub. L. 97–35 inserted provisions authorizing appropriations for fiscal years 1982, 1983, and 1984 of $20,000,000, $15,000,000, and $12,000,000, respectively.

1978—Pub. L. 95–567 substituted provisions authorizing appropriations of $40,000,000 for fiscal years 1979 to 1981 for provisions authorizing appropriations of $7,500,000 for July 1, 1976 through September 30, 1976 and $30,000,000 for fiscal year ending September 30, 1977, provision that such funds would remain available until ex-

pended for provision that such funds would remain available for one year after the last day of the fiscal year, and also made allowance for the funds to be used for the cost of administering this section.

1976—Pub. L. 94–309 substituted provision authorizing appropriation of $7,500,000 for period July 1, 1976, through September 30, 1976, and $30,000,000 for fiscal year ending September 30, 1977, to assist (through matching grants) in the construction of noncommercial educational television or radio broadcasting facilities as provided in this subpart and provision that sums appropriated under this section for any fiscal year or period shall remain available for payment of grants for projects for which applications approved under section 392 of this title have been submitted under such section within one year after the last day of such fiscal year or period for provision authorizing appropriation for fiscal year ending June 30, 1974 and for the succeeding fiscal year such sums not to exceed $25,000,000 for fiscal year ending June 30, 1974, and $30,000,000 for the succeeding fiscal year, as may be necessary to carry out the purposes of section 390 of this title and provision that sums appropriated under this section for any fiscal year shall remain available for payment of grants for projects for which applications approved under section 392 of this title have been submitted under such section prior to the end of the succeeding fiscal year, respectively.

1973—Pub. L. 93–84 substituted authorization of appropriation of amounts not exceeding $25,000,000 and $30,000,000 for fiscal year ending June 30, 1974 and the succeeding fiscal year, respectively, for authorization of appropriation of amount not exceeding $25,000,000 for fiscal year ending June 30, 1973.

1972—Pub. L. 92–411 substituted authorization of appropriation of $25,000,000 for fiscal year ending June 30, 1973, for authorization of $15,000,000 for such year, and struck out authorization of appropriations for fiscal years 1963 to 1972.

1969—Pub. L. 91–97 authorized appropriations of $15,000,000 for fiscal year ending June 30, 1971, and for each of the two succeeding fiscal years, and extended date for submission of applications from ''prior to July 1, 1971'' to ''prior to July 1, 1974''.

1967—Pub. L. 90–129 authorized appropriations of $10,500,000, and $12,500,000, and $15,000,000 for fiscal years ending June 30, 1968, 1969, and 1970, and extended date for submission of applications from ''prior to July 1, 1968'', to ''prior to July 1, 1971''.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 12 of Pub. L. 100–626 provided that: ''This Act and the amendments made by this Act [amending this section and sections 396, 398, 399, and 605 of this title and enacting provisions set out as notes under sections 396 and 609 of this title] are effective on the date of enactment of this Act [Nov. 7, 1988], except that the amendments made by sections 6 and 7(d) [amending section 396 of this title] are effective on October 1, 1989.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–567 effective Nov. 2, 1978, see section 403 of Pub. L. 95–567, set out as a note under section 390 of this title.

§ 392. Grants for construction

(a) Applications for grants

For each project for the construction of public telecommunications facilities there shall be submitted to the Secretary an application for a grant containing such information with respect to such project as the Secretary may require, including the total cost of such project, the amount of the grant requested for such project, and a 5-year plan outlining the applicant's projected facilities requirements and the projected costs of such facilities requirements. Each applicant shall also provide assurances satisfactory to the Secretary that—

(1) the applicant is (A) a public broadcast station; (B) a noncommercial telecommunications entity; (C) a system of public telecommunications entities; (D) a nonprofit foundation, corporation, institution, or association organized primarily for educational or cultural purposes; or (E) a State or local government (or any agency thereof), or a political or special purpose subdivision of a State;

(2) the operation of such public telecommunications facilities will be under the control of the applicant;

(3) necessary funds to construct, operate, and maintain such public telecommunications facilities will be available when needed;

(4) such public telecommunications facilities will be used primarily for the provision of public telecommunications services, and that the use of such public telecommunications facilities for purposes other than the provision of public telecommunications services will not interfere with the provision of such public telecommunications services as required in this part;

(5) the applicant has participated in comprehensive planning for such public telecommunications facilities in the area which the applicant proposes to serve, and such planning has included an evaluation of alternate technologies and coordination with State educational television and radio agencies, as appropriate; and

(6) the applicant will make the most efficient use of the grant.

(b) Amount of grant

Upon approving any application under this section with respect to any project for the construction of public telecommunications facilities, the Secretary shall make a grant to the applicant in an amount determined by the Secretary, except that such amount shall not exceed 75 percent of the amount determined by the Secretary to be the reasonable and necessary cost of such project.

(c) Information and assurances

The Secretary may provide such funds as the Secretary deems necessary for the planning of any project for which construction funds may be obtained under this section. An applicant for a planning grant shall provide such information with respect to such project as the Secretary may require and shall provide assurances satisfactory to the Secretary that the applicant meets the eligible requirements of subsection (a) of this section to receive construction assistance.

(d) Studies

Any studies conducted by or for any grant recipient under this section shall be provided to the Secretary, if such studies are conducted through the use of funds received under this section.

(e) Rules and regulations

The Secretary shall establish such rules and regulations as may be necessary to carry out

this subpart, including rules and regulations relating to the order of priority in approving applications for construction projects and relating to determining the amount of each grant for such projects.

(f) Minorities and women

In establishing criteria for grants pursuant to section 393 of this title and in establishing procedures relating to the order of priority established in subsection (e) of this section in approving applications for grants, the Secretary shall give special consideration to applications which would increase minority and women's ownership of, operation of, and participation in public telecommunications entities. The Secretary shall take affirmative steps to inform minorities and women of the availability of funds under this subpart, and the localities where new public telecommunications facilities are needed, and to provide such other assistance and information as may be appropriate.

(g) Recovering funds

If, within 10 years after completion of any project for construction of public telecommunications facilities with respect to which a grant has been made under this section—

(1) the applicant or other owner of such facilities ceases to be an agency, institution, foundation, corporation, association, or other entity described in subsection (a)(1) of this section; or

(2) such facilities cease to be used primarily for the provision of public telecommunications services (or the use of such public telecommunications facilities for purposes other than the provision of public telecommunications services interferes with the provision of such public telecommunications services as required in this part);

the United States shall be entitled to recover from the applicant or other owner of such facilities the amount bearing the same ratio to the value of such facilities at the time the applicant ceases to be such an entity or at the time of such determination (as determined by agreement of the parties or by action brought in the United States district court for the district in which such facilities are situated), as the amount of the Federal participation bore to the cost of construction of such facilities.

(h) Recordkeeping requirements

Each recipient of assistance under this subpart shall keep such records as may be reasonably necessary to enable the Secretary to carry out the functions of the Secretary under this subpart, including a complete and itemized inventory of all public telecommunications facilities under the control of such recipient, and records which fully disclose the amount and the disposition by such recipient of the proceeds of such assistance, the total cost of the project in connection with which such assistance is given or used, the amount and nature of that portion of the cost of the project supplied by other sources, and such other records as will facilitate an effective audit.

(i) Accessibility of records

The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of any recipient of assistance under this subpart that are pertinent to assistance received under this subpart.

(June 19, 1934, ch. 652, title III, § 392, as added Pub. L. 87–447, May 1, 1962, 76 Stat. 65; amended Pub. L. 90–129, title I, §§ 102, 103(b)–(e), 104, Nov. 7, 1967, 81 Stat. 365–367; Pub. L. 94–309, § 4, June 5, 1976, 90 Stat. 683; Pub. L. 95–567, title I, § 103(a), Nov. 2, 1978, 92 Stat. 2405; Pub. L. 97–35, title XII, § 1223, Aug. 13, 1981, 95 Stat. 725.)

AMENDMENTS

1981—Subsec. (a)(4). Pub. L. 97–35, § 1223(a), inserted provisions relating to noninterference of facilities with services required under this part, and substituted ''primarily'' for ''only''.

Subsec. (g)(2). Pub. L. 97–35, § 1223(b), substituted ''primarily'' for ''only'', and provisions relating to interference of uses of facilities for provisions relating to good cause for release of applicant or owner from requirements.

1978—Pub. L. 95–567 completely revised and restructured existing provisions, inserting provisions requiring applicant to submit a 5 year plan, allowing nonprofit educational or cultural groups to apply for grants, authorizing the Secretary to make grants up to 75 percent of the cost, establishing rules and regulations for approving grants and administering grants made before, on or after Nov. 2, 1978, and striking out provisions for an 8½ percent limit on grants and criteria for awarding grants.

1976—Subsec. (a)(1)(C). Pub. L. 94–309, § 4(a), substituted ''a public or private nonprofit college or university or other educational or cultural institution which is affiliated with an eligible college or university'' for ''a college or university deriving its support in whole or in part from tax revenues''.

Subsec. (d). Pub. L. 94–309, § 4(b), substituted separate provisions relating to grant criteria for television and for radio in place of single provision that Secretary shall base his determinations of whether to approve applications for grants and the amount of grants on criteria set forth in regulations and designed to achieve, with respect to noncommercial educational television channels, prompt and effective use of all such channels remaining available and, with respect to noncommercial educational television and radio broadcasting facilities, equitable geographical distribution of such facilities throughout the States and provision of such facilities which will serve the greatest number of persons in as many areas as possible and which are adaptable to the broadest educational uses.

1967—Subsec. (a). Pub. L. 90–129, § 103(b)(1), inserted ''noncommercial'' and ''or radio'' in introductory text.

Subsec. (a)(1)(B). Pub. L. 90–129, § 103(b)(2), required the State educational television agency applicant for a television facilities project to be a noncommercial agency and inserted requirement that applicant for a radio facilities project be a State educational radio agency.

Subsec. (a)(1)(D). Pub. L. 90–129, § 103(b)(3), designated existing provisions as cl. (i), made such cl. (i) applicable to television facilities projects and noncommercial television, and added cl. (ii) and provision for applicant meeting both television and radio broadcasting requirements.

Subsec. (a)(1)(E). Pub. L. 90–129, § 103(b)(4), added cl. (E).

Subsec. (a)(2) to (4). Pub. L. 90–129, § 103(b)(5), struck out ''television'' before ''broadcasting facilities'' wherever appearing.

Subsec. (a)(5). Pub. L. 90–129, § 103(b)(6), added par. (5).

Subsec. (b). Pub. L. 90–129, § 102, substituted limitation on grants for construction of noncommercial educational television and radio broadcasting facilities in any State to 8½ per centum of fiscal year appropriation

for former $1,000,000 limitation for construction of educational television broadcasting facilities in any State.

Subsec. (c). Pub. L. 90–129, §103(c), designated existing provisions as par. (1), restricted such provisions to noncommercial educational television broadcasting facilities, and added par. (2).

Subsec. (d). Pub. 90–129, §103(d), inserted in cls. (2) and (3) ''noncommercial'' and ''or noncommercial educational radio broadcasting facilities, as the case may be,'' before and after ''educational television broadcasting facilities'', respectively.

Subsec. (e). Pub. L. 90–129, §104, increased the maximum Federal share in the cost of constructing educational broadcasting facilities from 50 to 75 percent, eliminated the additional credit, formerly allowed the grantee, of 25 percent of the cost of facilities owned by the applicant on the date his application is filed, eliminated the prohibition against using not more than 15 percent of a grant for the acquisition and installation of interconnection facilities, microwave equipment, boosters, translators, and repeaters, and provided for payment of cost of the project from the sum available therefor.

Subsec. (f). Pub. L. 90–129, §103(e), inserted ''or radio'' in introductory text and, in par. (2), ''noncommercial'' and ''or noncommercial educational radio purposes, as the case may be'' before and after ''educational television purposes'', respectively.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–567 effective Nov. 2, 1978, see section 403 of Pub. L. 95–567, set out as a note under section 390 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Section 102 of Pub. L. 90–129 provided that the amendment made by that section is effective with respect to grants made from appropriations for any fiscal year beginning after June 30, 1967.

ADMINISTRATION OF GRANTS

Section 103(b) of Pub. L. 95–567 provided that:

''(1) The provisions of section 392(g) of the Communications Act of 1934 [subsec. (g) of this section], as added by subsection (a), shall apply to any grant made under section 392 of such Act [this section] before, on, or after the date of the enactment of this Act [Nov. 2, 1978]. Any authority and responsibilities of the Secretary of Health, Education, and Welfare regarding the administration of such grants are hereby transferred to the Secretary of Commerce.

''(2) Subject to the provisions of section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581c) [31 U.S.C. 1531], the following are hereby transferred to the Secretary of Commerce for appropriate allocation—

''(A) the personnel employed in connection with or in support of, or as an integral part of the mission of, the functions transferred to the Secretary of Commerce from the Secretary of Health, Education, and Welfare by paragraph (1); and

''(B) the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, allocations, and other funds employed, held, used, arising from, available for, or to be made available for, or in connection with, the functions described in subparagraph (A).

Unexpended funds transferred pursuant to this paragraph shall be used only for the purposes for which the funds originally were authorized and appropriated.

''(3) The Director of the Office of Management and Budget, in consultation with the Secretary of Commerce and the Secretary of Health, Education, and Welfare, shall—

''(A) make such determinations as may be necessary with regard to the transfer of the functions transferred to the Secretary of Commerce from the Secretary of Health, Education, and Welfare by paragraph (1); and

''(B) make such additional incidental dispositions of personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, allocations, and other funds employed, held, used, arising from, available for, or to be made available for, or in connection with, the functions described in subparagraph (A);

as the Director may deem necessary to accomplish the purposes of this Act [see Short Title of 1978 Amendment note set out under section 609 of this title] and the amendments made by this Act.''

§392a. Repealed. Pub. L. 95–567, title II, §201, Nov. 2, 1978, 92 Stat. 2409

Section, act June 19, 1934, ch. 652, title III, §392A, as added June 5, 1976, Pub. L. 94–309, §8, 90 Stat. 685, related to demonstrations of telecommunications, grants and contracts.

EFFECTIVE DATE OF REPEAL

Repeal effective Nov. 2, 1978, see section 403 of Pub. L. 95–567, set out as an Effective Date of 1978 Amendment note under section 390 of this title.

§393. Criteria for approval and expenditures by Secretary

(a) Construction and planning grants

The Secretary, in consultation with the Corporation, public telecommunications entities, and as appropriate with others, shall establish criteria for making construction and planning grants. Such criteria shall be consistent with the objectives and provisions set forth in this subpart, and shall be made available to interested parties upon request.

(b) Basis for determination

The Secretary shall base determinations of whether to approve applications for grants under this subpart, and the amount of such grants, on criteria developed pursuant to subsection (a) of this section and designed to achieve—

(1) the provision of new telecommunications facilities to extend service to areas currently not receiving public telecommunications services;

(2) the expansion of the service areas of existing public telecommunications entities;

(3) the development of public telecommunications facilities owned by, operated by, and available to minorities and women; and

(4) the improvement of the capabilities of existing public broadcast stations to provide public telecommunications services, including services to underserved audiences such as deaf and hearing impaired individuals and blind and visually impaired individuals.

(c) Noncommercial radio broadcast station facilities

Of the sums appropriated pursuant to section 391 of this title for any fiscal year, a substantial amount shall be available for the expansion and development of noncommercial radio broadcast station facilities.

(June 19, 1934, ch. 652, title III, §393, as added Pub. L. 87–447, May 1, 1962, 76 Stat. 66; amended Pub. L. 90–129, title II, §201(2), Nov. 7, 1967, 81 Stat. 367; Pub. L. 95–567, title I, §104, Nov. 2, 1978, 92 Stat. 2408; Pub. L. 99–272, title V, §5001(b), Apr. 7, 1986, 100 Stat. 117; Pub. L. 102–356, §3, Aug. 26, 1992, 106 Stat. 949.)

AMENDMENTS

1992—Subsec. (b)(4). Pub. L. 102–356 inserted before period at end ", including services to underserved audiences such as deaf and hearing impaired individuals and blind and visually impaired individuals".

1986—Subsecs. (c), (d). Pub. L. 99–272 redesignated subsec. (d) as (c) and struck out former subsec. (c) relating to extension of services to new areas.

1978—Pub. L. 95–567 amended section generally, striking out provisions dealing with keeping records and access to records by Secretary and Comptroller General and inserting provisions dealing with criteria for approval and expenditures by Secretary. See sections 392(h) and 395(h) of this title.

1967—Pub. L. 90–129 substituted "subpart" for "part" wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–567 effective Nov. 2, 1978, see section 403 of Pub. L. 95–567, set out as a note under section 390 of this title.

§ 393a. Long-range planning for facilities

(a) The Secretary, in consultation with the Corporation, public telecommunications entities, and as appropriate with other parties, shall develop a long-range plan to accomplish the objectives set forth in section 390 of this title. Such plan shall include a detailed 5-year projection of the broadcast and nonbroadcast public telecommunications facilities required to meet such objectives, and the expenditures necessary to provide such facilities.

(b) Repealed. Pub. L. 104–66, title I, § 1021(a), Dec. 21, 1995, 109 Stat. 712.

(June 19, 1934, ch. 652, title III, § 393A, formerly § 396, as added Pub. L. 87–447, May 1, 1962, 76 Stat. 67; renumbered § 394 and amended Pub. L. 90–129, title II, § 201(2), (4), Nov. 7, 1967, 81 Stat. 367; Pub. L. 95–567, title I, § 105, Nov. 2, 1978, 92 Stat. 2409; renumbered § 393A, Pub. L. 101–437, title II, § 203(a)(1), Oct. 17, 1990, 104 Stat. 998; Pub. L. 104–66, title I, § 1021(a), Dec. 21, 1995, 109 Stat. 712.)

AMENDMENTS

1995—Subsec. (b). Pub. L. 104–66 struck out subsec. (b) which read as follows: "The plan required in subsection (a) of this section shall be updated annually, and a summary of the activities of the Secretary in implementing the plan, shall be submitted concurrently to the President and the Congress not later than the 31st day of December of each year."

1978—Pub. L. 95–567 substituted provisions dealing with long-range planning for facilities for provisions authorizing the Secretary to establish rules and regulations necessary for this subpart. See section 392(e) of this title.

1967—Pub. L. 90–129, § 201(2), substituted "subpart" for "part".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–567 effective Nov. 2, 1978, see section 403 of Pub. L. 95–567, set out as a note under section 390 of this title.

SUBPART B—NATIONAL ENDOWMENT FOR CHILDREN'S EDUCATIONAL TELEVISION

§ 394. Establishment of National Endowment

(a) Purpose

It is the purpose of this section to enhance the education of children through the creation and production of television programming specifically directed toward the development of fundamental intellectual skills.

(b) Establishment; contracts and grants

(1) There is established, under the direction of the Secretary, a National Endowment for Children's Educational Television. In administering the National Endowment, the Secretary is authorized to—

(A) contract with the Corporation for the production of educational television programming for children; and

(B) make grants directly to persons proposing to create and produce educational television programming for children.

The Secretary shall consult with the Advisory Council on Children's Educational Television in the making of the grants or the awarding of contracts for the purpose of making the grants.

(2) Contracts and grants under this section shall be made on the condition that the programming shall—

(A) during the first two years after its production, be made available only to public television licensees and permittees and noncommercial television licensees and permittees; and

(B) thereafter be made available to any commercial television licensee or permittee or cable television system operator, at a charge established by the Secretary that will assure the maximum practicable distribution of such programming, so long as such licensee, permittee, or operator does not interrupt the programming with commercial advertisements.

The Secretary may, consistent with the purpose and provisions of this section, permit the programming to be distributed to persons using other media, establish conditions relating to such distribution, and apply those conditions to any contract or grant made under this section. The Secretary may waive the requirements of subparagraph (A) if the Secretary finds that neither public television licensees and permittees nor noncommercial television licensees and permittees will have an opportunity to air such programming in the first two years after its production.

(c) Criteria for contracts and grants; applications for contracts and grants

(1) The Secretary, with the advice of the Advisory Council on Children's Educational Television, shall establish criteria for making contracts and grants under this section. Such criteria shall be consistent with the purpose and provisions of this section and shall be made available to interested parties upon request. Such criteria shall include—

(A) criteria to maximize the amount of programming that is produced with the funds made available by the Endowment;

(B) criteria to minimize the costs of—

(i) selection of grantees,

(ii) administering the contracts and grants, and

(iii) the administrative costs of the programming production; and

(C) criteria to otherwise maximize the proportion of funds made available by the Endow-

ment that are expended for the cost of programming production.

(2) Applications for grants under this section shall be submitted to the Secretary in such form and containing such information as the Secretary shall require by regulation.

(d) Amount of grants

Upon approving any application for a grant under subsection (b)(1)(B) of this section, the Secretary shall make a grant to the applicant in an amount determined by the Secretary, except that such amounts shall not exceed 75 percent of the amount determined by the Secretary to be the reasonable and necessary cost of the project for which the grant is made.

(e) Advisory Council on Children's Educational Television

(1) The Secretary shall establish an Advisory Council on Children's Educational Television. The Secretary shall appoint ten individuals as members of the Council and designate one of such members to serve as Chairman.

(2) Members of the Council shall have terms of two years, and no member shall serve for more than three consecutive terms. The members shall have expertise in the fields of education, psychology, child development, or television programming, or related disciplines. Officers and employees of the United States shall not be appointed as members.

(3) While away from their homes or regular places of business in the performance of duties for the Council, the members of the Council shall serve without compensation but shall be allowed travel expenses, including per diem in lieu of subsistence, in accordance with section 5703 of title 5.

(4) The Council shall meet at the call of the Chairman and shall advise the Secretary concerning the making of contracts and grants under this section.

(f) Recordkeeping relating to grants; audits

(1) Each recipient of a grant under this section shall keep such records as may be reasonably necessary to enable the Secretary to carry out the Secretary's functions under this section, including records which fully disclose the amount and the disposition by such recipient of the proceeds of such grant, the total cost of the project, the amount and nature of that portion of the cost of the project supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purposes of audit and examination to any books, documents, papers, and records of the recipient that are pertinent to a grant received under this section.

(g) Issuance of rules and regulations

The Secretary is authorized to make such rules and regulations as may be necessary to carry out this section, including those relating to the order of priority in approving applications for projects under this section or to determining the amounts of contracts and grants for such projects.

(h) Authorization of appropriations; availability

There are authorized to be appropriated $2,000,000 for fiscal year 1991, $4,000,000 for fiscal year 1992, $5,000,000 for fiscal year 1993, and $6,000,000 for fiscal year 1994 to be used by the Secretary to carry out the provisions of this section. Sums appropriated under this subsection for any fiscal year shall remain available for contracts and grants for projects for which applications approved under this section have been submitted wtihin[1] one year after the last day of such fiscal year.

(i) Definitions

For purposes of this section—

(1) the term ''educational television programming for children'' means any television program which is directed to an audience of children who are 16 years of age or younger and which is designed for the intellectual development of those children, except that such term does not include any television program which is directed to a general audience but which might also be viewed by a significant number of children; and

(2) the term ''person'' means an individual, partnership, association, joint stock company, trust, corporation, or State or local governmental entity.

(June 19, 1934, ch. 652, title III, §394, as added Pub. L. 101–437, title II, §203(a)(3), Oct. 17, 1990, 104 Stat. 998; amended Pub. L. 102–538, title I, §152, formerly §132, Oct. 27, 1992, 106 Stat. 3540, renumbered §152, Pub. L. 103–66, title VI, §6001(a)(2), Aug. 10, 1993, 107 Stat. 379.)

PRIOR PROVISIONS

A prior section 394, act June 19, 1934, §394, was renumbered section 393A by Pub. L. 101–437 and transferred to section 393a of this title.

Another prior section 394, act June 19, 1934, §394, was renumbered section 397 by Pub. L. 90–129 and transferred to section 397 of this title.

AMENDMENTS

1992—Subsec. (h). Pub. L. 102–538 substituted ''1991,'' for ''1991 and'' and inserted '', $5,000,000 for fiscal year 1993, and $6,000,000 for fiscal year 1994'' after ''1992''.

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

CONGRESSIONAL FINDINGS

Section 202 of Pub. L. 101–437 provided that: ''The Congress finds that—

''(1) children in the United States are lagging behind those in other countries in fundamental intellectual skills, including reading, writing, mathematics, science, and geography;

''(2) these fundamental skills are essential for the future governmental and industrial leadership of the United States;

[1] So in original. Probably should be ''within''.

''(3) the United States must act now to greatly improve the education of its children;

''(4) television is watched by children about three hours each day on average and can be effective in teaching children;

''(5) educational television programming for children is aired too infrequently either because public broadcast licensees and permittees lack funds or because commercial broadcast licensees and permittees or cable television system operators do not have the economic incentive; and

''(6) the Federal Government can assist in the creation of children's educational television by establishing a National Endowment for Children's Educational Television to supplement the children's educational programming funded by other governmental entities.''

SUBPART C—TELECOMMUNICATIONS DEMONSTRATIONS

§ 395. Assistance for demonstration projects

(a) Authorization for grants and contracts

It is the purpose of this subpart to promote the development of nonbroadcast telecommunications facilities and services for the transmission, distribution, and delivery of health, education, and public or social service information. The Secretary is authorized, upon receipt of an application in such form and containing such information as he may by regulation require, to make grants to, and enter into contracts with, public and private nonprofit agencies, organizations, and institutions for the purpose of carrying out telecommunications demonstrations.

(b) Application approval

The Secretary may approve an application submitted under subsection (a) of this section if he determines that—

(1) the project for which application is made will demonstrate innovative methods or techniques of utilizing nonbroadcast telecommunications equipment or facilities to satisfy the purpose of this subpart;

(2) demonstrations and related activities assisted under this subpart will remain under the administration and control of the applicant;

(3) the applicant has the managerial and technical capability to carry out the project for which the application is made; and

(4) the facilities and equipment acquired or developed pursuant to the application will be used substantially for the transmission, distribution, and delivery of health, education, or public or social service information.

(c) Contract with applicant

Upon approving any application under this subpart with respect to any project, the Secretary shall make a grant to or enter into a contract with the applicant in an amount determined by the Secretary not to exceed the reasonable and necessary cost of such project. The Secretary shall pay such amount from the sums available therefor, in advance or by way of reimbursement, and in such installments consistent with established practice, as he may determine.

(d) Use of funds

Funds made available pursuant to this subpart shall not be available for the construction, remodeling, or repair of structures to house the facilities or equipment acquired or developed with such funds, except that such funds may be used for minor remodeling which is necessary for and incidental to the installation of such facilities or equipment.

(e) "Nonbroadcast telecommunications facilities" defined

For purposes of this section, the term ''nonbroadcast telecommunications facilities'' includes, but is not limited to, cable television systems, communications satellite systems and related terminal equipment, and other modes of transmitting, emitting, or receiving images and sounds or intelligence by means of wire, radio, optical, electromagnetic, or other means.

(f) Funding

The funding of any demonstration pursuant to this subpart shall continue for not more than 3 years from the date of the original grant or contract.

(g) Summary and evaluation

The Secretary shall require that the recipient of a grant or contract under this subpart submit a summary and evaluation of the results of the demonstration at least annually for each year in which funds are received pursuant to this section.

(h) Recordkeeping requirements; accessibility

(1) Each recipient of assistance under this subpart shall keep such records as may be reasonably necessary to enable the Secretary to carry out the Secretary's functions under this subpart, including records which fully disclose the amount and the disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purposes of audit and examination to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this subpart.

(i) Rules and regulations

The Secretary is authorized to make such rules and regulations as may be necessary to carry out this subpart, including regulations relating to the order of priority in approving applications for projects under this subpart or to determining the amounts of grants for such projects.

(j) Assistance

The Commission is authorized to provide such assistance in carrying out the provisions of this subpart as may be requested by the Secretary. The Secretary shall provide for close coordination with the Commission in the administration of the Secretary's functions under this subpart which are of interest to or affect the functions of the Commission. The Secretary shall provide for close coordination with the Corporation in

the administration of the Secretary's functions under this subpart which are of interest to or affect the functions of the Corporation.

(k) Authorization of appropriations

There are authorized to be appropriated $1,000,000 for each of the fiscal years 1979, 1980, and 1981, to be used by the Secretary to carry out the provisions of this subpart. Sums appropriated under this subsection for any fiscal year shall remain available for payment of grants or contracts for projects for which applications approved under this subpart have been submitted within one year after the last day of such fiscal year.

(June 19, 1934, ch. 652, title III, §395, as added Pub. L. 95–567, title II, §201, Nov. 2, 1978, 92 Stat. 2409.)

PRIOR PROVISIONS

A prior section 395, act June 19, 1934, ch. 652, title III, §395, as added May 1, 1962, Pub. L. 87–447, 76 Stat. 67; amended Nov. 7, 1967, Pub. L. 90–129, title II, §201(2), 81 Stat. 367; June 5, 1976, Pub. L. 94–309, §5, 90 Stat. 684, related to assistance of the Secretary by the Commission, prior to repeal by Pub. L. 95–567, §201.

EFFECTIVE DATE

Section effective Nov. 2, 1978, see section 403 of Pub. L. 95–567, set out as an Effective Date of 1978 Amendment note under section 390 of this title.

SUBPART D—CORPORATION FOR PUBLIC BROADCASTING

§396. Corporation for Public Broadcasting

(a) Congressional declaration of policy

The Congress hereby finds and declares that—

(1) it is in the public interest to encourage the growth and development of public radio and television broadcasting, including the use of such media for instructional, educational, and cultural purposes;

(2) it is in the public interest to encourage the growth and development of nonbroadcast telecommunications technologies for the delivery of public telecommunications services;

(3) expansion and development of public telecommunications and of diversity of its programming depend on freedom, imagination, and initiative on both local and national levels;

(4) the encouragement and support of public telecommunications, while matters of importance for private and local development, are also of appropriate and important concern to the Federal Government;

(5) it furthers the general welfare to encourage public telecommunications services which will be responsive to the interests of people both in particular localities and throughout the United States, which will constitute an expression of diversity and excellence, and which will constitute a source of alternative telecommunications services for all the citizens of the Nation;

(6) it is in the public interest to encourage the development of programming that involves creative risks and that addresses the needs of unserved and underserved audiences, particularly children and minorities;

(7) it is necessary and appropriate for the Federal Government to complement, assist, and support a national policy that will most effectively make public telecommunications services available to all citizens of the United States;

(8) public television and radio stations and public telecommunications services constitute valuable local community resources for utilizing electronic media to address national concerns and solve local problems through community programs and outreach programs;

(9) it is in the public interest for the Federal Government to ensure that all citizens of the United States have access to public telecommunications services through all appropriate available telecommunications distribution technologies; and

(10) a private corporation should be created to facilitate the development of public telecommunications and to afford maximum protection from extraneous interference and control.

(b) Establishment of Corporation; application of District of Columbia Nonprofit Corporation Act

There is authorized to be established a nonprofit corporation, to be known as the ''Corporation for Public Broadcasting'', which will not be an agency or establishment of the United States Government. The Corporation shall be subject to the provisions of this section, and, to the extent consistent with this section, to the District of Columbia Nonprofit Corporation Act.

(c) Board of Directors; functions, duties, etc.

(1) The Corporation for Public Broadcasting shall have a Board of Directors (hereinafter in this section referred to as the ''Board''), consisting of 9 members appointed by the President, by and with the advice and consent of the Senate. No more than 5 members of the Board appointed by the President may be members of the same political party.

(2) The 9 members of the Board appointed by the President (A) shall be selected from among citizens of the United States (not regular full-time employees of the United States) who are eminent in such fields as education, cultural and civic affairs, or the arts, including radio and television; and (B) shall be selected so as to provide as nearly as practicable a broad representation of various regions of the Nation, various professions and occupations, and various kinds of talent and experience appropriate to the functions and responsibilities of the Corporation.

(3) Of the members of the Board appointed by the President under paragraph (1), one member shall be selected from among individuals who represent the licensees and permittees of public television stations, and one member shall be selected from among individuals who represent the licensees and permittees of public radio stations.

(4) The members of the initial Board of Directors shall serve as incorporators and shall take whatever actions are necessary to establish the Corporation under the District of Columbia Nonprofit Corporation Act.

(5) The term of office of each member of the Board appointed by the President shall be 6

years, except as provided in section 5(c) of the Public Telecommunications Act of 1992. Any member whose term has expired may serve until such member's successor has taken office, or until the end of the calendar year in which such member's term has expired, whichever is earlier. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which such member's predecessor was appointed shall be appointed for the remainder of such term. No member of the Board shall be eligible to serve in excess of 2 consecutive full terms.

(6) Any vacancy in the Board shall not affect its power, but shall be filled in the manner consistent with this chapter.

(7) Members of the Board shall attend not less than 50 percent of all duly convened meetings of the Board in any calendar year. A member who fails to meet the requirement of the preceding sentence shall forfeit membership and the President shall appoint a new member to fill such vacancy not later than 30 days after such vacancy is determined by the Chairman of the Board.

(d) Election of Chairman and Vice Chairman; compensation of Board members

(1) Members of the Board shall annually elect one of their members to be Chairman and elect one or more of their members as a Vice Chairman or Vice Chairmen.

(2) The members of the Board shall not, by reason of such membership, be deemed to be officers or employees of the United States. They shall, while attending meetings of the Board or while engaged in duties related to such meetings or other activities of the Board pursuant to this subpart, be entitled to receive compensation at the rate of $150 per day, including traveltime. No Board member shall receive compensation of more than $10,000 in any fiscal year. While away from their homes or regular places of business, Board members shall be allowed travel and actual, reasonable, and necessary expenses.

(e) Officers and employees; term of office, compensation, qualifications, and removal; political party affiliation, political test or qualification when taking personnel actions

(1) The Corporation shall have a President, and such other officers as may be named and appointed by the Board for terms and at rates of compensation fixed by the Board. No officer or employee of the Corporation may be compensated by the Corporation at an annual rate of pay which exceeds the rate of basic pay in effect from time to time for level I of the Executive Schedule under section 5312 of title 5. No individual other than a citizen of the United States may be an officer of the Corporation. No officer of the Corporation, other than the Chairman or a Vice Chairman, may receive any salary or other compensation (except for compensation for services on boards of directors of other organizations that do not receive funds from the Corporation, on committees of such boards, and in similar activities for such organizations) from any sources other than the Corporation for services rendered during the period of his or her employment by the Corporation. Service by any officer on boards of directors of other organizations, on committees of such boards, and in similar activities for such organizations shall be subject to annual advance approval by the Board and subject to the provisions of the Corporation's Statement of Ethical Conduct. All officers shall serve at the pleasure of the Board.

(2) Except as provided in the second sentence of subsection (c)(1) of this section, no political test or qualification shall be used in selecting, appointing, promoting, or taking other personnel actions with respect to officers, agents, and employees of the Corporation.

(f) Nonprofit and nonpolitical nature of Corporation

(1) The Corporation shall have no power to issue any shares of stock, or to declare or pay any dividends.

(2) No part of the income or assets of the Corporation shall inure to the benefit of any director, officer, employee, or any other individual except as salary or reasonable compensation for services.

(3) The Corporation may not contribute to or otherwise support any political party or candidate for elective public office.

(g) Purposes and activities of Corporation; powers under District of Columbia Nonprofit Corporation Act

(1) In order to achieve the objectives and to carry out the purposes of this subpart, as set out in subsection (a) of this section, the Corporation is authorized to—

(A) facilitate the full development of public telecommunications in which programs of high quality, diversity, creativity, excellence, and innovation, which are obtained from diverse sources, will be made available to public telecommunications entities, with strict adherence to objectivity and balance in all programs or series of programs of a controversial nature;

(B) assist in the establishment and development of one or more interconnection systems to be used for the distribution of public telecommunications services so that all public telecommunications entities may disseminate such services at times chosen by the entities;

(C) assist in the establishment and development of one or more systems of public telecommunications entities throughout the United States; and

(D) carry out its purposes and functions and engage in its activities in ways that will most effectively assure the maximum freedom of the public telecommunications entities and systems from interference with, or control of, program content or other activities.

(2) In order to carry out the purposes set forth in subsection (a) of this section, the Corporation is authorized to—

(A) obtain grants from and make contracts with individuals and with private, State, and Federal agencies, organizations, and institutions;

(B) contract with or make grants to public telecommunications entities, national, regional, and other systems of public telecommunications entities, and independent producers and production entities, for the production or acquisition of public telecommunications services to be made available for use

by public telecommunications entities, except that—

(i) to the extent practicable, proposals for the provision of assistance by the Corporation in the production or acquisition of programs or series of programs shall be evaluated on the basis of comparative merit by panels of outside experts, representing diverse interests and perspectives, appointed by the Corporation; and

(ii) nothing in this subparagraph shall be construed to prohibit the exercise by the Corporation of its prudent business judgement with respect to any grant to assist in the production or acquisition of any program or series of programs recommended by any such panel;

(C) make payments to existing and new public telecommunications entities to aid in financing the production or acquisition of public telecommunications services by such entities, particularly innovative approaches to such services, and other costs of operation of such entities;

(D) establish and maintain, or contribute to, a library and archives of noncommercial educational and cultural radio and television programs and related materials and develop public awareness of, and disseminate information about, public telecommunications services by various means, including the publication of a journal;

(E) arrange, by grant to or contract with appropriate public or private agencies, organizations, or institutions, for interconnection facilities suitable for distribution and transmission of public telecommunications services to public telecommunications entities;

(F) hire or accept the voluntary services of consultants, experts, advisory boards, and panels to aid the Corporation in carrying out the purposes of this subpart;

(G) conduct (directly or through grants or contracts) research, demonstrations, or training in matters related to public television or radio broadcasting and the use of nonbroadcast communications technologies for the dissemination of noncommercial educational and cultural television or radio programs;

(H) make grants or contracts for the use of nonbroadcast telecommunications technologies for the dissemination to the public of public telecommunications services; and

(I) take such other actions as may be necessary to accomplish the purposes set forth in subsection (a) of this section.

Nothing contained in this paragraph shall be construed to commit the Federal Government to provide any sums for the payment of any obligation of the Corporation which exceeds amounts provided in advance in appropriation Acts.

(3) To carry out the foregoing purposes and engage in the foregoing activities, the Corporation shall have the usual powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act, except that the Corporation is prohibited from—

(A) owning or operating any television or radio broadcast station, system, or network, community antenna television system, interconnection system or facility, program production facility, or any public telecommunications entity, system, or network; and

(B) producing programs, scheduling programs for dissemination, or disseminating programs to the public.

(4) All meetings of the Board of Directors of the Corporation, including any committee of the Board, shall be open to the public under such terms, conditions, and exceptions as are set forth in subsection (k)(4) of this section.

(5) The Corporation, in consultation with interested parties, shall create a 5-year plan for the development of public telecommunications services. Such plan shall be updated annually by the Corporation.

(h) Free or reduced rate interconnection service; access to facilities

(1) Nothing in this chapter, or in any other provision of law, shall be construed to prevent United States communications common carriers from rendering free or reduced rate communications interconnection services for public television or radio services, subject to such rules and regulations as the Commission may prescribe.

(2) Subject to such terms and conditions as may be established by public telecommunications entities receiving space satellite interconnection facilities or services purchased or arranged for, in whole or in part, with funds authorized under this part, other public telecommunications entities shall have reasonable access to such facilities or services for the distribution of educational and cultural programs to public telecommunications entities. Any remaining capacity shall be made available to other persons for the transmission of noncommercial educational and cultural programs and program information relating to such programs, to public telecommunications entities, at a charge or charges comparable to the charge or charges, if any, imposed upon a public telecommunications entity for the distribution of noncommercial educational and cultural programs to public telecommunications entities. No such person shall be denied such access whenever sufficient capacity is available.

(i) Report to Congress

(1) The Corporation shall submit an annual report for the preceding fiscal year ending September 30 to the President for transmittal to the Congress on or before the 15th day of May of each year. The report shall include—

(A) a comprehensive and detailed report of the Corporation's operations, activities, financial condition, and accomplishments under this subpart and such recommendations as the Corporation deems appropriate;

(B) a comprehensive and detailed inventory of funds distributed by Federal agencies to public telecommunications entities during the preceding fiscal year;

(C) a listing of each organization that receives a grant from the Corporation to produce programming, the name of the producer of any programming produced under each such grant, the title or description of any

program so produced, and the amount of each such grant;[1]

(D) the summary of the annual report provided to the Secretary pursuant to section 398(b)(4) of this title.

(2) The officers and directors of the Corporation shall be available to testify before appropriate committees of the Congress with respect to such report, the report of any audit made by the Comptroller General pursuant to subsection (*l*) of this section, or any other matter which such committees may determine.

(j) Repeal, alteration, or amendment

The right to repeal, alter, or amend this section at any time is expressly reserved.

(k) Financing restrictions

(1)(A) There is hereby established in the Treasury a fund which shall be known as the Public Broadcasting Fund (hereinafter in this subsection referred to as the ''Fund''), to be administered by the Secretary of the Treasury.

(B) There is authorized to be appropriated to the Fund for each of the fiscal years 1978, 1979, and 1980, an amount equal to 40 percent of the total amount of non-Federal financial support received by public broadcasting entities during the fiscal year second preceding each such fiscal year, except that the amount so appropriated shall not exceed $121,000,000 for fiscal year 1978, $140,000,000 for fiscal year 1979, and $160,000,000 for fiscal year 1980.

(C) There is authorized to be appropriated to the Fund, for each of the fiscal years 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, and 1993, an amount equal to 40 percent of the total amount of non-Federal financial support received by public broadcasting entities during the fiscal year second preceding each such fiscal year, except that the amount so appropriated shall not exceed $265,000,000 for fiscal year 1992, $285,000,000 for fiscal year 1993, $310,000,000 for fiscal year 1994, $375,000,000 for fiscal year 1995, and $425,000,000 for fiscal year 1996.

(D) In addition to any amounts authorized under any other provision of this or any other Act to be appropriated to the Fund, $20,000,000 are hereby authorized to be appropriated to the Fund (notwithstanding any other provision of this subsection) specifically for transition from the use of analog to digital technology for the provision of public broadcasting services for fiscal year 2001.

(E) Funds appropriated under this subsection shall remain available until expended.

(F) In recognition of the importance of educational programs and services, and the expansion of public radio services, to unserved and underserved audiences, the Corporation, after consultation with the system of public telecommunications entities, shall prepare and submit to the Congress an annual report for each of the fiscal years 1994, 1995, and 1996 on the Corporation's activities and expenditures relating to those programs and services.

(2)(A) The funds authorized to be appropriated by this subsection shall be used by the Corporation, in a prudent and financially responsible manner, solely for its grants, contracts, and administrative costs, except that the Corporation may not use any funds appropriated under this subpart for purposes of conducting any reception, or providing any other entertainment, for any officer or employee of the Federal Government or any State or local government. The Corporation shall determine the amount of non-Federal financial support received by public broadcasting entities during each of the fiscal years referred to in paragraph (1) for the purpose of determining the amount of each authorization, and shall certify such amount to the Secretary of the Treasury, except that the Corporation may include in its certification non-Federal financial support received by a public broadcasting entity during its most recent fiscal year ending before September 30 of the year for which certification is made. Upon receipt of such certification, the Secretary of the Treasury shall make available to the Corporation, from such funds as may be appropriated to the Fund, the amount authorized for each of the fiscal years pursuant to the provisions of this subsection.

(B) Funds appropriated and made available under this subsection shall be disbursed by the Secretary of the Treasury on a fiscal year basis.

(3)(A)(i) The Corporation shall establish an annual budget for use in allocating amounts from the Fund. Of the amounts appropriated into the Fund available for allocation for any fiscal year—

(I) $10,200,000 shall be available for the administrative expenses of the Corporation for fiscal year 1989, and for each succeeding fiscal year the amount which shall be available for such administrative expenses shall be the sum of the amount made available to the Corporation under this subclause for such expenses in the preceding fiscal year plus the greater of 4 percent of such amount or a percentage of such amount equal to the percentage change in the Consumer Price Index, except that none of the amounts allocated under subclauses (II), (III), and (IV) and clause (v) shall be used for any administrative expenses of the Corporation and not more than 5 percent of all the amounts appropriated into the Fund available for allocation for any fiscal year shall be available for such administrative expenses;

(II) 6 percent of such amounts shall be available for expenses incurred by the Corporation for capital costs relating to telecommunications satellites, the payment of programming royalties and other fees, the costs of interconnection facilities and operations (as provided in clause (iv)(I)), and grants which the Corporation may make for assistance to stations that broadcast programs in languages other than English or for assistance in the provision of affordable training programs for employees at public broadcast stations, and if the available funding level permits, for projects and activities that will enhance public broadcasting;

(III) 75 percent of the remainder (after allocations are made under subclause (I) and subclause (II)) shall be allocated in accordance with clause (ii); and

(IV) 25 percent of such remainder shall be allocated in accordance with clause (iii).

[1] So in original. Probably should be followed by ''and''.

(ii) Of the amounts allocated under clause (i)(III) for any fiscal year—

(I) 75 percent of such amounts shall be available for distribution among the licensees and permittees of public television stations pursuant to paragraph (6)(B); and

(II) 25 percent of such amounts shall be available for distribution under subparagraph (B)(i), and in accordance with any plan implemented under paragraph (6)(A), for national public television programming.

(iii) Of the amounts allocated under clause (i)(IV) for any fiscal year—

(I) 70 percent of such amounts shall be available for distribution among the licensees and permittees of public radio stations pursuant to paragraph (6)(B);

(II) 7 percent of such amounts shall be available for distribution under subparagraph (B)(i) for public radio programming; and

(III) 23 percent of such amounts shall be available for distribution among the licensees and permittees of public radio stations pursuant to paragraph (6)(B), solely to be used for acquiring or producing programming that is to be distributed nationally and is designed to serve the needs of a national audience.

(iv)(I) From the amount provided pursuant to clause (i)(II), the Corporation shall defray an amount equal to 50 percent of the total costs of interconnection facilities and operations to facilitate the availability of public television and radio programs among public broadcast stations.

(II) Of the amounts received as the result of any contract, lease agreement, or any other arrangement under which the Corporation directly or indirectly makes available interconnection facilities, 50 percent of such amounts shall be distributed to the licensees and permittees of public television stations and public radio stations. The Corporation shall not have any authority to establish any requirements, guidelines, or limitations with respect to the use of such amounts by such licensees and permittees.

(v) Of the interest on the amounts appropriated into the Fund which is available for allocation for any fiscal year—

(I) 75 percent shall be available for distribution for the purposes referred to in clause (ii)(II); and

(II) 25 percent shall be available for distribution for the purposes referred to in clause (iii)(II) and (III).

(B)(i) The Corporation shall utilize the funds allocated pursuant to subparagraph (A)(ii)(II) and subparagraph (A)(iii)(II) to make grants for production of public television or radio programs by independent producers and production entities and public telecommunications entities, producers of national children's educational programming, and producers of programs addressing the needs and interests of minorities, and for acquisition of such programs by public telecommunications entities. The Corporation may make grants to public telecommunications entities and producers for the production of programs in languages other than English. Of the funds utilized pursuant to this clause, a substantial amount shall be distributed to independent producers and production entities, producers of national children's educational programming, and producers of programming addressing the needs and interests of minorities for the production of programs.

(ii) All funds available for distribution under clause (i) shall be distributed to entities outside the Corporation and shall not be used for the general administrative costs of the Corporation, the salaries or related expenses of Corporation personnel and members of the Board, or for expenses of consultants and advisers to the Corporation.

(iii)(I) For fiscal year 1990 and succeeding fiscal years, the Corporation shall, in carrying out its obligations under clause (i) with respect to public television programming, provide adequate funds for an independent production service.

(II) Such independent production service shall be separate from the Corporation and shall be incorporated under the laws of the District of Columbia for the purpose of contracting with the Corporation for the expenditure of funds for the production of public television programs by independent producers and independent production entities.

(III) The Corporation shall work with organizations or associations of independent producers or independent production entities to develop a plan and budget for the operation of such service that is acceptable to the Corporation.

(IV) The Corporation shall ensure that the funds provided to such independent production service shall be used exclusively in pursuit of the Corporation's obligation to expand the diversity and innovativeness of programming available to public broadcasting.

(V) The Corporation shall report annually to Congress regarding the activities and expenditures of the independent production service, including carriage and viewing information for programs produced or acquired with funds provided pursuant to subclause (I). At the end of fiscal years 1992, 1993, 1994, and 1995, the Corporation shall submit a report to Congress evaluating the performance of the independent production service in light of its mission to expand the diversity and innovativeness of programming available to public broadcasting.

(VI) The Corporation shall not contract to provide funds to any such independent production service, unless that service agrees to comply with public inspection requirements established by the Corporation within 3 months after August 26, 1992. Under such requirements the service shall maintain at its offices a public file, updated regularly, containing information relating to the service's award of funds for the production of programming. The information shall be available for public inspection and copying for at least 3 years and shall be of the same kind as the information required to be maintained by the Corporation under subsection (*l*)(4)(B) of this section.

(4) Funds may not be distributed pursuant to this subsection to the Public Broadcasting Service or National Public Radio (or any successor organization), or to the licensee or permittee of any public broadcast station, unless the governing body of any such organization, any commit-

tee of such governing body, or any advisory body of any such organization, holds open meetings preceded by reasonable notice to the public. All persons shall be permitted to attend any meeting of the board, or of any such committee or body, and no person shall be required, as a condition to attendance at any such meeting, to register such person's name or to provide any other information. Nothing contained in this paragraph shall be construed to prevent any such board, committee, or body from holding closed sessions to consider matters relating to individual employees, proprietary information, litigation and other matters requiring the confidential advice of counsel, commercial or financial information obtained from a person on a privileged or confidential basis, or the purchase of property or services whenever the premature exposure of such purchase would compromise the business interests of any such organization. If any such meeting is closed pursuant to the provisions of this paragraph, the organization involved shall thereafter (within a reasonable period of time) make available to the public a written statement containing an explanation of the reasons for closing the meeting.

(5) Funds may not be distributed pursuant to this subsection to any public telecommunications entity that does not maintain for public examination copies of the annual financial and audit reports, or other information regarding finances, submitted to the Corporation pursuant to subsection (*l*)(3)(B) of this section.

(6)(A) The Corporation shall conduct a study and prepare a plan, in consultation with public television licensees (or designated representatives of those licensees) and the Public Broadcasting Service, on how funds available to the Corporation under paragraph (3)(A)(ii)(II) can be best allocated to meet the objectives of this chapter with regard to national public television programming. The plan, which shall be based on the conclusions resulting from the study, shall be submitted by the Corporation to the Congress not later than January 31, 1990. Unless directed otherwise by an Act of Congress, the Corporation shall implement the plan during the first fiscal year beginning after the fiscal year in which the plan is submitted to Congress.

(B) The Corporation shall make a basic grant from the portion reserved for television stations under paragraph (3)(A)(ii)(I) to each licensee and permittee of a public television station that is on the air. The Corporation shall assist radio stations to maintain and improve their service where public radio is the only broadcast service available. The balance of the portion reserved for television stations and the total portion reserved for radio stations under paragraph (3)(A)(iii)(I) shall be distributed to licensees and permittees of such stations in accordance with eligibility criteria (which the Corporation shall review periodically in consultation with public radio and television licensees or permittees, or their designated representatives) that promote the public interest in public broadcasting, and on the basis of a formula designed to—

(i) provide for the financial needs and requirements of stations in relation to the communities and audiences such stations undertake to serve;

(ii) maintain existing, and stimulate new, sources of non-Federal financial support for stations by providing incentives for increases in such support; and

(iii) assure that each eligible licensee and permittee of a public radio station receives a basic grant.

(7) The funds distributed pursuant to paragraph (3)(A)(ii)(I) and (iii)(I) may be used at the discretion of the recipient for purposes related primarily to the production or acquisition of programming.

(8)(A) Funds may not be distributed pursuant to this subpart to any public broadcast station (other than any station which is owned and operated by a State, a political or special purpose subdivision of a State, or a public agency) unless such station establishes a community advisory board. Any such station shall undertake good faith efforts to assure that (i) its advisory board meets at regular intervals; (ii) the members of its advisory board regularly attend the meetings of the advisory board; and (iii) the composition of its advisory board are[2] reasonably representative of the diverse needs and interests of the communities served by such station.

(B) The board shall be permitted to review the programming goals established by the station, the service provided by the station, and the significant policy decisions rendered by the station. The board may also be delegated any other responsibilities, as determined by the governing body of the station. The board shall advise the governing body of the station with respect to whether the programming and other policies of such station are meeting the specialized educational and cultural needs of the communities served by the station, and may make such recommendations as it considers appropriate to meet such needs.

(C) The role of the board shall be solely advisory in nature, except to the extent other responsibilities are delegated to the board by the governing body of the station. In no case shall the board have any authority to exercise any control over the daily management or operation of the station.

(D) In the case of any public broadcast station (other than any station which is owned and operated by a State, a political or special purpose subdivision of a State, or a public agency) in existence on November 2, 1978, such station shall comply with the requirements of this paragraph with respect to the establishment of a community advisory board not later than 180 days after November 2, 1978.

(E) The provision of subparagraph (A) prohibiting the distribution of funds to any public broadcast station (other than any station which is owned and operated by a State, a political or special purpose subdivision of a State, or a public agency) unless such station establishes a community advisory board shall be the exclusive remedy for the enforcement of the provisions of this paragraph.

(9) Funds may not be distributed pursuant to this subsection to the Public Broadcasting Service or National Public Radio (or any successor

[2] So in original. Probably should be ''is''.

organization) unless assurances are provided to the Corporation that no officer or employee of the Public Broadcasting Service or National Public Radio (or any successor organization), as the case may be, will be compensated in excess of reasonable compensation as determined pursuant to Section[3] 4958 of title 26 for services that the officer or employee renders to organization,[4] and unless further assurances are provided to the Corporation that no officer or employee of such an entity will be loaned money by that entity on an interest-free basis.

(10)(A) There is hereby established in the Treasury a fund which shall be known as the Public Broadcasting Satellite Interconnection Fund (hereinafter in this subsection referred to as the ''Satellite Interconnection Fund''), to be administered by the Secretary of the Treasury.

(B) There is authorized to be appropriated to the Satellite Interconnection Fund, for fiscal year 1991, the amount of $200,000,000. If such amount is not appropriated in full for fiscal year 1991, the portion of such amount not yet appropriated is authorized to be appropriated for fiscal years 1992 and 1993. Funds appropriated to the Satellite Interconnection Fund shall remain available until expended.

(C) The Secretary of the Treasury shall make available and disburse to the Corporation, at the beginning of fiscal year 1991 and of each succeeding fiscal year thereafter, such funds as have been appropriated to the Satellite Interconnection Fund for the fiscal year in which such disbursement is to be made.

(D) Notwithstanding any other provision of this subsection except paragraphs (4), (5), (8), and (9), all funds appropriated to the Satellite Interconnection Fund and interest thereon—

(i) shall be distributed by the Corporation to the licensees and permittees of noncommercial educational television broadcast stations providing public telecommunications services or the national entity they designate for satellite interconnection purposes and to those public telecommunications entities participating in the public radio satellite interconnection system or the national entity they designate for satellite interconnection purposes, exclusively for the capital costs of the replacement, refurbishment, or upgrading of their national satellite interconnection systems and associated maintenance of such systems; and

(ii) shall not be used for the administrative costs of the Corporation, the salaries or related expenses of Corporation personnel and members of the Board, or for expenses of consultants and advisers to the Corporation.

(11)(A) Funds may not be distributed pursuant to this subsection for any fiscal year to the licensee or permittee of any public broadcast station if such licensee or permittee—

(i) fails to certify to the Corporation that such licensee or permittee complies with the Commission's regulations concerning equal employment opportunity as published under section 73.2080 of title 47, Code of Federal Regulations, or any successor regulations thereto; or

(ii) fails to submit to the Corporation the report required by subparagraph (B) for the preceding calendar year.

(B) A licensee or permittee of any public broadcast station with more than five full-time employees to file annually with the Corporation a statistical report, consistent with reports required by Commission regulation, identifying by race and sex the number of employees in each of the following full-time and part-time job categories:

(i) Officials and managers.
(ii) Professionals.
(iii) Technicians.
(iv) Semiskilled operatives.
(v) Skilled craft persons.
(vi) Clerical and office personnel.
(vii) Unskilled operatives.
(viii) Service workers.

(C) In addition, such report shall state the number of job openings occurring during the course of the year. Where the job openings were filled in accordance with the regulations described in subparagraph (A)(i), the report shall so certify, and where the job openings were not filled in accordance with such regulations, the report shall contain a statement providing reasons therefor. The statistical report shall be available to the public at the central office and at every location where more than five full-time employees are regularly assigned to work.

(12) Funds may not be distributed under this subsection to any public broadcasting entity that directly or indirectly—

(A) rents contributor or donor names (or other personally identifiable information) to or from, or exchanges such names or information with, any Federal, State, or local candidate, political party, or political committee; or

(B) discloses contributor or donor names, or other personally identifiable information, to any nonaffiliated third party unless—

(i) such entity clearly and conspicuously discloses to the contributor or donor that such information may be disclosed to such third party;

(ii) the contributor or donor is given the opportunity, before the time that such information is initially disclosed, to direct that such information not be disclosed to such third party; and

(iii) the contributor or donor is given an explanation of how the contributor or donor may exercise that nondisclosure option.

(*l*) Financial management and records

(1)(A) The accounts of the Corporation shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants or independent licensed public accountants certified or licensed by a regulatory authority of a State or other political subdivision of the United States, except that such requirement shall not preclude shared auditing arrangements between any public telecommunications entity and its licensee where such licensee is a public or private institution. The audits shall be conducted at the place or places where the accounts of the Corporation

[3] So in original. Probably should not be capitalized.

[4] So in original. Probably should be ''the organization,''.

are normally kept. All books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Corporation and necessary to facilitate the audits shall be made available to the person or persons conducting the audits; and full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents and custodians shall be afforded to such person or persons.

(B) The report of each such independent audit shall be included in the annual report required by subsection (i) of this section. The audit report shall set forth the scope of the audit and include such statements as are necessary to present fairly the Corporation's assets and liabilities, surplus or deficit, with an analysis of the changes therein during the year, supplemented in reasonable detail by a statement of the Corporation's income and expenses during the year, and a statement of the sources and application of funds, together with the independent auditor's opinion of those statements.

(2)(A) The financial transactions of the Corporation for any fiscal year during which Federal funds are available to finance any portion of its operations may be audited by the Government Accountability Office in accordance with the principles and procedures applicable to commercial corporate transactions and under such rules and regulations as may be prescribed by the Comptroller General of the United States. Any such audit shall be conducted at the place or places where accounts of the Corporation are normally kept. The representative of the Government Accountability Office shall have access to all books, accounts, records, reports, files, and all other papers, things, or property belonging to or in use by the Corporation pertaining to its financial transactions and necessary to facilitate the audit, and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. All such books, accounts, records, reports, files, papers and property of the corporation shall remain in possession and custody of the Corporation.

(B) A report of each such audit shall be made by the Comptroller General to the Congress. The report to the Congress shall contain such comments and information as the Comptroller General may deem necessary to inform Congress of the financial operations and condition of the Corporation, together with such recommendations with respect thereto as he may deem advisable. The report shall also show specifically any program, expenditure, or other financial transaction or undertaking observed in the course of the audit, which, in the opinion of the Comptroller General, has been carried on or made without authority of law. A copy of each report shall be furnished to the President, to the Secretary, and to the Corporation at the time submitted to the Congress.

(3)(A) Not later than 1 year after November 2, 1978, the Corporation, in consultation with the Comptroller General, and as appropriate with others, shall develop accounting principles which shall be used uniformly by all public telecommunications entities receiving funds under this subpart, taking into account organizational differences among various categories of such entities. Such principles shall be designed to account fully for all funds received and expended for public telecommunications purposes by such entities.

(B) Each public telecommunications entity receiving funds under this subpart shall be required—

(i) to keep its books, records, and accounts in such form as may be required by the Corporation;

(ii)(I) to undergo a biennial audit by independent certified public accountants or independent licensed public accountants certified or licensed by a regulatory authority of a State, which audit shall be in accordance with auditing standards developed by the Corporation, in consultation with the Comptroller General; or

(II) to submit a financial statement in lieu of the audit required by subclause (I) if the Corporation determines that the cost burden of such audit on such entity is excessive in light of the financial condition of such entity; and

(iii) to furnish biennially to the Corporation a copy of the audit report required pursuant to clause (ii), as well as such other information regarding finances (including an annual financial report) as the Corporation may require.

(C) Any recipient of assistance by grant or contract under this section, other than a fixed price contract awarded pursuant to competitive bidding procedures, shall keep such records as may be reasonably necessary to disclose fully the amount and the disposition by such recipient of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(D) The Corporation or any of its duly authorized representatives shall have access to any books, documents, papers, and records of any recipient of assistance for the purpose of auditing and examining all funds received or expended for public telecommunications purposes by the recipient. The Comptroller General of the United States or any of his duly authorized representatives also shall have access to such books, documents, papers, and records for the purpose of auditing and examining all funds received or expended for public telecommunications purposes during any fiscal year for which Federal funds are available to the Corporation.

(4)(A) The Corporation shall maintain the information described in subparagraphs (B), (C), and (D) at its offices for public inspection and copying for at least 3 years, according to such reasonable guidelines as the Corporation may issue. This public file shall be updated regularly. This paragraph shall be effective August 26, 1992, and shall apply to all grants awarded after January 1, 1993.

(B) Subsequent to any award of funds by the Corporation for the production or acquisition of national broadcasting programming pursuant to subsection (k)(3)(A)(ii)(II) or (iii)(II) of this section, the Corporation shall make available for public inspection the following:

(i) Grant and solicitation guidelines for proposals for such programming.

(ii) The reasons for selecting the proposal for which the award was made.

(iii) Information on each program for which the award was made, including the names of the awardee and producer (and if the awardee or producer is a corporation or partnership, the principals of such corporation or partnership), the monetary amount of the award, and the title and description of the program (and of each program in a series of programs).

(iv) A report based on the final audit findings resulting from any audit of the award by the Corporation or the Comptroller General.

(v) Reports which the Corporation shall require to be provided by the awardee relating to national public broadcasting programming funded, produced, or acquired by the awardee with such funds. Such reports shall include, where applicable, the information described in clauses (i), (ii), and (iii), but shall exclude proprietary, confidential, or privileged information.

(C) The Corporation shall make available for public inspection the final report required by the Corporation on an annual basis from each recipient of funds under subsection (k)(3)(A)(iii)(III) of this section, excluding proprietary, confidential, or privileged information.

(D) The Corporation shall make available for public inspection an annual list of national programs distributed by public broadcasting entities that receive funds under subsection (k)(3)(A)(ii)(III) or (iii)(II) of this section and are engaged primarily in the national distribution of public television or radio programs. Such list shall include the names of the programs (or program series), producers, and providers of funding.

(m) Needs of minorities and other groups

(1) Prior to July 1, 1989, and every three years thereafter, the Corporation shall compile an assessment of the needs of minority and diverse audiences, the plans of public broadcasting entities and public telecommunications entities to address such needs, the ways radio and television can be used to help these underrepresented groups, and projections concerning minority employment by public broadcasting entities and public telecommunications entities. Such assessment shall address the needs of racial and ethnic minorities, new immigrant populations, people for whom English is a second language, and adults who lack basic reading skills.

(2) Commencing July 1, 1989, the Corporation shall prepare an annual report on the provision by public broadcasting entities and public telecommunications entities of service to the audiences described in paragraph (1). Such report shall address programming (including that which is produced by minority producers), training, minority employment, and efforts by the Corporation to increase the number of minority public radio and television stations eligible for financial support from the Corporation. Such report shall include a summary of the statistical reports received by the Corporation pursuant to subsection (k)(11) of this section, and a comparison of the information contained in those reports with the information submitted by the Corporation in the previous year's annual report.

(3) As soon as they have been prepared, each assessment and annual report required under paragraphs (1) and (2) shall be submitted to Congress.

(June 19, 1934, ch. 652, title III, §396, as added Pub. L. 90–129, title II, §201(9), Nov. 7, 1967, 81 Stat. 368; amended Pub. L. 90–294, Apr. 26, 1968, 82 Stat. 108; Pub. L. 91–97, §3, Oct. 27, 1969, 83 Stat. 146; Pub. L. 91–437, §2, Oct. 7, 1970, 84 Stat. 888; Pub. L. 92–411, §1, Aug. 29, 1972, 86 Stat. 643; Pub. L. 93–84, §1(a), (b), Aug. 6, 1973, 87 Stat. 219; Pub. L. 94–192, §§2–4, Dec. 31, 1975, 89 Stat. 1099, 1100; Pub. L. 95–567, title III, §§301–303(a), 304–307(a), 308, Nov. 2, 1978, 92 Stat. 2411, 2412, 2414, 2415, 2419; Pub. L. 97–35, title XII, §§1224, 1225(a)(1), (b), (c), 1226, 1227(a)–(c)(3), (d)(1), (2), (e)–(g), 1228, 1234(a), Aug. 13, 1981, 95 Stat. 725–730, 736; Pub. L. 98–214, §§3, 5, 6, Dec. 8, 1983, 97 Stat. 1467–1469; Pub. L. 99–272, title V, §5001(c), Apr. 7, 1986, 100 Stat. 117; Pub. L. 100–626, §§3, 4(a), 5–9(a), Nov. 7, 1988, 102 Stat. 3207–3211; Pub. L. 102–356, §§4, 5(a), (b), 6–14, Aug. 26, 1992, 106 Stat. 949–953; Pub. L. 105–277, div. A, §101(f) [title VII, §701], Oct. 21, 1998, 112 Stat. 2681–337, 2681–389; Pub. L. 106–113, div. B, §1000(a)(9) [title V, §5002(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–592; Pub. L. 107–20, title II, §2702, July 24, 2001, 115 Stat. 182; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814.)

REFERENCES IN TEXT

The District of Columbia Nonprofit Corporation Act, referred to in subsecs. (b), (c)(4), and (g)(3), is Pub. L. 87–569, Aug. 6, 1962, 76 Stat. 265, as amended, which is not classified to the Code.

Section 5(c) of the Public Telecommunications Act of 1992, referred to in subsec. (c)(5), is section 5(c) of Pub. L. 102–356, which is set out below.

PRIOR PROVISIONS

A prior section 396, act June 19, 1934, ch. 652, title III, §396, as added May 1, 1962, Pub. L. 87–447, 76 Stat. 67, was renumbered section 394 by Pub. L. 90–129, and subsequently renumbered section 393A by Pub. L. 101–437, and is classified to section 393a of this title.

AMENDMENTS

2004—Subsec. (*l*)(2)(A). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office'' in two places.

2001—Subsec. (k)(1)(D) to (F). Pub. L. 107–20 added subpar. (D) and redesignated former subpars. (D) and (E) as (E) and (F), respectively.

1999—Subsec. (k)(12). Pub. L. 106–113 added par. (12).

1998—Subsec. (k)(9). Pub. L. 105–277 which directed the substitution of ''in excess of reasonable compensation as determined pursuant to Section 4958 of title 26 for services that the officer or employee renders to organization'' for ''at an annual rate of pay which exceeds the rate of basic pay in effect from time to time for level I of the Executive Schedule under 5312 of title 5,'', was executed by making the substitution for text which read ''section 5312 of title 5'' to reflect the probable intent of Congress.

1992—Subsec. (a)(8) to (10). Pub. L. 102–356, §4, added pars. (8) and (9) and redesignated former par. (8) as (10).

Subsec. (c)(1). Pub. L. 102–356, §5(a)(1), substituted ''9'' for ''10'' and ''5'' for ''6''.

Subsec. (c)(2). Pub. L. 102–356, §5(a)(2), substituted ''9'' for ''10''.

Subsec. (c)(5). Pub. L. 102–356, §5(b), amended par. (5) generally. Prior to amendment, par. (5) read as follows:

''The term of office of each member of the Board appointed by the President shall be 5 years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. No member of the Board shall be eligible to serve in excess of 2 consecutive terms of 5 years each.''

Subsec. (e)(1). Pub. L. 102–356, § 6, inserted fourth sentence and struck out former fourth sentence which read as follows: ''No officer of the Corporation, other than the Chairman or a Vice Chairman, may receive any salary or other compensation from any source other than the Corporation for services rendered during the period of his employment by the Corporation.''

Subsec. (i)(1)(C), (D). Pub. L. 102–356, § 7, added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (k)(1)(C). Pub. L. 102–356, § 8(a), inserted provisions authorizing appropriations of $310,000,000 for fiscal year 1994, $375,000,000 for fiscal year 1995, and $425,000,000 for fiscal year 1996, and struck out provisions authorizing appropriations of $180,000,000 for fiscal year 1981, $200,000,000 for fiscal year 1982, $220,000,000 for fiscal year 1983, $145,000,000 for fiscal year 1984, $153,000,000 for fiscal year 1985, $162,000,000 for fiscal year 1986, $200,000,000 for fiscal year 1987, $214,000,000 for fiscal year 1988, $238,000,000 for fiscal year 1989, $254,000,000 for fiscal year 1990, and $245,000,000 for fiscal year 1991.

Subsec. (k)(1)(E). Pub. L. 102–356, § 8(b), added subpar. (E).

Subsec. (k)(3)(A)(i)(II). Pub. L. 102–356, § 9, inserted ''or for assistance in the provision of affordable training programs for employees at public broadcast stations'' after ''other than English''.

Subsec. (k)(3)(B)(iii)(V). Pub. L. 102–356, § 10, inserted before period at end of first sentence '', including carriage and viewing information for programs produced or acquired with funds provided pursuant to subclause (I)'' and substituted ''fiscal years 1992, 1993, 1994, and 1995'' for ''fiscal year 1992'' in second sentence.

Subsec. (k)(3)(B)(iii)(VI). Pub. L. 102–356, § 14(b), added subcl. (VI).

Subsec. (k)(6)(B). Pub. L. 102–356, § 11, inserted ''(which the Corporation shall review periodically in consultation with public radio and television licensees or permittees, or their designated representatives)'' after ''eligibility criteria''.

Subsec. (k)(11). Pub. L. 102–356, § 12(a), added par. (11).

Subsec. (*l*)(3)(B)(ii). Pub. L. 102–356, § 13(a), (b)(1), designated existing provisions as subcl. (I), substituted ''biennial'' for ''biannual'', substituted ''or'' for ''and'' after semicolon, and added subcl. (II).

Subsec. (*l*)(3)(B)(iii). Pub. L. 102–356, § 13(b)(2), substituted ''biennially'' for ''biannually''.

Subsec. (*l*)(4). Pub. L. 102–356, § 14(a), added par. (4) and struck out former par. (4) which consisted of subpars. (A) to (C) relating to National Public Radio's system of financial controls and budget and requiring Corporation to report to Congress not later than 15 days after Dec. 8, 1983, on actions taken by National Public Radio with respect to deficits it accumulated before Oct. 1, 1983.

Subsec. (m)(2). Pub. L. 102–356, § 12(b), inserted at end ''Such report shall include a summary of the statistical reports received by the Corporation pursuant to subsection (k)(11), and a comparison of the information contained in those reports with the information submitted by the Corporation in the previous year's annual report.''

1988—Subsec. (a)(6) to (8). Pub. L. 100–626, § 5, added par. (6) and redesignated former pars. (6) and (7) as (7) and (8), respectively.

Subsec. (g)(2)(B)(ii). Pub. L. 100–626, § 6, struck out ''contract or'' after ''respect to any''.

Subsec. (k)(1)(C). Pub. L. 100–626, § 3, substituted ''1990, 1991, 1992, and 1993'' for ''and 1990'' and ''40 percent'' for ''50 percent'', struck out ''and'' after ''fiscal year 1989,'', and inserted '', $245,000,000 for fiscal year 1991, $265,000,000 for fiscal year 1992, and $285,000,000 for fiscal year 1993'' after ''fiscal year 1990''.

Subsec. (k)(3)(A)(i)(I), (II). Pub. L. 100–626, § 7(a)(1), (2), amended subcls. (I) and (II) generally. Prior to amendment, subcls. (I) and (II) read as follows:

''(I) not more than 5 percent of such amounts shall be available for the administrative expenses of the Corporation;

''(II) not less than 5 percent of such amounts shall be available for other expenses incurred by the Corporation, including capital costs relating to telecommunications satellites, the payment of programming royalties and other fees, and the costs of interconnection facilities and operations (as provided in clause (iv)(I)), except that the total amount available for obligation for any fiscal year under this subclause and subclause (I) shall not exceed 10 percent of the amounts appropriated into the Fund available for allocation for such fiscal year;''.

Subsec. (k)(3)(A)(i)(III). Pub. L. 100–626, § 7(a)(3), substituted ''clause (ii)'' for ''clause (ii)(I)''.

Subsec. (k)(3)(A)(ii)(II). Pub. L. 100–626, § 7(b), substituted '', and in accordance with any plan implemented under paragraph (6)(A), for national public'' for ''for public''.

Subsec. (k)(3)(A)(iii). Pub. L. 100–626, § 7(c), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''Of the amounts allocated under clause (i)(IV) for any fiscal year—

''(I) not less than 50 percent of such amounts (as determined under paragraph (6)(A)) shall be available for distribution among the licensees and permittees of public radio stations pursuant to paragraph (6)(B); and

''(II) not more than 50 percent of such amounts (as determined under paragraph (6)(A)) shall be available for distribution under subparagraph (B)(i) for public radio.''

Subsec. (k)(3)(A)(iv)(I). Pub. L. 100–626, § 7(e), substituted ''From the amount provided pursuant to clause (i)(II),'' for ''Subject to the provisions of clause (v),''.

Subsec. (k)(3)(A)(v). Pub. L. 100–626, § 7(d), amended cl. (v) generally. Prior to amendment, cl. (v) read as follows: ''If the expenses incurred by the Corporation under clause (i)(II) for any fiscal year for—

''(I) capital costs relating to telecommunications satellites;

''(II) the payment of programming royalties and other fees; and

''(III) the costs of interconnection facilities and operations (as provided in clause (iv));

exceed 6 percent of the amounts appropriated into the Fund available for allocation for such fiscal year, then 75 percent of such excess costs shall be defrayed by the licensees and permittees of public television stations from amounts available to such licensees and permittees under clause (ii)(I) and 25 percent of such excess costs shall be defrayed by the licensees and permittees of public radio stations from amounts available to such licensees and permittees under clause (iii)(I).''

Subsec. (k)(3)(B)(i). Pub. L. 100–626, § 7(f), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''The Corporation shall utilize the funds allocated pursuant to subparagraph (A)(ii)(II) and subparagraph (A)(iii)(II), and a significant portion of such other funds as may be available to the Corporation, to make grants and contracts for production of public television or radio programs by independent producers and production entities and public telecommunications entities, and for acquisition of such programs by public telecommunications entities. Of the funds utilized pursuant to this clause, a substantial amount shall be reserved for distribution to independent producers and production entities for the production of programs.''

Subsec. (k)(3)(B)(iii). Pub. L. 100–626, § 8, added cl. (iii).

Subsec. (k)(3)(C). Pub. L. 100–626, § 7(g), struck out subpar. (C) which related to limit on expenditure by Corporation in fiscal year 1981 of an amount equal to not more than 5 percent of funds made available by Secretary of the Treasury.

Subsec. (k)(3)(D). Pub. L. 100–626, §7(g), struck out subpar. (D) which related to expenditure by Corporation of 105 percent of amount derived for preceding fiscal year, for activities authorized under subsection (g)(2) of this section, in fiscal years 1982 and 1983.

Subsec. (k)(6)(A). Pub. L. 100–626, §7(h), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''The Corporation, in consultation with public radio stations and with National Public Radio (or any successor organization), shall determine the percentage of funds allocated under subclause (I) and subclause (II) of paragraph (3)(A)(iii) for each fiscal year. The Corporation, in consultation with such organizations, also shall conduct an annual review of the criteria and conditions applicable to such allocations.''

Subsec. (k)(6)(B). Pub. L. 100–626, §7(i), inserted after first sentence ''The Corporation shall assist radio stations to maintain and improve their service where public radio is the only broadcast service available.''

Subsec. (k)(7). Pub. L. 100–626, §7(j), inserted ''(ii)(I) and (iii)(I)'' after ''paragraph (3)(A)''.

Subsec. (k)(10). Pub. L. 100–626, §4(a), added par. (10).

Subsec. (m). Pub. L. 100–626, §9(a), added subsec. (m).

1986—Subsec. (k)(1)(C). Pub. L. 99–272, §5001(c)(1), substituted ''1986, 1987, 1988, 1989, and 1990'' for ''and 1986'', struck out ''and'' after ''fiscal year 1985,'', and inserted '', $200,000,000 for fiscal year 1987, $214,000,000 for fiscal year 1988, $238,000,000 for fiscal year 1989, and $254,000,000 for fiscal year 1990'' before period at end.

Subsec. (k)(3)(A)(i)(II). Pub. L. 99–272, §5001(c)(2), struck out ''research, training, technical assistance, engineering, instructional support, payment of interest on indebtedness,'' after ''Corporation, including''.

Subsec. (k)(8) to (10). Pub. L. 99–272, §5001(c)(3), redesignated paragraphs (9) and (10) as (8) and (9), respectively. Former subsec. (8), which related to refunding to the Corporation of an amount equal to the amount of unrelated business income tax, was struck out.

1983—Subsec. (c)(1). Pub. L. 98–214, §6(a), struck out '', and the President of the Corporation'' after ''advice and consent of the Senate'' and provision directing that the President of the Corporation serve as the Chairman of the Board.

Subsec. (d)(1). Pub. L. 98–214, §6(b)(1), inserted ''elect one of their members to be Chairman and'' after ''Members of the Board shall annually''.

Subsec. (e)(1). Pub. L. 98–214, §6(c), substituted ''No officer of the Corporation, other than the Chairman or a Vice Chairman'' for ''No officer of the Corporation, other than a Vice Chairman''.

Subsec. (k)(1)(C). Pub. L. 98–214, §3(a), substituted '', $145,000,000 for fiscal year 1984, $153,000,000 for fiscal year 1985, and $162,000,000 for fiscal year 1986'' for '', and $130,000,000 for each of the fiscal years 1984, 1985, and 1986''.

Subsec. (k)(10). Pub. L. 98–214, §3(b), inserted provision requiring assurances that no officer or employee of such entity will be loaned money by that entity on an interest-free basis.

Subsec. (*l*)(4). Pub. L. 98–214, §5, added par. (4).

1981—Subsec. (a)(5). Pub. L. 97–35, §1224, inserted provisions respecting alternative telecommunications services.

Subsec. (c). Pub. L. 97–35, §1225(a)(1), amended subsec. (c) generally, substituting provisions respecting appointment, selection, service, etc., of the ten members of the Board of Directors, for provisions respecting appointment, selection, service, etc., of the 15 members of the Board of Directors.

Subsec. (d). Pub. L. 97–35, §1225(b), amended subsec. (d) generally, substituting in par. (1) provisions respecting election, status, compensation, etc., of Vice Chairman, for provisions respecting election, status, compensation, etc., of Chairman and Vice Chairman.

Subsec. (e)(1). Pub. L. 97–35, §1225(c), inserted reference to services rendered by a Vice Chairman, and struck out reference to the Chairman.

Subsec. (g). Pub. L. 97–35, §1234(a), struck out par. (5) relating to study and report concerning manner of including personal services of volunteers in determining non-Federal financial support, and redesignated par. (6) as (5).

Subsec. (i)(1). Pub. L. 97–35, §1226, substituted ''May'' for ''February''.

Subsec. (k)(1)(C). Pub. L. 97–35, §1227(a), extended authorization of appropriations through 1986.

Subsec. (k)(2)(B). Pub. L. 97–35, §1227(b), substituted fiscal year basis for disbursement for quarterly basis.

Subsec. (k)(3)(A). Pub. L. 97–35, §1227(c)(1), amended subpar. (A) generally, substituting provisions mandating the establishment by the Corporation of an annual budget for use in allocating amounts from the Fund, setting out the allocation and distribution formulae, and providing for interconnecting facilities and operations costs for making public television and radio programs available to public broadcast stations for former provisions which had directed the Corporation to reserve for distribution among the licensees and permittees of public television and radio stations an amount equal to (i) not less than 40 percent of the funds disbursed by the Corporation from the Fund under this section in each fiscal year in which the amount disbursed was $88,000,000 or more, but less than $121,000,000; (ii) not less than 45 percent of such funds in each fiscal year in which the amount disbursed was $121,000,000 or more, but less than $160,000,000; and (iii) not less than 50 percent of such funds in each fiscal year in which the amount disbursed was $160,000,000 or more.

Subsec. (k)(3)(B)(i). Pub. L. 97–35, §1227(c)(2), amended cl. (i) generally, substituting ''The Corporation shall utilize the funds allocated pursuant to subparagraph (A)(ii)(II) and subparagraph (A)(iii)(II), and a significant portion of such other funds as may be available to the Corporation, to make grants and contracts for production of public television or radio programs by independent producers and production entities and public telecommunications entities, and for acquisition of such programs by public telecommunications entities. Of the funds utilized pursuant to this clause, a substantial amount shall be reserved for distribution to independent producers and production entities for the production of programs'' for ''The Corporation shall establish an annual budget according to which it shall made grants and contracts for production of public television or radio programs by independent producers and production entities and public telecommunications entities, for acquisition of such programs by public telecommunications entities, for interconnection facilities and operations, for distribution of funds among public telecommunications entities, and for engineering and program-related research. A significant portion of funds available under the budget established by the Corporation under this subparagraph shall be used for funding the production of television and radio programs. Of such portion, a substantial amount shall be reserved for distribution to independent producers and production entities for the production of programs''.

Subsec. (k)(3)(B)(ii). Pub. L. 97–35, §1227(c)(3)(A), amended cl. (ii) generally, substituting ''available for distribution under clause (i)'' for ''contained in the annual budget established by the Corporation under clause (i)''.

Subsec. (k)(3)(B)(iii), (iv). Pub. L. 97–35, §1227(c)(3)(B), struck out cls. (iii) and (iv) which had provided, respectively, that ''During each of the fiscal years 1981, 1982, and 1983, the annual budget established by the Corporation under clause (i) shall consist of not less than 95 percent of the funds made available by the Secretary of the Treasury to the Corporation pursuant to paragraph (2)(A)'' and that ''In determining the amount of funds which shall be made available for radio programming and operations under this subparagraph, the Corporation shall take into account the increased financial needs relating to radio programming and operations resulting from the expansion and development of noncommercial radio broadcast station facilities through the use of funds made available pursuant to section 393(d) of this title''.

Subsec. (k)(6)(A). Pub. L. 97–35, §1227(d)(1), amended subpar. (A) generally, substituting ''The Corporation,

in consultation with public radio stations and with National Public Radio (or any successor organization), shall determine the percentage of funds allocated under subclause (I) and subclause (II) of paragraph (3)(A)(iii) for each fiscal year. The Corporation, in consultation with such organizations, also shall conduct an annual review of the criteria and conditions applicable to such allocations'' for ''The Corporation, in consultation with public television and radio licensees, shall review annually the percentage of funds reserved pursuant to paragraph (3)(A), and the criteria and conditions regarding the division and distribution of such funds among public television and radio stations''.

Subsec. (k)(6)(B). Pub. L. 97–35, § 1227(d)(2), amended subpar. (B) generally, striking out provision that the funds reserved for public broadcast stations pursuant to paragraph (3)(A) be divided into two portions, one to be distributed among radio stations and one to be distributed among television stations in the provisions preceding cl. (i) and inserting ''under paragraph (3)(A)(ii)(I)'' and ''under paragraph (3)(A)(iii)(I)''.

Subsec. (k)(7). Pub. L. 97–35, § 1227(e), amended par. (7) generally, substituting provisions relating to use of funds distributed for provisions limiting amount of funds distributed.

Subsec. (k)(8). Pub. L. 97–35, § 1227(f), amended par. (8) generally, substituting provisions relating to refunding funds to the Corporation for provisions relating to the use of funds distributed.

Subsec. (k)(9). Pub. L. 97–35, § 1227(g), in subpar. (A) substituted ''to assure that (i) its advisory board meets at regular intervals; (ii) the members of its advisory board regularly attend the meetings of the advisory board; and (iii) the composition of its advisory board are reasonably representative of the diverse needs'' for ''to assure that the composition of its advisory board reasonably reflects the diverse needs'' and in subpars. (A), (D), and (E) inserted provisions respecting stations owned and operated by a State, a political or special purpose subdivision of a State or a public agency.

Subsec. (*l*). Pub. L. 97–35, § 1228, inserted provisions in par. (1)(A) respecting shared auditing arrangements, and substituted in par. (3)(B)(ii) and (iii) provisions relating to biannual audits and accompanying report, for provisions relating to annual audits and accompanying report.

1978—Subsec. (a). Pub. L. 95–567, § 301, substituted ''public'' for ''noncommercial educational'' and ''telecommunications'' for ''radio and television'' wherever appearing and inserted provisions relating to the growth and development of nonbroadcast telecommunications technologies for the delivery of public telecommunications services.

Subsec. (d)(1). Pub. L. 95–567, § 302, struck out provision authorizing the President to designate one of the members first appointed to the Board as Chairman.

Subsec. (e)(1). Pub. L. 95–567, § 303(a), inserted provision which regulated the rate of compensation an officer or employee of the Corporation could receive.

Subsec. (g). Pub. L. 95–567, § 304, amended subsec. (g) generally, substituting ''public telecommunications'' for ''educational broadcasting'', ''noncommercial educational television or radio'', or ''program production'' wherever appearing, authorizing panel of outside experts to evaluate programs, authorizing Corporation to use its own judgment when dealing with programming, and striking out provision dealing with the creation of new noncommercial educational broadcast stations.

Subsec. (h). Pub. L. 95–567, § 305, designated existing provisions as par. (1) and added par. (2).

Subsec. (i). Pub. L. 95–567, § 306, revised and restructured subsection and, as so restructured, substituted ''September 30'' for ''June 30'', ''15th day of February'' for ''31st day of December'', and inserted provisions comprising pars. (1)(B) and (C).

Subsec. (k). Pub. L. 95–567, § 307(a), completely revised and restructured subsec. (k) and, in so doing, inserted provisions establishing an annual budget, authorizing funds for the fiscal years 1978 to 1983, requiring funds be disbursed on a quarterly basis, requiring that all meetings of entities receiving funds be open to the public, and that the financial records of such entities be available for public examination.

Subsec. (*l*)(3). Pub. L. 95–567, § 308, completely revised and restructured par. (3) and, in so doing, inserted provisions requiring an annual audit, furnishing a copy of the audit report, and use of uniform accounting principals.

1975—Subsec. (g)(2)(H). Pub. L. 94–192, § 3, inserted ''and the use of nonbroadcast communications technologies for the dissemination of educational television or radio programs'' after ''broadcasting''.

Subsec. (i). Pub. L. 94–192, § 4, directed that officers and directors be available to testify before Congressional committees concerning the annual fiscal report, audit report, or any other matter.

Subsec. (k)(3) to (7). Pub. L. 94–192, § 2, added pars. (3) to (7).

1973—Subsec. (k)(1). Pub. L. 93–84, § 1(a), substituted authorization of appropriation of $50,000,000 and $60,000,000 for the fiscal years ending June 30, 1974 and June 30, 1975, respectively, for authorization of appropriation of $40,000,000 for the fiscal year ending June 30, 1973.

Subsec. (k)(2). Pub. L. 93–84, § 1(b), substituted ''1975'' for ''1973''.

1972—Subsec. (k)(1). Pub. L. 92–411 struck out authorization of appropriation for fiscal years ending June 30, 1969, June 30, 1970, and the two succeeding fiscal years and provided for an appropriation of $40,000 for fiscal year ending June 30, 1973.

Subsec. (k)(2). Pub. L. 92–411 substituted ''June 30, 1973'' for ''June 30, 1972''.

1970—Subsec. (k). Pub. L. 91–437 authorized appropriations of $20,000,000 for the fiscal year ending June 30, 1970, and $30,000,000 for each of the two succeeding fiscal years, and further authorized appropriation of amounts equal to the amount of total grants, donations, bequests, or other contributions from non-Federal sources received by the Corporation during each fiscal year with a maximum limit of $5,000,000 for any fiscal year.

1969—Subsec. (k)(1). Pub. L. 91–97, § 3(a), inserted ''and for the next fiscal year the sum of $20,000,000'' after ''the sum of $9,000,000''.

Subsec. (k)(2). Pub. L. 91–97, § 3(b), inserted ''or the next fiscal year'' after ''the fiscal year ending June 30, 1969,''.

1968—Subsec. (k). Pub. L. 90–294 substituted ''1969'' for ''1968''.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, § 1000(a)(9) [title V, § 5002(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–593, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to funds distributed on or after 6 months after the date of the enactment of this Act [Nov. 29, 1999].''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 22 of Pub. L. 102–356 provided that: ''Section 5(a) [amending this section] shall take effect on January 31, 1996. All other provisions of this Act [amending this section and sections 303b, 391, and 393 of this title, enacting provisions set out as notes under this section and sections 303 and 609 of this title, and repealing provisions set out as a note under section 303 of this title] are effective on its date of enactment [Aug. 26, 1992].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 6 and 7(d) of Pub. L. 100–626 effective Oct. 1, 1989, see section 12 of Pub. L. 100–626, set out as a note under section 391 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 1227(c)(4) of Pub. L. 97–35 provided that: ''The amendments made in this subsection [amending this section] shall apply to fiscal years beginning after September 30, 1983.''

Section 1227(d)(3) of Pub. L. 97–35 provided that: ''The amendments made in this subsection [amending this section] shall apply to fiscal years beginning after September 30, 1983.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–567 effective Nov. 2, 1978, see section 403 of Pub. L. 95–567, set out as a note under section 390 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which reports required under subsecs. (i), (k)(3)(B)(iii)(V)(1st sentence), and (m) of this section are listed as the 10th through 13th items on page 199), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

TRANSITION RULES RELATING TO TERM OF OFFICE OF BOARD OF DIRECTORS OF CORPORATION FOR PUBLIC BROADCASTING

Section 5(c) of Pub. L. 102–356 provided that:

''(1) With respect to the three offices whose terms are prescribed by law to expire on March 26, 1992, the term for each such office immediately after that date shall expire on January 31, 1998.

''(2) With respect to the two offices whose terms are prescribed by law to expire on March 1, 1994, the term for each of such offices immediately after that date shall expire on January 31, 2000.

''(3) With respect to the five offices whose terms are prescribed by law to expire on March 26, 1996—

''(A) one such office, as selected by the President, shall be abolished on January 31, 1996;

''(B) the term immediately after March 26, 1996, for another such office, as designated by the President, shall expire on January 31, 2000; and

''(C) the term for each of the remaining three such offices immediately after March 26, 1996, shall expire on January 31, 2002.

''(4) As used in this subsection, the term 'office' means an office as a member of the Board of Directors of the Corporation for Public Broadcasting.''

OBJECTIVITY AND BALANCE POLICY, PROCEDURES, AND REPORT

Section 19 of Pub. L. 102–356 provided that: ''Pursuant to the existing responsibility of the Corporation for Public Broadcasting under section 396(g)(1)(A) of the Communications Act of 1934 (47 U.S.C. 396(g)(1)(A)) to facilitate the full development of public telecommunications in which programs of high quality, diversity, creativity, excellence, and innovation, which are obtained from diverse sources, will be made available to public telecommunications entities, with strict adherence to objectivity and balance in all programs or series of programs of a controversial nature, the Board of Directors of the Corporation shall—

''(1) review the Corporation's existing efforts to meet its responsibility under section 396(g)(1)(A);

''(2) after soliciting the views of the public, establish a comprehensive policy and set of procedures to—

''(A) provide reasonable opportunity for members of the public to present comments to the Board regarding the quality, diversity, creativity, excellence, innovation, objectivity, and balance of public broadcasting services, including all public broadcasting programming of a controversial nature, as well as any needs not met by those services;

''(B) review, on a regular basis, national public broadcasting programming for quality, diversity, creativity, excellence, innovation, objectivity, and balance, as well as for any needs not met by such programming;

''(C) on the basis of information received through such comment and review, take such steps in awarding programming grants pursuant to clauses (ii)(II), (iii)(II), and (iii)(III) of section 396(k)(3)(A) of the Communications Act of 1934 (47 U.S.C. 396(k)(3)(A)) that it finds necessary to meet the Corporation's responsibility under section 396(g)(1)(A), including facilitating objectivity and balance in programming of a controversial nature; and

''(D) disseminate among public broadcasting entities information about its efforts to address concerns about objectivity and balance relating to programming of a controversial nature so that such entities can utilize the Corporation's experience in addressing such concerns within their own operations; and

''(3) starting in 1993, by January 31 of each year, prepare and submit to the President for transmittal to the Congress a report summarizing its efforts pursuant to paragraphs (1) and (2).''

CONSUMER INFORMATION; DISCLOSURE OF FUNDING

Section 20 of Pub. L. 102–356 provided that: ''Prior to the expiration of the 90-day period following the date of the enactment of this Act [Aug. 26, 1992], the Corporation for Public Broadcasting, in consultation with representatives of public broadcasting entities, shall develop guidelines to assure that program credits for public television programs that receive production funding directly from the Corporation for Public Broadcasting adequately disclose that all or a portion of the cost of producing such program was paid for by funding from the Corporation for Public Broadcasting, and that indicates in some manner that the Corporation for Public Broadcasting is partially funded from Federal tax revenues.''

INDEPENDENT PRODUCTION SERVICE FUNDING

Section 21 of Pub. L. 102–356 provided that: ''In making available funding pursuant to authorizations under this Act [see Short Title of 1992 Amendment note set out under section 609 of this title], any independent production service established under section 396(k) of the Communications Act of 1934 (47 U.S.C. 396(k)) shall, to the maximum extent practicable and consistent with the provisions of the Communications Act of 1934 [47 U.S.C. 151 et seq.], provide such funding to eligible recipients and projects representing the widest possible geographic distribution, with the objective of providing funding to eligible recipients and projects in each State from which qualified proposals are received over the course of such authorizations.''

SATELLITE REPLACEMENT NEEDS; REPORT TO CONGRESS

Section 4(b) of Pub. L. 100–626 directed Corporation for Public Broadcasting, on behalf of the public radio and public television licensees and permittees (or their designated representatives), to submit to Congress on or before Mar. 1, 1990, a report by such licensees or permittees (or their representatives) detailing the satellite replacement needs of public radio and public television, the difference in cost between leasing satellite transponder capacity and buying such capacity, and the availability of private sector rather than Federal financing.

CONTINUATION OF INDIVIDUALS SERVING ON THE BOARD OF DIRECTORS; REDUCTION IN MEMBERSHIP OF BOARD; POLITICAL AFFILIATION OF BOARD APPOINTEES; ABOLITION OF FIVE OFFICES ON MARCH 1, 1984

Section 1225(a)(2) of Pub. L. 97–35, as amended by Pub. L. 97–410, §4, Jan. 3, 1983, 96 Stat. 2044, provided that:

''(A) The amendment made in paragraph (1) [amending this section] shall not affect the continuation in office of any individual serving on the Board of Directors of the Corporation for Public Broadcasting on the date of the enactment of this Act [Aug. 13, 1981].

''(B) Notwithstanding the provisions of subsection (c) of section 396 of the Communications Act of 1934 [subsec. (c) of this section], in the case of the offices of director the terms of which expired March 1982, persons

appointed to fill two of such vacancies existing as of December 13, 1982, shall be appointed for terms which shall expire on March 1, 1984 and shall not be respresentative [sic] of the political party having a majority of the directors of the Board on December 13, 1982. Persons appointed for a term beginning March 1, 1984, to fill the vacancies occurring in such offices the terms of which, by reason of the preceding sentence, expire on March 1, 1984, shall not be filled by persons representing the political party having a majority of the directors of the Board on March 1, 1984. Persons appointed on or after March 1, 1984, to fill vacancies in the two such offices shall be appointed for terms of five years. On March 1, 1984, there are abolished those five offices of director the terms of which, without application of the preceding provisions of this paragraph, expire on such date. In administering the provisions of this paragraph a director is a minority member of the Board if he is not a member of the political party to which the majority of the directors of the Board are members.''

TEMPORARY COMMISSION ON ALTERNATIVE FINANCING FOR PUBLIC TELECOMMUNICATIONS; COMPOSITION; PERSONNEL; FUNCTIONS; REPORT; DEMONSTRATION PROGRAMS FOR DETERMINING FEASIBILITY OF PERMITTING PUBLIC TELEVISION STATIONS AND PUBLIC RADIO STATION LICENSEES TO BROADCAST ADVERTISING ANNOUNCEMENTS

Sections 1232 and 1233 of Pub. L. 97–35 established a Temporary Commission on Alternative Financing for Public Telecommunications for the purpose of conducting a study, to be submitted to Congress not later than July 1, 1982, regarding options which may be available to public telecommunications entities, the Public Broadcasting Service, and National Public Radio with respect to development of sources of revenue in addition to sources available to such entities on Aug. 13, 1981, further provided for membership of the Temporary Commission as well as other administrative matters, further authorized the Temporary Commission to establish a demonstration program to allow broadcast advertising announcements on public radio and television stations, which would run from Jan. 1, 1982, to June 30, 1983, further directed the Temporary Commission to submit to Congress, not later than Oct. 1, 1983, a report on the demonstration program, and further provided for the termination of the Temporary Commission 90 days after the submission of this report to Congress.

COMPENSATION OF OFFICERS AND EMPLOYEES

Section 303(b) of Pub. L. 95–567 provided that: ''The amendment made by subsection (a) [amending this section] shall not be construed to reduce the annual rate of pay of any officer or employee of the Corporation for Public Broadcasting in any case in which (1) such officer or employee was appointed or named to any position in the Corporation before the date of the enactment of this Act [Nov. 2, 1978]; and (2) the annual rate of pay for such position, as in effect on such date of enactment, exceeds the maximum rate of pay established in section 396(e)(1) of the Communications Act of 1934 [subsec. (e)(1) of this section], as amended by subsection (a).''

Section 307(b) of Pub. L. 95–567 provided that: ''Section 396(k)(10) of the Communications Act of 1934 [subsec. (k)(10) of this section], as added by subsection (a), shall not be construed to reduce the annual rate of pay of any officer or employee of the Public Broadcasting Service or National Public Radio (or any successor organization) in any case in which (1) such officer or employee was appointed or named to any position in the Public Broadcasting Service or National Public Radio (or any successor organization) before the date of the enactment of this Act [Nov. 2, 1978]; and (2) the annual rate of pay for such position, as in effect on such date of enactment, exceeds the maximum rate of pay established in section 396(k)(10) of the Communications Act of 1934 [subsec. (k)(10) of this section], as added by subsection (a).''

SUBPART E—GENERAL PROVISIONS

§ 397. Definitions

For the purposes of this part—

(1) The term ''construction'' (as applied to public telecommunications facilities) means acquisition (including acquisition by lease), installation, and modernization of public telecommunications facilities and planning and preparatory steps incidental to any such acquisition, installation, or modernization.

(2) The term ''Corporation'' means the Corporation for Public Broadcasting authorized to be established in subpart D.

(3) The term ''interconnection'' means the use of microwave equipment, boosters, translators, repeaters, communication space satellites, or other apparatus or equipment for the transmission and distribution of television or radio programs to public telecommunications entities.

(4) The term ''interconnection system'' means any system of interconnection facilities used for the distribution of programs to public telecommunications entities.

(5) The term ''meeting'' means the deliberations of at least the number of members of a governing or advisory body, or any committee thereof, required to take action on behalf of such body or committee where such deliberations determine or result in the joint conduct or disposition of the governing or advisory body's business, or the committee's business, as the case may be, but only to the extent that such deliberations relate to public broadcasting.

(6) The terms ''noncommercial educational broadcast station'' and ''public broadcast station'' mean a television or radio broadcast station which—

(A) under the rules and regulations of the Commission in effect on November 2, 1978, is eligible to be licensed by the Commission as a noncommercial educational radio or television broadcast station and which is owned and operated by a public agency or nonprofit private foundation, corporation, or association; or

(B) is owned and operated by a municipality and which transmits only noncommercial programs for education purposes.

(7) The term ''noncommercial telecommunications entity'' means any enterprise which—

(A) is owned and operated by a State, a political or special purpose subdivision of a State, a public agency, or a nonprofit private foundation, corporation, or association; and

(B) has been organized primarily for the purpose of disseminating audio or video noncommercial educational and cultural programs to the public by means other than a primary television or radio broadcast station, including, but not limited to, coaxial cable, optical fiber, broadcast translators, cassettes, discs, microwave, or laser transmission through the atmosphere.

(8) The term ''nonprofit'' (as applied to any foundation, corporation, or association) means a foundation, corporation, or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(9) The term ''non-Federal financial support'' means the total value of cash and the fair market value of property and services (including, to the extent provided in the second sentence of this paragraph, the personal services of volunteers) received—

(A) as gifts, grants, bequests, donations, or other contributions for the construction or operation of noncommercial educational broadcast stations, or for the production, acquisition, distribution, or dissemination of educational television or radio programs, and related activities, from any source other than (i) the United States or any agency or instrumentality of the United States; or (ii) any public broadcasting entity; or

(B) as gifts, grants, donations, contributions, or payments from any State, or any educational institution, for the construction or operation of noncommercial educational broadcast stations or for the production, acquisition, distribution, or dissemination of educational television or radio programs, or payments in exchange for services or materials with respect to the provision of educational or instructional television or radio programs.

Such term includes the fair market value of personal services of volunteers, as computed using the valuation standards established by the Corporation, but only, with respect to such an entity in a fiscal year, to the extent that the value of the services does not exceed 5 percent of the total non-Federal financial support of the entity in such fiscal year.

(10) The term ''preoperational expenses'' means all nonconstruction costs incurred by new telecommunications entities before the date on which they begin providing service to the public, and all nonconstruction costs associated with expansion of existing entities before the date on which such expanded capacity is activated, except that such expenses shall not include any portion of the salaries of any personnel employed by an operating public telecommunications entity.

(11) The term ''public broadcasting entity'' means the Corporation, any licensee or permittee of a public broadcast station, or any nonprofit institution engaged primarily in the production, acquisition, distribution, or dissemination of educational and cultural television or radio programs.

(12) The term ''public telecommunications entity'' means any enterprise which—

(A) is a public broadcast station or a noncommercial telecommunications entity; and

(B) disseminates public telecommunications services to the public.

(13) The term ''public telecommunications facilities'' means apparatus necessary for production, interconnection, captioning, broadcast, or other distribution of programming, including, but not limited to, studio equipment, cameras, microphones, audio and video storage or reproduction equipment, or both, signal processors and switchers, towers, antennas, transmitters, translators, microwave equipment, mobile equipment, satellite communications equipment, instructional television fixed service equipment, subsidiary communications authorization transmitting and receiving equipment, cable television equipment, video and audio cassettes and discs, optical fiber communications equipment, and other means of transmitting, emitting, storing, and receiving images and sounds, or intelligence, except that such term does not include the buildings to house such apparatus (other than small equipment shelters which are part of satellite earth stations, translators, microwave interconnection facilities, and similar facilities).

(14) The term ''public telecommunications services'' means noncommercial educational and cultural radio and television programs, and related noncommercial instructional or informational material that may be transmitted by means of electronic communications.

(15) The term ''Secretary'' means the Secretary of Commerce when such term is used in subpart A and subpart B, and the Secretary of Health and Human Services when such term is used in subpart C, subpart D, and this subpart.

(16) The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(17) The term ''system of public telecommunications entities'' means any combination of public telecommunications entities acting cooperatively to produce, acquire, or distribute programs, or to undertake related activities.

(June 19, 1934, ch. 652, title III, §397, formerly §394, as added Pub. L. 87–447, May 1, 1962, 76 Stat. 67; renumbered §397 and amended Pub. L. 90–129, title I, §§103(f), 105, 106, title II, §201(3), (6), Nov. 7, 1967, 81 Stat. 366–368; Pub. L. 94–192, §5, Dec. 31, 1975, 89 Stat. 1100; Pub. L. 94–309, §6, June 5, 1976, 90 Stat. 684; Pub. L. 95–567, title IV, §401, Nov. 2, 1978, 92 Stat. 2422; Pub. L. 97–35, title XII, §1234(b), Aug. 13, 1981, 95 Stat. 736; Pub. L. 101–437, title II, §203(b), Oct. 17, 1990, 104 Stat. 1000; Pub. L. 104–316, title I, §126(a), Oct. 19, 1996, 110 Stat. 3840.)

REFERENCES IN TEXT

This part, referred to in provision preceding par. (1), commences with section 390 of this title.

PRIOR PROVISIONS

A prior section 397, act June 19, 1934, ch. 652, title III, §397, as added May 1, 1962, Pub. L. 87–447, 76 Stat. 67, was renumbered section 398 by Pub. L. 90–129, and is classified to section 398 of this title.

AMENDMENTS

1996—Par. (9). Pub. L. 104–208, in closing provisions, struck out ''and approved by the Comptroller General pursuant to section 396(g)(5) of this title'' after ''by the Corporation'' and ''with respect to such services provided to public telecommunications entities after such standards are approved by the Comptroller General and only'' before '', with respect to such an entity''.

1990—Par. (2). Pub. L. 101–437, §203(b)(1), substituted ''subpart D'' for ''subpart C''.

Par. (15). Pub. L. 101–437, §203(b)(2), inserted ''and subpart B'' after ''subpart A'' and substituted ''subpart C, subpart D'' for ''subpart B, subpart C''.

1981—Par. (15). Pub. L. 97–35 substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

1978—Pub. L. 95–567, revised definition of ''construction'', ''corporation'', ''interconnection'', ''noncommer-

cial educational broadcast station'', ''non-Federal financial support'', ''Secretary'' and ''State'', inserted definitions of ''meeting'', ''interconnection system'', ''noncommercial telecommunications entity'', ''preoperational expenses'', ''public telecommunications entity'', ''public telecommunications facilities'', and ''public telecommunications services'', and deleted definitions of ''educational television or radio programs'' and ''State educational television agency'' in order to make such definitions consistent with the chapter as amended.

1976—Par. (2). Pub. L. 94–309 substituted ''transmission and reception apparatus'' for ''transmission apparatus'' and ''closed circuit television or radio programs'' for ''closed circuit television programs'' and inserted in parenthetical text reference to non-video recording equipment, radio subcarrier receivers and satellite transceivers.

1975—Pars. (10), (11). Pub. L. 94–192 added pars. (10) and (11).

1967—Par. (1). Pub. L. 90–129, § 105(a), included the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands in definition of ''State''.

Par. (2). Pub. L. 90–129, §§ 103(f)(1), 106, provided for application of term ''construction'' to educational radio broadcasting facilities and defined such term to include acquisition and installation of transmission apparatus necessary for radio broadcasting, and included costs of planning, respectively.

Par. (4). Pub. L. 90–129, §§ 103(f)(2), 105(b), substituted ''The terms 'State educational television agency' and 'State educational radio agency' mean, with respect to television broadcasting and radio broadcasting, respectively,'' for ''The term 'State educational television agency' means'' and ''such broadcasting'' for ''educational television'' in cls. (A) and (B), and defined ''Governor'' to include the High Commissioner of the Trust Territory of the Pacific Islands, respectively.

Pars. (6) to (9). Pub. L. 90–129, § 201(6), added pars. (6) to (9).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–567 effective Nov. 2, 1978, see section 403 of Pub. L. 95–567, set out as a note under section 390 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 398. Federal interference or control

(a) Prohibition

Nothing contained in this part shall be deemed (1) to amend any other provision of, or requirement under, this chapter; or (2) except to the extent authorized in subsection (b) of this section, to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over public telecommunications, or over the Corporation or any of its grantees or contractors, or over the charter or bylaws of the Corporation, or over the curriculum, program of instruction, or personnel of any educational institution, school system, or public telecommunications entity.

(b) Equal opportunity employment

(1) Equal opportunity in employment shall be afforded to all persons by the Public Broadcasting Service and National Public Radio (or any successor organization) and by all public telecommunications entities receiving funds pursuant to subpart C[1] (hereinafter in this subsection referred to as ''recipients''), in accordance with the equal employment opportunity regulations of the Commission, and no person shall be subjected to discrimination in employment by any recipient on the grounds of race, color, religion, national origin, or sex.

(2)(A) The Secretary is authorized and directed to enforce this subsection and to prescribe such rules and regulations as may be necessary to carry out the functions of the Secretary under this subsection.

(B) The Secretary shall provide for close coordination with the Commission in the administration of the responsibilities of the Secretary under this subsection which are of interest to or affect the functions of the Commission so that, to the maximum extent possible consistent with the enforcement responsibilities of each, the reporting requirements of public telecommunications entities shall be uniformly based upon consistent definitions and categories of information.

(3)(A) The Corporation shall incorporate into each grant agreement or contract with any recipient entered into on or after the effective date of the rules and regulations prescribed by the Secretary pursuant to paragraph (2)(A), a statement indicating that, as a material part of the terms and conditions of the grant agreement or contract, the recipient will comply with the provisions of paragraph (1) and the rules and regulations prescribed pursuant to paragraph (2)(A). Any person which desires to be a recipient (within the meaning of paragraph (1)) of funds under subpart C[1] shall, before receiving any such funds, provide to the Corporation any information which the Corporation may require to satisfy itself that such person is affording equal opportunity in employment in accordance with the requirements of this subsection. Determinations made by the Corporation in accordance with the preceding sentence shall be based upon guidelines relating to equal opportunity in employment which shall be established by rule by the Secretary.

(B) If the Corporation is not satisfied that any such person is affording equal opportunity in employment in accordance with the requirements of this subsection, the Corporation shall notify the Secretary, and the Secretary shall review the matter and make a final determination regarding whether such person is affording equal opportunity in employment. In any case in which the Secretary conducts a review under the preceding sentence, the Corporation shall make funds available to the person involved pursuant to the grant application of such person (if the Corporation would have approved such application but for the finding of the Corporation under this paragraph) pending a final determination of the Secretary upon completion of such review. The Corporation shall monitor the equal employment opportunity practices of each recipient throughout the duration of the grant or contract.

(C) The provisions of subparagraph (A) and subparagraph (B) shall take effect on the effective date of the rules and regulations prescribed by the Secretary pursuant to paragraph (2)(A).

(4) Based upon its responsibilities under paragraph (3), the Corporation shall provide an an-

[1] See References in Text note below.

nual report for the preceding fiscal year ending September 30 to the Secretary on or before the 15th day of February of each year. The report shall contain information in the form required by the Secretary. The Corporation shall submit a summary of such report to the President and the Congress as part of the report required in section 396(i) of this title. The Corporation shall provide other information in the form which the Secretary may require in order to carry out the functions of the Secretary under this subsection.

(5) Whenever the Secretary makes a final determination, pursuant to the rules and regulations which the Secretary shall prescribe, that a recipient is not in compliance with paragraph (1), the Secretary shall, within 10 days after such determination, notify the recipient in writing of such determination and request the recipient to secure compliance. Unless the recipient within 120 days after receipt of such written notice—

(A) demonstrates to the Secretary that the violation has been corrected; or

(B) enters into a compliance agreement approved by the Secretary;

the Secretary shall direct the Corporation to reduce or suspend any further payments of funds under this part to the recipient and the Corporation shall comply with such directive. Resumption of payments shall take place only when the Secretary certifies to the Corporation that the recipient has entered into a compliance agreement approved by the Secretary. A recipient whose funds have been reduced or suspended under this paragraph may apply at any time to the Secretary for such certification.

(c) Control over content or distribution of programs

Nothing in this section shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the content or distribution of public telecommunications programs and services, or over the curriculum or program of instruction of any educational institution or school system.

(June 19, 1934, ch. 652, title III, § 398, formerly § 397, as added Pub. L. 87–447, May 1, 1962, 76 Stat. 67; renumbered § 398 and amended Pub. L. 90–129, title I, § 103(g), title II, § 201(3), (5), Nov. 7, 1967, 81 Stat. 367, 368; Pub. L. 95–567, title III, § 309, Nov. 2, 1978, 92 Stat. 2420; Pub. L. 100–626, § 9(b), Nov. 7, 1988, 102 Stat. 3211.)

REFERENCES IN TEXT

This part, referred to in subsecs. (a) and (b)(5), commences with section 390 of this title.

Subpart C, referred to in subsec. (b)(1), (3)(A), was redesignated subpart D by Pub. L. 101–437, title II, § 203(a)(2), Oct. 17, 1990, 104 Stat. 998.

AMENDMENTS

1988—Subsec. (b)(1). Pub. L. 100–626, § 9(b), inserted ''in accordance with the equal employment opportunity regulations of the Commission,'' before ''and no person''.

1978—Pub. L. 95–567 designated existing provisions as subsec. (a), substituted ''public telecommunications entity'' and ''public telecommunications'' for ''educational broadcasting station or system'' and ''educational television or radio broadcasting'', respectively, and added subsecs. (b) and (c).

1967—Pub. L. 90–129, §§ 103(g), 201(5), inserted ''or radio'' and '', or over the Corporation or any of its grantees or contractors, or over the charter or bylaws of the Corporation,'' before and after ''broadcasting'', where first appearing, respectively.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–567 effective Nov. 2, 1978, see section 403 of Pub. L. 95–567, set out as a note under section 390 of this title.

§ 399. Support of political candidates prohibited

No noncommercial educational broadcasting station may support or oppose any candidate for political office.

(June 19, 1934, ch. 652, title III, § 399, as added Pub. L. 90–129, title II, § 201(8), Nov. 7, 1967, 81 Stat. 368; amended Pub. L. 93–84, § 2, Aug. 6, 1973, 87 Stat. 219; Pub. L. 94–309, § 7, June 5, 1976, 90 Stat. 685; Pub. L. 97–35, title XII, § 1229, Aug. 13, 1981, 95 Stat. 730; Pub. L. 100–626, § 10, Nov. 7, 1988, 102 Stat. 3211.)

AMENDMENTS

1988—Pub. L. 100–626, in section catchline, substituted ''Support of'' for ''Editorializing and support of'', and in text, struck out provisions which prohibited editorializing by noncommercial educational broadcasting station which receives grant from Corporation under subpart C of this part.

1981—Pub. L. 97–35 revised subsec. (a) into existing provisions and, as so revised, added requirement respecting grant under subpart C of this part, and struck out subsec. (b), which related to program recording of broadcasts where issues of public importance are discussed.

1976—Subsec. (b)(5). Pub. L. 94–309 added par. (5).

1973—Pub. L. 93–84 designated existing provisions as subsec. (a) and added subsec. (b).

§ 399a. Use of business or institutional logograms

(a) "Business or institutional logogram" defined

For purposes of this section, the term ''business or institutional logogram'' means any aural or visual letters or words, or any symbol or sign, which is used for the exclusive purpose of identifying any corporation, company, or other organization, and which is not used for the purpose of promoting the products, services, or facilities of such corporation, company, or other organization.

(b) Permitted uses

Each public television station and each public radio station shall be authorized to broadcast announcements which include the use of any business or institutional logogram and which include a reference to the location of the corporation, company, or other organization involved, except that such announcements may not interrupt regular programming.

(c) Authority of Commission not limited

The provisions of this section shall not be construed to limit the authority of the Commission to prescribe regulations relating to the manner in which logograms may be used to identify corporations, companies, or other organizations.

(June 19, 1934, ch. 652, title III, § 399A, as added Pub. L. 97–35, title XII, § 1230, Aug. 13, 1981, 95 Stat. 730.)

§ 399b. Offering of certain services, facilities, or products by public broadcast station

(a) "Advertisement" defined

For purposes of this section, the term ''advertisement'' means any message or other programming material which is broadcast or otherwise transmitted in exchange for any remuneration, and which is intended—

(1) to promote any service, facility, or product offered by any person who is engaged in such offering for profit;

(2) to express the views of any person with respect to any matter of public importance or interest; or

(3) to support or oppose any candidate for political office.

(b) Offering of services, facilities, or products permitted; advertisements prohibited

(1) Except as provided in paragraph (2), each public broadcast station shall be authorized to engage in the offering of services, facilities, or products in exchange for remuneration.

(2) No public broadcast station may make its facilities available to any person for the broadcasting of any advertisement.

(c) Use of funds from offering services, etc.

Any public broadcast station which engages in any offering specified in subsection (b)(1) of this section may not use any funds distributed by the Corporation under section 396(k) of this title to defray any costs associated with such offering. Any such offering by a public broadcast station shall not interfere with the provision of public telecommunications services by such station.

(d) Development of accounting system

Each public broadcast station which engages in the activity specified in subsection (b)(1) of this section shall, in consultation with the Corporation, develop an accounting system which is designed to identify any amounts received as remuneration for, or costs related to, such activities under this section, and to account for such amounts separately from any other amounts received by such station from any source.

(June 19, 1934, ch. 652, title III, § 399B, as added Pub. L. 97–35, title XII, § 1231, Aug. 13, 1981, 95 Stat. 731.)

SUBCHAPTER IV—PROCEDURAL AND ADMINISTRATIVE PROVISIONS

§ 401. Enforcement provisions

(a) Jurisdiction

The district courts of the United States shall have jurisdiction, upon application of the Attorney General of the United States at the request of the Commission, alleging a failure to comply with or a violation of any of the provisions of this chapter by any person, to issue a writ or writs of mandamus commanding such person to comply with the provisions of this chapter.

(b) Orders of Commission

If any person fails or neglects to obey any order of the Commission other than for the payment of money, while the same is in effect, the Commission or any party injured thereby, or the United States, by its Attorney General, may apply to the appropriate district court of the United States for the enforcement of such order. If, after hearing, that court determines that the order was regularly made and duly served, and that the person is in disobedience of the same, the court shall enforce obedience to such order by a writ of injunction or other proper process, mandatory or otherwise, to restrain such person or the officers, agents, or representatives of such person, from further disobedience of such order, or to enjoin upon it or them obedience to the same.

(c) Duty to prosecute

Upon the request of the Commission it shall be the duty of any United States attorney to whom the Commission may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States all necessary proceedings for the enforcement of the provisions of this chapter and for the punishment of all violations thereof, and the costs and expenses of such prosecutions shall be paid out of the appropriations for the expenses of the courts of the United States.

(June 19, 1934, ch. 652, title IV, § 401, 48 Stat. 1092; June 25, 1948, ch. 646, § 1, 62 Stat. 909; Pub. L. 93–528, § 6(a), Dec. 21, 1974, 88 Stat. 1709.)

REFERENCES IN TEXT

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

AMENDMENTS

1974—Subsec. (d). Pub. L. 93–528 repealed subsec. (d) which provided that the provisions of sections 28 and 29 of title 15, section 345(1) of title 28, and sections 44 and 45 of title 49, shall be held to apply to any suit in equity arising under sections 201 to 222 of this title, wherein the United States is complainant.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted ''United States attorney'' for ''district attorney'' in subsec. (c). See section 541 of Title 28, Judiciary and Judicial Procedure, and Historical and Revision Notes thereunder.

§ 402. Judicial review of Commission's orders and decisions

(a) Procedure

Any proceeding to enjoin, set aside, annul, or suspend any order of the Commission under this chapter (except those appealable under subsection (b) of this section) shall be brought as provided by and in the manner prescribed in chapter 158 of title 28.

(b) Right to appeal

Appeals may be taken from decisions and orders of the Commission to the United States Court of Appeals for the District of Columbia in any of the following cases:

(1) By any applicant for a construction permit or station license, whose application is denied by the Commission.

(2) By any applicant for the renewal or modification of any such instrument of authoriza-

tion whose application is denied by the Commission.

(3) By any party to an application for authority to transfer, assign, or dispose of any such instrument of authorization, or any rights thereunder, whose application is denied by the Commission.

(4) By any applicant for the permit required by section 325 of this title whose application has been denied by the Commission, or by any permittee under said section whose permit has been revoked by the Commission.

(5) By the holder of any construction permit or station license which has been modified or revoked by the Commission.

(6) By any other person who is aggrieved or whose interests are adversely affected by any order of the Commission granting or denying any application described in paragraphs (1), (2), (3), (4), and (9) of this subsection.

(7) By any person upon whom an order to cease and desist has been served under section 312 of this title.

(8) By any radio operator whose license has been suspended by the Commission.

(9) By any applicant for authority to provide interLATA services under section 271 of this title whose application is denied by the Commission.

(c) Filing notice of appeal; contents; jurisdiction; temporary orders

Such appeal shall be taken by filing a notice of appeal with the court within thirty days from the date upon which public notice is given of the decision or order complained of. Such notice of appeal shall contain a concise statement of the nature of the proceedings as to which the appeal is taken; a concise statement of the reasons on which the appellant intends to rely, separately stated and numbered; and proof of service of a true copy of said notice and statement upon the Commission. Upon filing of such notice, the court shall have jurisdiction of the proceedings and of the questions determined therein and shall have power, by order, directed to the Commission or any other party to the appeal, to grant such temporary relief as it may deem just and proper. Orders granting temporary relief may be either affirmative or negative in their scope and application so as to permit either the maintenance of the status quo in the matter in which the appeal is taken or the restoration of a position or status terminated or adversely affected by the order appealed from and shall, unless otherwise ordered by the court, be effective pending hearing and determination of said appeal and compliance by the Commission with the final judgment of the court rendered in said appeal.

(d) Notice to interested parties; filing of record

Upon the filing of any such notice of appeal the appellant shall, not later than five days after the filing of such notice, notify each person shown by the records of the Commission to be interested in said appeal of the filing and pendency of the same. The Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28.

(e) Intervention

Within thirty days after the filing of any such appeal any interested person may intervene and participate in the proceedings had upon said appeal by filing with the court a notice of intention to intervene and a verified statement showing the nature of the interest of such party, together with proof of service of true copies of said notice and statement, both upon appellant and upon the Commission. Any person who would be aggrieved or whose interest would be adversely affected by a reversal or modification of the order of the Commission complained of shall be considered an interested party.

(f) Records and briefs

The record and briefs upon which any such appeal shall be heard and determined by the court shall contain such information and material, and shall be prepared within such time and in such manner as the court may by rule prescribe.

(g) Time of hearing; procedure

The court shall hear and determine the appeal upon the record before it in the manner prescribed by section 706 of title 5.

(h) Remand

In the event that the court shall render a decision and enter an order reversing the order of the Commission, it shall remand the case to the Commission to carry out the judgment of the court and it shall be the duty of the Commission, in the absence of the proceedings to review such judgment, to forthwith give effect thereto, and unless otherwise ordered by the court, to do so upon the basis of the proceedings already had and the record upon which said appeal was heard and determined.

(i) Judgment for costs

The court may, in its discretion, enter judgment for costs in favor of or against an appellant, or other interested parties intervening in said appeal, but not against the Commission, depending upon the nature of the issues involved upon said appeal and the outcome thereof.

(j) Finality of decision; review by Supreme Court

The court's judgment shall be final, subject, however, to review by the Supreme Court of the United States upon writ of certiorari on petition therefor under section 1254 of title 28, by the appellant, by the Commission, or by any interested party intervening in the appeal, or by certification by the court pursuant to the provisions of that section.

(June 19, 1934, ch. 652, title IV, §402, 48 Stat. 1093; May 20, 1937, ch. 229, §§11–13, 50 Stat. 197; May 24, 1949, ch. 139, §132, 63 Stat. 108; July 16, 1952, ch. 879, §14, 66 Stat. 718; Pub. L. 85–791, §12, Aug. 28, 1958, 72 Stat. 945; Pub. L. 97–259, title I, §§121, 127(b), Sept. 13, 1982, 96 Stat. 1097, 1099; Pub. L. 98–620, title IV, §402(50), Nov. 8, 1984, 98 Stat. 3361; Pub. L. 104–104, title I, §151(b), Feb. 8, 1996, 110 Stat. 107.)

AMENDMENTS

1996—Par. (6). Pub. L. 104–104, §151(b)(1), inserted reference to par. (9).

Subsec. (b)(9). Pub. L. 104–104, §151(b)(2), added par. (9).

1984—Subsec. (g). Pub. L. 98–620 substituted ''The'' for ''At the earliest convenient time the'' and ''706 of title 5'' for ''10(e) of the Administrative Procedure Act [former 5 U.S.C. 1009(e)]''.

1982—Subsec. (a). Pub. L. 97–259, § 127(b), substituted ''chapter 158 of title 28'' for ''Public Law 901, Eighty-first Congress, approved December 29, 1950''.

Subsec. (d). Pub. L. 97–259, § 121, substituted ''appellant'' for ''Commission'', ''filing of such notice'' for ''date of service upon it'', struck out ''and shall thereafter permit any such person to inspect and make copies of said notice and statement of reasons therefor at the office of the Commission in the city of Washington'' after ''pendency of the same'', and substituted ''The'' for ''Within thirty days after the filing of an appeal, the'' before ''Commission shall file''.

1958—Subsec. (d). Pub. L. 85–791 substituted ''the record upon which the order complained of was entered, as provided in section 2112 of title 28,'' for ''a copy of the order complained of, a full statement in writing of the facts and grounds relied upon by it in support of the order involved upon said appeal, and the originals or certified copies of all papers and evidence presented to and considered by it in entering said order'' in second sentence.

1952—Act July 16, 1952, amended section generally to set up the procedure for the judicial review of the Commission's orders and decisions.

1949—Subsec. (a). Act May 24, 1949, substituted ''Title 28 of the United States Code'' for ''the Act of October 22, 1913 (38 Stat. 219)'', and ''such Title 28'' in lieu of ''that Act''.

1937—Subsec. (a). Act May 20, 1937, § 11, inserted '', or suspending a radio operator's license'' after ''or for modifications of an existing radio station license''.

Subsec. (b)(3). Act May 20, 1937, § 12, added par. (3) relating to appeal from decisions in case of any radio operator whose license has been suspended by the Commission.

Subsec. (c). Act May 20, 1937, § 13, inserted in last sentence ''or order'' after ''upon the application''.

CHANGE OF NAME

Act June 7, 1934, ch. 426, 48 Stat. 926, changed name of ''Court of Appeals of the District of Columbia'' to ''United States Court of Appeals for the District of Columbia''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as a note under section 1657 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1952 AMENDMENT

Section 19(2) of act July 16, 1952, provided that: ''The amendments made by this Act to section 402 of the Communications Act of 1934 [this section] (relating to judicial review of orders and decisions of the Commission) shall not apply with respect to any action or appeal which is pending before any court on the date of enactment of this Act [July 16, 1952].''

ADMINISTRATIVE ORDERS REVIEW ACT

Court of appeals exclusive jurisdiction respecting final orders of Federal Communications Commission made reviewable by subsec. (a) of this section, see section 2342 of Title 28, Judiciary and Judicial Procedure.

§ 403. Inquiry by Commission on its own motion

The Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which complaint is authorized to be made, to or before the Commission by any provision of this chapter, or concerning which any question may arise under any of the provisions of this chapter, or relating to the enforcement of any of the provisions of this chapter. The Commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of this chapter, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had, excepting orders for the payment of money.

(June 19, 1934, ch. 652, title IV, § 403, 48 Stat. 1094.)

§ 404. Reports of investigations

Whenever an investigation shall be made by the Commission it shall be its duty to make a report in writing in respect thereto, which shall state the conclusions of the Commission, together with its decision, order, or requirement in the premises; and in case damages are awarded such report shall include the findings of fact on which the award is made.

(June 19, 1934, ch. 652, title IV, § 404, 48 Stat. 1094.)

§ 405. Petition for reconsideration; procedure; disposition; time of filing; additional evidence; time for disposition of petition for reconsideration of order concluding hearing or investigation; appeal of order

(a) After an order, decision, report, or action has been made or taken in any proceeding by the Commission, or by any designated authority within the Commission pursuant to a delegation under section 155(c)(1) of this title, any party thereto, or any other person aggrieved or whose interests are adversely affected thereby, may petition for reconsideration only to the authority making or taking the order, decision, report, or action; and it shall be lawful for such authority, whether it be the Commission or other authority designated under section 155(c)(1) of this title, in its discretion, to grant such a reconsideration if sufficient reason therefor be made to appear. A petition for reconsideration must be filed within thirty days from the date upon which public notice is given of the order, decision, report, or action complained of. No such application shall excuse any person from complying with or obeying any order, decision, report, or action of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without the special order of the Commission. The filing of a petition for reconsideration shall not be a condition precedent to judicial review of any such order, decision, report, or action, except where the party seeking such review (1) was not a party to the proceedings resulting in such order, decision, report, or action, or (2) relies on questions of fact or law upon which the Commission, or designated authority within the Commission, has been afforded no opportunity to pass. The Commission, or designated authority within the Commission, shall enter an order, with a concise statement of the reasons therefor, denying a petition for reconsideration or granting such petition, in whole or in part, and ordering such further proceedings as

may be appropriate: *Provided*, That in any case where such petition relates to an instrument of authorization granted without a hearing, the Commission, or designated authority within the Commission, shall take such action within ninety days of the filing of such petition. Considerations shall be governed by such general rules as the Commission may establish, except that no evidence other than newly discovered evidence, evidence which has become available only since the original taking of evidence, or evidence which the Commission or designated authority within the Commission believes should have been taken in the original proceeding shall be taken on any reconsideration. The time within which a petition for review must be filed in a proceeding to which section 402(a) of this title applies, or within which an appeal must be taken under section 402(b) of this title in any case, shall be computed from the date upon which the Commission gives public notice of the order, decision, report, or action complained of.

(b)(1) Within 90 days after receiving a petition for reconsideration of an order concluding a hearing under section 204(a) of this title or concluding an investigation under section 208(b) of this title, the Commission shall issue an order granting or denying such petition.

(2) Any order issued under paragraph (1) shall be a final order and may be appealed under section 402(a) of this title.

(June 19, 1934, ch. 652, title IV, § 405, 48 Stat. 1095; July 16, 1952, ch. 879, § 15, 66 Stat. 720; Pub. L. 86–752, § 4(c), Sept. 13, 1960, 74 Stat. 892; Pub. L. 87–192, § 3, Aug. 31, 1961, 75 Stat. 421; Pub. L. 97–259, title I, §§ 122, 127(c), Sept. 13, 1982, 96 Stat. 1097, 1099; Pub. L. 100–594, § 8(d), Nov. 3, 1988, 102 Stat. 3023.)

CODIFICATION

"Reconsiderations" substituted in text for "Rehearings" as the probable intent of Congress, in view of amendment by section 127(c)(1) of Pub. L. 97–259, which substituted "reconsideration" for "rehearing" wherever appearing in this section.

AMENDMENTS

1988—Pub. L. 100–594 designated existing provisions as subsec. (a), substituted "section 155(c)(1)" for "section 155(d)(1)" in two places, and added subsec. (b).

1982—Pub. L. 97–259 substituted "reconsideration" for "rehearing" wherever appearing and "the Commission gives public notice of the order, decision, report, or action complained of" for "public notice is given of orders disposing of all petitions for rehearing filed with the Commission in such proceeding or case, but any order, decision, report, or action made or taken after such rehearing reversing, changing, or modifying the original order shall be subject to the same provisions with respect to rehearing as an original order".

1961—Pub. L. 87–192 provided for petition for rehearing to the authority making or taking the order, decision, report, or action, substituted references to report and action for requirement, wherever else appearing, and inserted references to proceeding by any designated authority within the Commission, wherever appearing.

1960—Pub. L. 86–752 substituted "any party" for "and party" in first sentence, and inserted sentence dealing with disposition of petitions for rehearing.

1952—Act July 16, 1952, provided for taking of newly discovered evidence and evidence which should have been taken in original hearing.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 4(d)(4) of Pub. L. 86–752 provided that: "The amendment made by paragraph (2) of subsection (c) of this section [amending this section] shall only apply to petitions for rehearing filed on or after the date of the enactment of this Act [Sept. 13, 1960]."

§ 406. Compelling furnishing of facilities; mandamus; jurisdiction

The district courts of the United States shall have jurisdiction upon the relation of any person alleging any violation, by a carrier subject to this chapter, of any of the provisions of this chapter which prevent the relator from receiving service in interstate or foreign communication by wire or radio, or in interstate or foreign transmission of energy by radio, from said carrier at the same charges, or upon terms or conditions as favorable as those given by said carrier for like communication or transmission under similar conditions to any other person, to issue a writ or writs of mandamus against said carrier commanding such carrier to furnish facilities for such communication or transmission to the party applying for the writ: *Provided*, That if any question of fact as to the proper compensation to the carrier for the service to be enforced by the writ is raised by the pleadings, the writ of peremptory mandamus may issue, notwithstanding such question of fact is undetermined, upon such terms as to security, payment of money into the court, or otherwise, as the court may think proper pending the determination of the question of fact: *Provided further*, That the remedy given by writ of mandamus shall be cumulative and shall not be held to exclude or interfere with other remedies provided by this chapter.

(June 19, 1934, ch. 652, title IV, § 406, 48 Stat. 1095.)

§ 407. Order for payment of money; petition for enforcement; procedure; order of Commission as prima facie evidence; costs; attorneys' fees

If a carrier does not comply with an order for the payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may file in the district court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the line of the carrier runs, or in any State court of general jurisdiction having jurisdiction of the parties, a petition setting forth briefly the causes for which he claims damages, and the order of the Commission in the premises. Such suit in the district court of the United States shall proceed in all respects like other civil suits for damages, except that on the trial of such suits the findings and order of the Commission shall be prima facie evidence of the facts therein stated, except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If the petitioner shall finally prevail, he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit.

(June 19, 1934, ch. 652, title IV, § 407, 48 Stat. 1095.)

§ 408. Order not for payment of money; when effective

Except as otherwise provided in this chapter, all orders of the Commission, other than orders for the payment of money, shall take effect thirty calendar days from the date upon which public notice of the order is given, unless the Commission designates a different effective date. All such orders shall continue in force for the period of time specified in the order or until the Commission or a court of competent jurisdiction issues a superseding order.

(June 19, 1934, ch. 652, title IV, § 408, 48 Stat. 1096; Pub. L. 97–259, title I, § 123, Sept. 13, 1982, 96 Stat. 1098.)

AMENDMENTS

1982—Pub. L. 97–259 substituted provision that all orders of the Commission but for payment of money shall take effect thirty calendar days from the date upon which public notice of the order is given, unless the Commission designates a different effective date, and that such orders shall continue in force for the period of time specified in the order or until the Commission or a court of competent jurisdiction issues a superseding order, for provision that such orders would take effect within such reasonable time, not less than thirty days after service of the order, and would continue in force until its further order, or for a specified period of time, as prescribed in the order, unless the same were suspended or modified or set aside by the Commission, or suspended or set aside by a court of competent jurisdiction.

§ 409. Hearings

(a) Filing of initial decisions; exceptions

In every case of adjudication (as defined in section 551 of title 5) which has been designated by the Commission for hearing, the person or persons conducting the hearing shall prepare and file an initial, tentative, or recommended decision, except where such person or persons become unavailable to the Commission or where the Commission finds upon the record that due and timely execution of its functions imperatively and unavoidably require that the record be certified to the Commission for initial or final decision.

(b) Exceptions to initial decisions; memoranda; determination of Commission or authority within Commission; prohibition against consideration of own decision

In every case of adjudication (as defined in section 551 of title 5) which has been designated by the Commission for hearing, any party to the proceeding shall be permitted to file exceptions and memoranda in support thereof to the initial, tentative, or recommended decision, which shall be passed upon by the Commission or by the authority within the Commission, if any, to whom the function of passing upon the exceptions is delegated under section 155(d)(1)[1] of this title: *Provided, however*, That such authority shall not be the same authority which made the decision to which the exception is taken.

(c) Notice and opportunity for participation by parties; applicability of administrative procedure provisions

(1) In any case of adjudication (as defined in section 551 of title 5) which has been designated by the Commission for a hearing, no person who has participated in the presentation or preparation for presentation of such case at the hearing or upon review shall (except to the extent required for the disposition of ex parte matters as authorized by law) directly or indirectly make any additional presentation respecting such case to the hearing officer or officers or to the Commission, or to any authority within the Commission to whom, in such case, review functions have been delegated by the Commission under section 155(d)(1)[1] of this title, unless upon notice and opportunity for all parties to participate.

(2) The provision in section 554(d) of title 5 which states that such subsection shall not apply in determining applications for initial licenses, shall not be applicable hereafter in the case of applications for initial licenses before the Federal Communications Commission.

(d) Applicability of administrative procedure provisions

To the extent that the foregoing provisions of this section and section 155(d)[1] of this title are in conflict with the provisions of subchapter II of chapter 5, and chapter 7, of title 5, such provisions of this section and section 155(d)[1] of this title shall be held to supersede and modify the provisions of subchapter II of chapter 5, and chapter 7, of title 5.

(e) Subpenas; witnesses; production of documents; fees and mileage

For the purposes of this chapter the Commission shall have the power to require by subpena the attendance and testimony of witnesses and the production of all books, papers, schedules of charges, contracts, agreements, and documents relating to any matter under investigation. Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(f) Designated place of hearing; aid in enforcement of orders

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpena the Commission, or any party to a proceeding before the Commission, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.

(g) Contempts

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpena issued to any common carrier or licensee or other person, issue an order requiring such common carrier, licensee, or other person to appear before the Commission (and produce books and papers if so ordered) and give evidence touching the matter in question; and

[1] See References in Text note below.

any failure to obey such order of the court may be punished by such court as a contempt thereof.

(h) Depositions

The testimony of any witness may be taken, at the instance of a party, in any proceeding or investigation pending before the Commission, by deposition, at any time after a cause or proceeding is at issue on petition and answer. The Commission may also order testimony to be taken by deposition in any proceeding or investigation pending before it, at any stage of such proceeding or investigation. Such depositions may be taken before any judge of any court of the United States, or any United States magistrate judge, or any clerk of a district court, or any chancellor, justice, or judge of a supreme or superior court, mayor, or chief magistrate of a city, judge of a county court, or court of common pleas of any of the United States, or any notary public, not being of counsel or attorney to either of the parties, nor interested in the event of the proceeding or investigation. Reasonable notice must first be given in writing by the party or his attorney proposing to take such deposition to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce documentary evidence, in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission, as hereinbefore provided.

(i) Oaths; testimony in writing

Every person deposing as herein provided shall be cautioned and sworn (or affirm, if he so request) to testify the whole truth, and shall be carefully examined. His testimony shall be reduced to writing by the magistrate taking the deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent.

(j) Foreign depositions

If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken before an officer or person designated by the Commission, or agreed upon by the parties by stipulation in writing to be filed with the Commission. All depositions must be promptly filed with the Commission.

(k) Deposition fees

Witnesses whose depositions are taken as authorized in this chapter, and the magistrate or other officer taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(*l*) Repealed. Pub. L. 91–452, title II, §242, Oct. 15, 1970, 84 Stat. 930

(m) Penalties

Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce books, papers, schedules of charges, contracts, agreements, and documents, if in his power to do so, in obedience to the subpena or lawful requirement of the Commission, shall be guilty of a misdemeanor and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than $100 nor more than $5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

(June 19, 1934, ch. 652, title IV, §409, 48 Stat. 1096; July 16, 1952, ch. 879, §16, 66 Stat. 721; Pub. L. 87–192, §4, Aug. 31, 1961, 75 Stat. 422; Pub. L. 90–578, title IV, §402(b)(2), Oct. 17, 1968, 82 Stat. 1118; Pub. L. 91–452, title II, §242, Oct. 15, 1970, 84 Stat. 930; Pub. L. 101–650, title III, §321, Dec. 1, 1990, 104 Stat. 5117.)

REFERENCES IN TEXT

Section 155(d) of this title, referred to in subsecs. (b), (c), and (d), was redesignated section 155(c) of this title by Pub. L. 97–259, title I, §105(b), Sept. 13, 1982, 96 Stat. 1091.

CODIFICATION

In subsecs. (a), (b), and (c)(1), ''adjudication (as defined in section 551 of title 5)'' substituted for ''adjudication (as defined in the Administrative Procedure Act)'', in subsec. (c)(2) ''section 554(d) of title 5'' substituted for ''subsection (c) of section 5 of the Administrative Procedure Act'', and in subsec. (d) ''subchapter II of chapter 5, and chapter 7, of title 5'' substituted for ''the Administrative Procedure Act'' and ''that Act'', respectively, on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1970—Subsec. (*l*). Pub. L. 91–452 struck out subsec. (*l*) which related to the immunity from prosecution of any individual compelled to testify or produce evidence, documentary or otherwise, after claiming his privilege against self-incrimination.

1961—Subsec. (a). Pub. L. 87–192 substituted provision for filing of initial decisions, with stated exceptions, formerly contained in first sentence of subsec. (b) of this section but amplified to include tentative or recommended decisions, for provision relating to assignment of cases to examiners.

Subsec. (b). Pub. L. 87–192 provided for filing of memoranda in support of exceptions to initial, tentative, or recommended decisions, to be passed upon by the Commission or the designated authority within the Commission, and eliminated provisions for oral argument on the exceptions, filing of initial decisions, with stated exceptions, incorporated in subsec. (a) of this section, and making all decisions part of the record and requiring the decisions to include a statement of findings, and conclusions upon all material issues of fact, law, or discretion and the appropriate decision, order, or requirement. See section 557 of Title 5, Government Organization and Employees.

Subsec. (c). Pub. L. 87–192 continued requirement of notice and opportunity for participation by all parties when person seeks to make any additional presentation of case, having previously participated in the presentation of or preparation for presentation of the case, made applicable provisions of section 554(d) of Title 5 to applications for initial licenses and eliminated provisions for separation of functions of examiners from the investigative and prosecutory functions of persons engaged in performance of such functions, prohibition against consultation with Commission or any member or employee thereof with respect to initial decisions or exceptions taken to findings, rulings or recommendations, prohibition against members of Office of The General Counsel, Office of the Chief Engineer or the Office of the Chief Accountant from making any presentations respecting a case, and prohibition against persons engaged in performance of investigative or pros-

ecuting functions for the Commission from consulting in any case of adjudication.

Subsec. (d). Pub. L. 87–192 inserted references to section 155(d) of this title.

1952—Act July 16, 1952, amended section generally, inserting subsecs. (a) to (d) and redesignating former subsecs. (b) to (j) as (e) to (m), respectively.

CHANGE OF NAME

''United States magistrate judge'' substituted for ''United States magistrate'' in subsec. (h) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure. Previously, ''United States magistrate'' substituted for ''United States commissioner'' pursuant to Pub. L. 90–578. See chapter 43 (§ 631 et seq.) of Title 28.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–452 effective on sixtieth day following Oct. 15, 1970, and not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91–452, set out as an Effective Date; Savings Provisions note under section 6001 of Title 18, Crimes and Criminal Procedure.

SAVINGS PROVISION

Section 5 of Pub. L. 87–192 provided that: ''Notwithstanding the foregoing provisions of this Act [amending this section and sections 155 and 405 of this title], the second sentence of subsection (b) of section 409 of the Communications Act of 1934 [subsec. (b) of this section] (which relates to the filing of exceptions and the presentation of oral argument), as in force at the time of the enactment of this Act [Aug. 31, 1961], shall continue to be applicable with respect to any case of adjudication (as defined in the Administrative Procedure Act) [see sections 551 et seq. and 701 et seq. of Title 5, Government Organization and Employees] designated by the Federal Communications Commission for hearing by a notice of hearing issued prior to the date of the enactment of this Act.''

§ 410. Joint boards and commissions

(a) State joint boards; reference of communication matters; composition; jurisdiction, powers, duties, and obligations; conduct of proceedings; force and effect of joint board action; members: nomination, appointment, and rejection; allowances for expenses

Except as provided in section 409 of this title, the Commission may refer any matter arising in the administration of this chapter to a joint board to be composed of a member, or of an equal number of members, as determined by the Commission, from each of the States in which the wire or radio communication affected by or involved in the proceeding takes place or is proposed. For purposes of acting upon such matter any such board shall have all the jurisdiction and powers conferred by law upon an examiner provided for in section 3105 of title 5, designated by the Commission, and shall be subject to the same duties and obligations. The action of a joint board shall have such force and effect and its proceedings shall be conducted in such manner as the Commission shall by regulations prescribe. The joint board member or members for each State shall be nominated by the State commission of the State or by the Governor if there is no State commission, and appointed by the Federal Communications Commission. The Commission shall have discretion to reject any nominee. Joint board members shall receive such allowances for expenses as the Commission shall provide.

(b) State commissions; conferences with Commission regarding matters of carriers subject to their jurisdiction; joint hearings; cooperation with Commission

The Commission may confer with any State commission having regulatory jurisdiction with respect to carriers, regarding the relationship between rate structures, accounts, charges, practices, classifications, and regulations of carriers subject to the jurisdiction of such State commission and of the Commission; and the Commission is authorized under such rules and regulations as it shall prescribe to hold joint hearings with any State commission in connection with any matter with respect to which the Commission is authorized to act. The Commission is authorized in the administration of this chapter to avail itself of such cooperation, services, records, and facilities as may be afforded by any State commission.

(c) Federal-State Joint Board; reference of proceedings regarding jurisdictional separation of common carrier property and expenses between interstate and intrastate operations and other matters relating to common carrier communications of joint concern; jurisdiction, powers, duties, and obligations; recommendation of decisions; State members; presence at oral arguments and nonvoting participation in deliberations; composition; Chairman

The Commission shall refer any proceeding regarding the jurisdictional separation of common carrier property and expenses between interstate and intrastate operations, which it institutes pursuant to a notice of proposed rulemaking and, except as provided in section 409 of this title, may refer any other matter, relating to common carrier communications of joint Federal-State concern, to a Federal-State Joint Board. The Joint Board shall possess the same jurisdiction, powers, duties, and obligations as a joint board established under subsection (a) of this section, and shall prepare a recommended decision for prompt review and action by the Commission. In addition, the State members of the Joint Board shall sit with the Commission en banc at any oral argument that may be scheduled in the proceeding. The Commission shall also afford the State members of the Joint Board an opportunity to participate in its deliberations, but not vote, when it has under consideration the recommended decision of the Joint Board or any further decisional action that may be required in the proceeding. The Joint Board shall be composed of three Commissioners of the Commission and of four State commissioners nominated by the national organization of the State commissions and approved by the Commission. The Chairman of the Commission, or another Commissioner designated by the Commission, shall serve as Chairman of the Joint Board.

(June 19, 1934, ch. 652, title IV, § 410, 48 Stat. 1098; July 16, 1952, ch. 879, § 17, 66 Stat. 722; Aug. 2, 1956, ch. 874, § 4, 70 Stat. 932; Pub. L. 92–131, § 2,

Sept. 30, 1971, 85 Stat. 363; Pub. L. 103–414, title III, §303(a)(21), Oct. 25, 1994, 108 Stat. 4295.)

CODIFICATION

In subsec. (a), ''section 3105 of title 5'' substituted for ''section 11 of the Administrative Procedure Act (5 U.S.C. 1010)'' on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1994—Subsec. (c). Pub. L. 103–414 struck out '', as referred to in sections 202(b) and 205(f) of the Interstate Commerce Act,'' after ''State commissions''.

1971—Subsec. (c). Pub. L. 92–131 added subsec. (c).

1956—Subsec. (a). Act Aug. 2, 1956, inserted in second sentence ''and examiner provided for in section 3105 of title 5, designated by'' after ''the Commissioner''.

1952—Subsec. (a). Act July 16, 1952, inserted first sentence so as to bring these provisions in conformity with section 409 of this title.

§411. Joinder of parties

(a) In any proceeding for the enforcement of the provisions of this chapter, whether such proceeding be instituted before the Commission or be begun originally in any district court of the United States, it shall be lawful to include as parties, in addition to the carrier, all persons interested in or affected by the charge, regulation, or practice under consideration, and inquiries, investigations, orders, and decrees may be made with reference to and against such additional parties in the same manner, to the same extent, and subject to the same provisions as are or shall be authorized by law with respect to carriers.

(b) In any suit for the enforcement of an order for the payment of money all parties in whose favor the Commission may have made an award for damages by a single order may be joined as plaintiffs, and all of the carriers parties to such order awarding such damages may be joined as defendants, and such suit may be maintained by such joint plaintiffs and against such joint defendants in any district where any one of such joint plaintiffs could maintain such suit against any one of such joint defendants; and service of process against any one of such defendants as may not be found in the district where the suit is brought may be made in any district where such defendant carrier has its principal operating office. In case of such joint suit, the recovery, if any, may be by judgment in favor of any one of such plaintiffs, against the defendant found to be liable to such plaintiff.

(June 19, 1934, ch. 652, title IV, §411, 48 Stat. 1098.)

§412. Documents filed with Commission as public records; prima facie evidence; confidential records

The copies of schedules of charges, classifications, and of all contracts, agreements, and arrangements between common carriers filed with the Commission as herein provided, and the statistics, tables, and figures contained in the annual or other reports of carriers and other persons made to the Commission as required under the provisions of this chapter shall be preserved as public records in the custody of the secretary of the Commission, and shall be received as prima facie evidence of what they purport to be for the purpose of investigations by the Commission and in all judicial proceedings; and copies of and extracts from any of said schedules, classifications, contracts, agreements, arrangements, or reports, made public records as aforesaid, certified by the secretary, under the Commission's seal, shall be received in evidence with like effect as the originals: *Provided*, That the Commission may, if the public interest will be served thereby, keep confidential any contract, agreement, or arrangement relating to foreign wire or radio communication when the publication of such contract, agreement, or arrangement would place American communication companies at a disadvantage in meeting the competition of foreign communication companies.

(June 19, 1934, ch. 652, title IV, §412, 48 Stat. 1099.)

§413. Designation of agent for service; method of service

It shall be the duty of every carrier subject to this chapter to designate in writing an agent in the District of Columbia, upon whom service of all notices and process and all orders, decisions, and requirements of the Commission may be made for and on behalf of said carrier in any proceeding or suit pending before the Commission, and to file such designation in the office of the secretary of the Commission, which designation may from time to time be changed by like writing similarly filed; and thereupon service of all notices and process and orders, decisions, and requirements of the Commission may be made upon such carrier by leaving a copy thereof with such designated agent at his office or usual place of residence in the District of Columbia, with like effect as if made personally upon such carrier, and in default of such designation of such agent, service of any notice or other process in any proceeding before said Commission, or of any order, decision, or requirement of the Commission, may be made by posting such notice, process, order, requirement, or decision in the office of the secretary of the Commission.

(June 19, 1934, ch. 652, title IV, §413, 48 Stat. 1099; Pub. L. 103–414, title III, §304(a)(11), Oct. 25, 1994, 108 Stat. 4297.)

AMENDMENTS

1994—Pub. L. 103–414 struck out '', within sixty days after the taking effect of this chapter,'' after ''every carrier subject to this chapter''.

§414. Exclusiveness of chapter

Nothing in this chapter contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this chapter are in addition to such remedies.

(June 19, 1934, ch. 652, title IV, §414, 48 Stat. 1099.)

REFERENCES IN TEXT

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

§ 415. Limitations of actions

(a) Recovery of charges by carrier

All actions at law by carriers for recovery of their lawful charges, or any part thereof, shall be begun within two years from the time the cause of action accrues, and not after.

(b) Recovery of damages

All complaints against carriers for the recovery of damages not based on overcharges shall be filed with the Commission within two years from the time the cause of action accrues, and not after, subject to subsection (d) of this section.

(c) Recovery of overcharges

For recovery of overcharges action at law shall be begun or complaint filed with the Commission against carriers within two years from the time the cause of action accrues, and not after, subject to subsection (d) of this section, except that if claim for the overcharge has been presented in writing to the carrier within the two-year period of limitation said period shall be extended to include two years from the time notice in writing is given by the carrier to the claimant of disallowance of the claim, or any part or parts thereof, specified in the notice.

(d) Extension

If on or before expiration of the period of limitation in subsection (b) or (c) of this section a carrier begins action under subsection (a) of this section for recovery of lawful charges in respect of the same service, or, without beginning action, collects charges in respect of that service, said period of limitation shall be extended to include ninety days from the time such action is begun or such charges are collected by the carrier.

(e) Accrual of cause of action for transmission of message

The cause of action in respect of the transmission of a message shall, for the purposes of this section, be deemed to accrue upon delivery or tender of delivery thereof by the carrier, and not after.

(f) Enforcement petition

A petition for the enforcement of an order of the Commission for the payment of money shall be filed in the district court or the State court within one year from the date of the order, and not after.

(g) "Overcharges" defined

The term ''overcharges'' as used in this section shall be deemed to mean charges for services in excess of those applicable thereto under the schedules of charges lawfully on file with the Commission.

(June 19, 1934, ch. 652, title IV, § 415, 48 Stat. 1099; Pub. L. 93–507, Nov. 30, 1974, 88 Stat. 1577.)

AMENDMENTS

1974—Subsecs. (a) to (c). Pub. L. 93–507 amended subsecs. (a) to (c) generally, substituting reference to two years for reference to one year wherever appearing.

§ 416. Orders of Commission

(a) Service

Every order of the Commission shall be forthwith served upon the designated agent of the carrier in the city of Washington or in such other manner as may be provided by law.

(b) Suspension or modification

Except as otherwise provided in this chapter, the Commission is authorized to suspend or modify its orders upon such notice and in such manner as it shall deem proper.

(c) Compliance

It shall be the duty of every person, its agents and employees, and any receiver or trustee thereof, to observe and comply with such orders so long as the same shall remain in effect.

(June 19, 1934, ch. 652, title IV, § 416, 48 Stat. 1100.)

SUBCHAPTER V—PENAL PROVISIONS; FORFEITURES

§ 501. General penalty

Any person who willfully and knowingly does or causes or suffers to be done any act, matter, or thing, in this chapter prohibited or declared to be unlawful, or who willfully and knowingly omits or fails to do any act, matter, or thing in this chapter required to be done, or willfully and knowingly causes or suffers such omission or failure, shall, upon conviction thereof, be punished for such offense, for which no penalty (other than a forfeiture) is provided in this chapter, by a fine of not more than $10,000 or by imprisonment for a term not exceeding one year, or both; except that any person, having been once convicted of an offense punishable under this section, who is subsequently convicted of violating any provision of this chapter punishable under this section, shall be punished by a fine of not more than $10,000 or by imprisonment for a term not exceeding two years, or both.

(June 19, 1934, ch. 652, title V, § 501, 48 Stat. 1100; Mar. 23, 1954, ch. 104, 68 Stat. 30.)

REFERENCES IN TEXT

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

AMENDMENTS

1954—Act Mar. 23, 1954, provided that any offense punishable hereunder, except a second or subsequent offense, should constitute a misdemeanor rather than a felony, as those terms are defined in section 1 of Title 18, Crimes and Criminal Procedure.

§ 502. Violation of rules, regulations, etc.

Any person who willfully and knowingly violates any rule, regulation, restriction, or condition made or imposed by the Commission under authority of this chapter, or any rule, regulation, restriction, or condition made or imposed by any international radio or wire communications treaty or convention, or regulations annexed thereto, to which the United States is or may hereafter become a party, shall, in addition to any other penalties provided by law, be punished, upon conviction thereof, by a fine of not more than $500 for each and every day during which such offense occurs.

(June 19, 1934, ch. 652, title V, § 502, 48 Stat. 1100.)

§ 503. Forfeitures

(a) Rebates and offsets

Any person who shall deliver messages for interstate or foreign transmission to any carrier, or for whom as sender or receiver, any such carrier shall transmit any interstate or foreign wire or radio communication, who shall knowingly by employee, agent, officer, or otherwise, directly or indirectly, by or through any means or device whatsoever, receive or accept from such common carrier any sum of money or any other valuable consideration as a rebate or offset against the regular charges for transmission of such messages as fixed by the schedules of charges provided for in this chapter, shall in addition to any other penalty provided by this chapter forfeit to the United States a sum of money three times the amount of money so received or accepted and three times the value of any other consideration so received or accepted, to be ascertained by the trial court; and in the trial of said action all such rebates or other considerations so received or accepted for a period of six years prior to the commencement of the action, may be included therein, and the amount recovered shall be three times the total amount of money, or three times the total value of such consideration, so received or accepted, or both, as the case may be.

(b) Activities constituting violations authorizing imposition of forfeiture penalty; amount of penalty; procedures applicable; persons subject to penalty; liability exemption period

(1) Any person who is determined by the Commission, in accordance with paragraph (3) or (4) of this subsection, to have—

(A) willfully or repeatedly failed to comply substantially with the terms and conditions of any license, permit, certificate, or other instrument or authorization issued by the Commission;

(B) willfully or repeatedly failed to comply with any of the provisions of this chapter or of any rule, regulation, or order issued by the Commission under this chapter or under any treaty, convention, or other agreement to which the United States is a party and which is binding upon the United States;

(C) violated any provision of section 317(c) or 509(a) of this title; or

(D) violated any provision of section 1304, 1343, or 1464 of title 18;

shall be liable to the United States for a forfeiture penalty. A forfeiture penalty under this subsection shall be in addition to any other penalty provided for by this chapter; except that this subsection shall not apply to any conduct which is subject to forfeiture under subchapter II of this chapter, part II or III of subchapter III of this chapter, or section 507 of this title.

(2)(A) If the violator is (i) a broadcast station licensee or permittee, (ii) a cable television operator, or (iii) an applicant for any broadcast or cable television operator license, permit, certificate, or other instrument or authorization issued by the Commission, the amount of any forfeiture penalty determined under this section shall not exceed $25,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $250,000 for any single act or failure to act described in paragraph (1) of this subsection.

(B) If the violator is a common carrier subject to the provisions of this chapter or an applicant for any common carrier license, permit, certificate, or other instrument of authorization issued by the Commission, the amount of any forfeiture penalty determined under this subsection shall not exceed $100,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $1,000,000 for any single act or failure to act described in paragraph (1) of this subsection.

(C) Notwithstanding subparagraph (A), if the violator is—

(i)(I) a broadcast station licensee or permittee; or

(II) an applicant for any broadcast license, permit, certificate, or other instrument or authorization issued by the Commission; and

(ii) determined by the Commission under paragraph (1) to have broadcast obscene, indecent, or profane language,[1] the amount of any forfeiture penalty determined under this subsection shall not exceed $325,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $3,000,000 for any single act or failure to act.

(D) In any case not covered in subparagraph (A), (B), or (C), the amount of any forfeiture penalty determined under this subsection shall not exceed $10,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $75,000 for any single act or failure to act described in paragraph (1) of this subsection.

(E) The amount of such forfeiture penalty shall be assessed by the Commission, or its designee, by written notice. In determining the amount of such a forfeiture penalty, the Commission or its designee shall take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

(3)(A) At the discretion of the Commission, a forfeiture penalty may be determined against a person under this subsection after notice and an opportunity for a hearing before the Commission or an administrative law judge thereof in accordance with section 554 of title 5. Any person against whom a forfeiture penalty is determined under this paragraph may obtain review thereof pursuant to section 402(a) of this title.

(B) If any person fails to pay an assessment of a forfeiture penalty determined under subparagraph (A) of this paragraph, after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the Commission, the Commission shall

[1] So in original. Following provision probably should be set flush with subpar. (C).

refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the forfeiture penalty shall not be subject to review.

(4) Except as provided in paragraph (3) of this subsection, no forfeiture penalty shall be imposed under this subsection against any person unless and until—

(A) the Commission issues a notice of apparent liability, in writing, with respect to such person;

(B) such notice has been received by such person, or until the Commission has sent such notice to the last known address of such person, by registered or certified mail; and

(C) such person is granted an opportunity to show, in writing, within such reasonable period of time as the Commission prescribes by rule or regulation, why no such forfeiture penalty should be imposed.

Such a notice shall (i) identify each specific provision, term, and condition of any Act, rule, regulation, order, treaty, convention, or other agreement, license, permit, certificate, instrument, or authorization which such person apparently violated or with which such person apparently failed to comply; (ii) set forth the nature of the act or omission charged against such person and the facts upon which such charge is based; and (iii) state the date on which such conduct occurred. Any forfeiture penalty determined under this paragraph shall be recoverable pursuant to section 504(a) of this title.

(5) No forfeiture liability shall be determined under this subsection against any person, if such person does not hold a license, permit, certificate, or other authorization issued by the Commission, and if such person is not an applicant for a license, permit, certificate, or other authorization issued by the Commission, unless, prior to the notice required by paragraph (3) of this subsection or the notice of apparent liability required by paragraph (4) of this subsection, such person (A) is sent a citation of the violation charged; (B) is given a reasonable opportunity for a personal interview with an official of the Commission, at the field office of the Commission which is nearest to such person's place of residence; and (C) subsequently engages in conduct of the type described in such citation. The provisions of this paragraph shall not apply, however, if the person involved is engaging in activities for which a license, permit, certificate, or other authorization is required, or is a cable television system operator, if the person involved is transmitting on frequencies assigned for use in a service in which individual station operation is authorized by rule pursuant to section 307(e) of this title, or in the case of violations of section 303(q) of this title, if the person involved is a nonlicensee tower owner who has previously received notice of the obligations imposed by section 303(q) of this title from the Commission or the permittee or licensee who uses that tower. Whenever the requirements of this paragraph are satisfied with respect to a particular person, such person shall not be entitled to receive any additional citation of the violation charged, with respect to any conduct of the type described in the citation sent under this paragraph.

(6) No forfeiture penalty shall be determined or imposed against any person under this subsection if—

(A) such person holds a broadcast station license issued under subchapter III of this chapter and if the violation charged occurred—

(i) more than 1 year prior to the date of issuance of the required notice or notice of apparent liability; or

(ii) prior to the date of commencement of the current term of such license,

whichever is earlier; or

(B) such person does not hold a broadcast station license issued under subchapter III of this chapter and if the violation charged occurred more than 1 year prior to the date of issuance of the required notice or notice of apparent liability.

For purposes of this paragraph, ''date of commencement of the current term of such license'' means the date of commencement of the last term of license for which the licensee has been granted a license by the Commission. A separate license term shall not be deemed to have commenced as a result of continuing a license in effect under section 307(c) of this title pending decision on an application for renewal of the license.

(June 19, 1934, ch. 652, title V, § 503, 48 Stat. 1101; Pub. L. 86–752, § 7(a), Sept. 13, 1960, 74 Stat. 894; Pub. L. 95–234, § 2, Feb. 21, 1978, 92 Stat. 33; Pub. L. 96–507, § 2(b), Dec. 8, 1980, 94 Stat. 2747; Pub. L. 97–259, title I, § 124, Sept. 13, 1982, 96 Stat. 1098; Pub. L. 98–214, § 4(b), Dec. 8, 1983, 97 Stat. 1468; Pub. L. 101–239, title III, § 3002(i), Dec. 19, 1989, 103 Stat. 2131; Pub. L. 101–396, § 10, Sept. 28, 1990, 104 Stat. 851; Pub. L. 102–538, title II, §§ 206, 210(b), Oct. 27, 1992, 106 Stat. 3543, 3544; Pub. L. 109–235, § 2, June 15, 2006, 120 Stat. 491.)

REFERENCES IN TEXT

Parts II and III of subchapter III of this chapter, referred to in subsec. (b)(1), are classified to sections 351 et seq. and 381 et seq., respectively, of this title.

AMENDMENTS

2006—Subsec. (b)(2)(C). Pub. L. 109–235, § 2(2), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (b)(2)(D). Pub. L. 109–235, § 2(1), (3), redesignated subpar. (C) as (D) and substituted ''subparagraph (A), (B), or (C)'' for ''subparagraph (A) or (B)''. Former subpar. (D) redesignated (E).

Subsec. (b)(2)(E). Pub. L. 109–235, § (2)(1), redesignated subpar. (D) as (E).

1992—Subsec. (b)(5). Pub. L. 102–538, § 210(b), substituted ''system operator,'' for ''system operator or'' and inserted '', or in the case of violations of section 303(q) of this title, if the person involved is a nonlicensee tower owner who has previously received notice of the obligations imposed by section 303(q) of this title from the Commission or the permittee or licensee who uses that tower'' after ''section 307(e) of this title''.

Subsec. (b)(6). Pub. L. 102–538, § 206(2), inserted at end ''For purposes of this paragraph, 'date of commencement of the current term of such license' means the date of commencement of the last term of license for which the licensee has been granted a license by the Commission. A separate license term shall not be deemed to have commenced as a result of continuing a license in effect under section 307(c) of this title pending decision on an application for renewal of the license.''

Subsec. (b)(6)(A). Pub. L. 102–538, §206(1), struck out ''so long as such violation occurred within 3 years prior to the date of issuance of such required notice'' after ''whichever is earlier''.

1990—Subsec. (b)(5). Pub. L. 101–396 inserted ''and if such person is not an applicant for a license, permit, certificate, or other authorization issued by the Commission,'' before ''unless, prior''.

1989—Subsec. (b)(1), (2). Pub. L. 101–239 inserted ''(1)'' before ''Any person who'' in first par., added par. (2), and struck out former par. (2) thereby resulting in increasing penalty if violator is a common carrier from $20,000 to $100,000 per day to a maximum of $1,000,000 per act and penalty if violator is a broadcast station licensee or cable television operator from $20,000 to $25,000 per day to a maximum of $250,000 per act, making such penalty also applicable to television operator applicants, and increasing penalty in all other cases from $5,000 to $10,000 per day to a maximum of $75,000.

1983—Subsec. (b)(5). Pub. L. 98–214 inserted ''or if the person involved is transmitting on frequencies assigned for use in a service in which individual station operation is authorized by rule pursuant to section 307(e) of this title''.

1982—Subsec. (b)(5). Pub. L. 97–259 inserted '', or is a cable television system operator'' after ''other authorization is required''.

1980—Subsec. (b). Pub. L. 96–507 conformed references in first paragraph to sections 509(a) and 507 of this title to reflect renumbering of those sections which required no change in text.

1978—Subsec. (b). Pub. L. 95–234 substituted provisions relating to activities making persons liable for forfeiture penalties, amounts of forfeiture penalties, procedures applicable for imposition of forfeiture penalties, and exemptions from liability from imposition of forfeiture penalties, for provisions relating to activities of licensees or permittees constituting violations and authorizing forfeiture to the United States of a sum not to exceed $1,000 for each separate offense, procedures applicable for imposition of forfeiture liability, and limitations on imposition of forfeiture liability.

1960—Pub. L. 86–752 amended section catchline substituting ''Forfeitures'' for ''Rebates and offsets, forfeitures,'', designated existing provisions as subsec. (a), and added subsec. (b).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–234 effective on thirtieth day after Feb. 21, 1978, except that the provisions of subsec. (b) of this section, as in effect on Feb. 21, 1978, shall continue to constitute the applicable law with respect to any act or omission which occurs prior to such thirtieth day, see section 7 of Pub. L. 95–234, set out as a note under section 152 of this title.

§504. Forfeitures

(a) Recovery

The forfeitures provided for in this chapter shall be payable into the Treasury of the United States, and shall be recoverable, except as otherwise provided with respect to a forfeiture penalty determined under section 503(b)(3) of this title, in a civil suit in the name of the United States brought in the district where the person or carrier has its principal operating office or in any district through which the line or system of the carrier runs: *Provided*, That any suit for the recovery of a forfeiture imposed pursuant to the provisions of this chapter shall be a trial de novo: *Provided further*, That in the case of forfeiture by a ship, said forfeiture may also be recoverable by way of libel in any district in which such ship shall arrive or depart. Such forfeitures shall be in addition to any other general or specific penalties provided in this chapter. It shall be the duty of the various United States attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures under this chapter. The costs and expenses of such prosecutions shall be paid from the appropriation for the expenses of the courts of the United States.

(b) Remission and mitigation

The forfeitures imposed by subchapter II of this chapter, parts II and III of subchapter III of this chapter, and sections 503(b) and 507 of this title shall be subject to remission or mitigation by the Commission under such regulations and methods of ascertaining the facts as may seem to it advisable, and, if suit has been instituted, the Attorney General, upon request of the Commission, shall direct the discontinuance of any prosecution to recover such forfeitures: *Provided, however*, That no forfeiture shall be remitted or mitigated after determination by a court of competent jurisdiction.

(c) Use of notice of apparent liability

In any case where the Commission issues a notice of apparent liability looking toward the imposition of a forfeiture under this chapter, that fact shall not be used, in any other proceeding before the Commission, to the prejudice of the person to whom such notice was issued, unless (i) the forfeiture has been paid, or (ii) a court of competent jurisdiction has ordered payment of such forfeiture, and such order has become final.

(June 19, 1934, ch. 652, title V, §504, 48 Stat. 1101; May 20, 1937, ch. 229, §14, 50 Stat. 197; June 25, 1948, ch. 646, §1, 62 Stat. 909; Aug. 13, 1954, ch. 735, §4, 68 Stat. 729; Aug. 6, 1956, ch. 973, §2, 70 Stat. 1048; Pub. L. 86–752, §7(b)–(d), Sept. 13, 1960, 74 Stat. 895; Pub. L. 87–448, §2, May 11, 1962, 76 Stat. 69; Pub. L. 95–234, §3, Feb. 21, 1978, 92 Stat. 35; Pub. L. 96–507, §2(c), Dec. 8, 1980, 94 Stat. 2747.)

REFERENCES IN TEXT

Parts II and III of subchapter III of this chapter, referred to in subsec. (b), are classified to sections 351 et seq. and 381 et seq., respectively, of this title.

AMENDMENTS

1980—Subsec. (b). Pub. L. 96–507 conformed reference to section 507 of this title to reflect renumbering of that section which required no change in text.

1978—Subsec. (a). Pub. L. 95–234, §3(a), inserted in first sentence '', except as otherwise provided with respect to a forfeiture penalty determined under section 503(b)(3) of this title,'' after ''recoverable''. Such wording was inserted only after the first reference to ''recoverable'' as the probable intent of Congress.

Subsec. (b). Pub. L. 95–234, §3(b), inserted reference to subchapter II of this chapter and struck out reference to section 510 of this title and '', upon application therefor,'' after ''by the Commission''.

1962—Subsec. (b). Pub. L. 87–448 empowered the Commission to remit or mitigate the forfeitures imposed by section 510 of this title.

1960—Subsec. (a). Pub. L. 86–752, §7(b), inserted proviso that any suit for recovery of a forfeiture shall be a trial de novo.

Subsec. (b). Pub. L. 86–752, §7(c), substituted ''sections 503(b) and 507'' for ''section 507''.

Subsec. (c). Pub. L. 86–752, §7(d), added subsec. (c).

1956—Subsec. (b). Act Aug. 6, 1956, inserted reference to part III of subchapter III.

1954—Subsec. (b). Act Aug. 13, 1954, inserted reference to section 507 of this title.

1937—Act May 20, 1937, designated existing provisions as subsec. (a), inserted proviso as to recovery of forfeiture in any district where a ship may arrive or depart, and added subsec. (b).

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted ''United States attorneys'' for ''district attorneys''. See section 541 of Title 28, Judiciary and Judicial Procedure, and Historical and Revision Notes thereunder.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–234 effective on thirtieth day after Feb. 21, 1978, see section 7 of Pub. L. 95–234, set out as a note under section 152 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 3 of Pub. L. 87–448 provided that: ''The amendments made by this Act [enacting section 510 of this title and amending this section] shall take effect on the thirtieth day after the date of its enactment [May 11, 1962].''

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Aug. 6, 1956, effective Mar. 1, 1957, see section 4 of act Aug. 6, 1956, set out as an Effective Date note under section 381 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 13, 1954, effective Nov. 13, 1954, see section 6 of act Aug. 13, 1954, set out as an Effective Date note under section 507 of this title.

§ 505. Venue of trials

The trial of any offense under this chapter shall be in the district in which it is committed; or if the offense is committed upon the high seas, or out of the jurisdiction of any particular State or district, the trial shall be in the district where the offender may be found or into which he shall be first brought. Whenever the offense is begun in one jurisdiction and completed in another it may be dealt with, inquired of, tried, determined, and punished in either jurisdiction in the same manner as if the offense had been actually and wholly committed therein.

(June 19, 1934, ch. 652, title V, § 505, 48 Stat. 1101.)

§ 506. Repealed. Pub. L. 96–507, § 1, Dec. 8, 1980, 94 Stat. 2747

Section, act June 19, 1934, ch. 652, title V, § 506, as added Apr. 16, 1946, ch. 138, 60 Stat. 89, prohibited certain coercive practices affecting broadcasting and provided penalties for violations.

§ 507. Violation of Great Lakes Agreement

(a) Any vessel of the United States that is navigated in violation of the provisions of the Great Lakes Agreement or the rules and regulations of the Commission made in pursuance thereof and any vessel of a foreign country that is so navigated on waters under the jurisdiction of the United States shall forfeit to the United States the sum of $500 recoverable by way of suit or libel. Each day during which such navigation occurs shall constitute a separate offense.

(b) Every willful failure on the part of the master of a vessel of the United States to enforce or to comply with the provisions of the Great Lakes Agreement or the rules and regulations of the Commission made in pursuance thereof shall cause him to forfeit to the United States the sum of $100.

(June 19, 1934, ch. 652, title V, § 506, formerly § 507, as added Aug. 13, 1954, ch. 735, § 3, 68 Stat. 729; renumbered § 506, Pub. L. 96–507, § 1, Dec. 8, 1980, 94 Stat. 2747.)

PRIOR PROVISIONS

A prior section 506 of act June 19, 1934, ch. 652, was classified to section 506 of this title prior to repeal by Pub. L. 96–507.

EFFECTIVE DATE

Section 6 of act Aug. 13, 1954, provided that: ''This Act [enacting this section and amending sections 153, 154, and 504 of this title] shall take effect on November 13, 1954.''

§ 508. Disclosure of payments to individuals connected with broadcasts

(a) Payments to station employees

Subject to subsection (d) of this section, any employee of a radio station who accepts or agrees to accept from any person (other than such station), or any person (other than such station) who pays or agrees to pay such employee, any money, service or other valuable consideration for the broadcast of any matter over such station shall, in advance of such broadcast, disclose the fact of such acceptance or agreement to such station.

(b) Production or preparation of programs

Subject to subsection (d) of this section, any person who, in connection with the production or preparation of any program or program matter which is intended for broadcasting over any radio station, accepts or agrees to accept, or pays or agrees to pay, any money, service or other valuable consideration for the inclusion of any matter as a part of such program or program matter, shall, in advance of such broadcast, disclose the fact of such acceptance or payment or agreement to the payee's employer, or to the person for whom such program or program matter is being produced, or to the licensee of such station over which such program is broadcast.

(c) Supplying of program or program matter

Subject to subsection (d) of this section, any person who supplies to any other person any program or program matter which is intended for broadcasting over any radio station shall, in advance of such broadcast, disclose to such other person any information of which he has knowledge, or which has been disclosed to him, as to any money, service or other valuable consideration which any person has paid or accepted, or has agreed to pay or accept, for the inclusion of any matter as a part of such program or program matter.

(d) Waiver of announcements under section 317(d)

The provisions of this section requiring the disclosure of information shall not apply in any case where, because of a waiver made by the Commission under section 317(d) of this title, an announcement is not required to be made under section 317 of this title.

(e) Announcement under section 317 as sufficient disclosure

The inclusion in the program of the announcement required by section 317 of this title shall

constitute the disclosure required by this section.

(f) "Service or other valuable consideration" defined

The term ''service or other valuable consideration'' as used in this section shall not include any service or property furnished without charge or at a nominal charge for use on, or in connection with, a broadcast, or for use on a program which is intended for broadcasting over any radio station, unless it is so furnished in consideration for an identification in such broadcast or in such program of any person, product, service, trademark, or brand name beyond an identification which is reasonably related to the use of such service or property in such broadcast or such program.

(g) Penalties

Any person who violates any provision of this section shall, for each such violation, be fined not more than $10,000 or imprisoned not more than one year, or both.

(June 19, 1934, ch. 652, title V, § 507, formerly § 508, as added Pub. L. 86–752, § 8(b), Sept. 13, 1960, 74 Stat. 896; renumbered § 507, Pub. L. 96–507, § 1, Dec. 8, 1980, 94 Stat. 2747.)

PRIOR PROVISIONS

A prior section 507 of act June 19, 1934, ch. 652, was renumbered section 506 by section 1 of Pub. L. 96–507, and is classified to section 507 of this title.

§ 509. Prohibited practices in contests of knowledge, skill, or chance

(a) Influencing, prearranging, or predetermining outcome

It shall be unlawful for any person, with intent to deceive the listening or viewing public—

(1) To supply to any contestant in a purportedly bona fide contest of intellectual knowledge or intellectual skill any special and secret assistance whereby the outcome of such contest will be in whole or in part prearranged or predetermined.

(2) By means of persuasion, bribery, intimidation, or otherwise, to induce or cause any contestant in a purportedly bona fide contest of intellectual knowledge or intellectual skill to refrain in any manner from using or displaying his knowledge or skill in such contest, whereby the outcome thereof will be in whole or in part prearranged or predetermined.

(3) To engage in any artifice or scheme for the purpose of prearranging or predetermining in whole or in part the outcome of a purportedly bona fide contest of intellectual knowledge, intellectual skill, or chance.

(4) To produce or participate in the production for broadcasting of, to broadcast or participate in the broadcasting of, to offer to a licensee for broadcasting, or to sponsor, any radio program, knowing or having reasonable ground for believing that, in connection with a purportedly bona fide contest of intellectual knowledge, intellectual skill, or chance constituting any part of such program, any person has done or is going to do any act or thing referred to in paragraph (1), (2), or (3) of this subsection.

(5) To conspire with any other person or persons to do any act or thing prohibited by paragraph (1), (2), (3), or (4) of this subsection, if one or more of such persons do any act to effect the object of such conspiracy.

(b) "Contest" and "the listening or viewing public" defined

For the purposes of this section—

(1) The term ''contest'' means any contest broadcast by a radio station in connection with which any money or any other thing of value is offered as a prize or prizes to be paid or presented by the program sponsor or by any other person or persons, as announced in the course of the broadcast.

(2) The term ''the listening or viewing public'' means those members of the public who, with the aid of radio receiving sets, listen to or view programs broadcast by radio stations.

(c) Penalties

Whoever violates subsection (a) of this section shall be fined not more than $10,000 or imprisoned not more than one year, or both.

(June 19, 1934, ch. 652, title V, § 508, formerly § 509, as added Pub. L. 86–752, § 9, Sept. 13, 1960, 74 Stat. 897; renumbered § 508, Pub. L. 96–507, § 1, Dec. 8, 1980, 94 Stat. 2747.)

PRIOR PROVISIONS

A prior section 508 of act June 19, 1934, ch. 652, was renumbered section 507 by section 1 of Pub. L. 96–507, and is classified to section 508 of this title.

§ 510. Forfeiture of communications devices

(a) Violation with willful and knowing intent

Any electronic, electromagnetic, radio frequency, or similar device, or component thereof, used, sent, carried, manufactured, assembled, possessed, offered for sale, sold, or advertised with willful and knowing intent to violate section 301 or 302a of this title, or rules prescribed by the Commission under such sections, may be seized and forfeited to the United States.

(b) Seizure

Any property subject to forfeiture to the United States under this section may be seized by the Attorney General of the United States upon process issued pursuant to the supplemental rules for certain admiralty and maritime claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made if the seizure is incident to a lawful arrest or search.

(c) Laws applicable to seizure and forfeiture

All provisions of law relating to—

(1) the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws;

(2) the disposition of such property or the proceeds from the sale thereof;

(3) the remission or mitigation of such forfeitures; and

(4) the compromise of claims with respect to such forfeitures;

shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the pro-

visions of this section, insofar as applicable and not inconsistent with the provisions of this section, except that such seizures and forfeitures shall be limited to the communications device, devices, or components thereof.

(d) Disposition of forfeited property

Whenever property is forfeited under this section, the Attorney General of the United States may forward it to the Commission or sell any forfeited property which is not harmful to the public. The proceeds from any such sale shall be deposited in the general fund of the Treasury of the United States.

(June 19, 1934, ch. 652, title V, § 510, as added Pub. L. 97–259, title I, § 125, Sept. 13, 1982, 96 Stat. 1098.)

PRIOR PROVISIONS

A prior section 510, act June 19, 1934, ch. 652, title V, § 510, as added May 11, 1962, Pub. L. 87–448, § 1, 76 Stat. 68, related to forfeitures for violations of rules and regulations by radio stations operating in common carrier, safety and special radio fields, prior to repeal effective the thirtieth day after Feb. 21, 1978, by Pub. L. 95–234, §§ 4, 7, Feb. 21, 1978, 92 Stat. 35.

SUBCHAPTER V–A—CABLE COMMUNICATIONS

PART I—GENERAL PROVISIONS

§ 521. Purposes

The purposes of this subchapter are to—

(1) establish a national policy concerning cable communications;

(2) establish franchise procedures and standards which encourage the growth and development of cable systems and which assure that cable systems are responsive to the needs and interests of the local community;

(3) establish guidelines for the exercise of Federal, State, and local authority with respect to the regulation of cable systems;

(4) assure that cable communications provide and are encouraged to provide the widest possible diversity of information sources and services to the public;

(5) establish an orderly process for franchise renewal which protects cable operators against unfair denials of renewal where the operator's past performance and proposal for future performance meet the standards established by this subchapter; and

(6) promote competition in cable communications and minimize unnecessary regulation that would impose an undue economic burden on cable systems.

(June 19, 1934, ch. 652, title VI, § 601, as added Pub. L. 98–549, § 2, Oct. 30, 1984, 98 Stat. 2780.)

EFFECTIVE DATE

Section 9(a) of Pub. L. 98–549 provided that: "Except where otherwise expressly provided, the provisions of this Act [enacting this subchapter and section 611 of this title, amending sections 152, 224, 309, and 605 of this title, section 2511 of Title 18, Crimes and Criminal Procedure, and section 1805 of Title 50, War and National Defense, and enacting provisions set out as notes under this section and sections 543, 605, and 609 of this title] and the amendments made thereby shall take effect 60 days after the date of enactment of this Act [Oct. 30, 1984]."

SHORT TITLE

For short title of Pub. L. 98–549 [enacting this subchapter] as the "Cable Communications Policy Act of 1984", see section 1(a) of Pub. L. 98–549, set out as a Short Title of 1984 Amendment note under section 609 of this title.

CONGRESSIONAL FINDINGS AND POLICY FOR PUB. L. 102–385

Pub. L. 102–385, § 2(a), (b), Oct. 5, 1992, 106 Stat. 1460, 1463, provided that:

"(a) FINDINGS.—The Congress finds and declares the following:

"(1) Pursuant to the Cable Communications Policy Act of 1984 [Pub. L. 98–549, enacting this subchapter and section 611 of this title, amending sections 152, 224, 309, and 605 of this title, section 2511 of Title 18, Crimes and Criminal Procedure, and section 1805 of Title 50, War and National Defense, and enacting provisions set out as notes under this section and sections 543, 605, and 609 of this title], rates for cable television services have been deregulated in approximately 97 percent of all franchises since December 29, 1986. Since rate deregulation, monthly rates for the lowest priced basic cable service have increased by 40 percent or more for 28 percent of cable television subscribers. Although the average number of basic channels has increased from about 24 to 30, average monthly rates have increased by 29 percent during the same period. The average monthly cable rate has increased almost 3 times as much as the Consumer Price Index since rate deregulation.

"(2) For a variety of reasons, including local franchising requirements and the extraordinary expense of constructing more than one cable television system to serve a particular geographic area, most cable television subscribers have no opportunity to select between competing cable systems. Without the presence of another multichannel video programming distributor, a cable system faces no local competition. The result is undue market power for the cable operator as compared to that of consumers and video programmers.

"(3) There has been a substantial increase in the penetration of cable television systems over the past decade. Nearly 56,000,000 households, over 60 percent of the households with televisions, subscribe to cable television, and this percentage is almost certain to increase. As a result of this growth, the cable television industry has become a dominant nationwide video medium.

"(4) The cable industry has become highly concentrated. The potential effects of such concentration are barriers to entry for new programmers and a reduction in the number of media voices available to consumers.

"(5) The cable industry has become vertically integrated; cable operators and cable programmers often have common ownership. As a result, cable operators have the incentive and ability to favor their affiliated programmers. This could make it more difficult for noncable-affiliated programmers to secure carriage on cable systems. Vertically integrated program suppliers also have the incentive and ability to favor their affiliated cable operators over nonaffiliated cable operators and programming distributors using other technologies.

"(6) There is a substantial governmental and First Amendment interest in promoting a diversity of views provided through multiple technology media.

"(7) There is a substantial governmental and First Amendment interest in ensuring that cable subscribers have access to local noncommercial educational stations which Congress has authorized, as expressed in section 396(a)(5) of the Communications Act of 1934 [47 U.S.C. 396(a)(5)]. The distribution of unique noncommercial, educational programming services advances that interest.

"(8) The Federal Government has a substantial interest in making all nonduplicative local public television services available on cable systems because—

''(A) public television provides educational and informational programming to the Nation's citizens, thereby advancing the Government's compelling interest in educating its citizens;

''(B) public television is a local community institution, supported through local tax dollars and voluntary citizen contributions in excess of $10,800,000,000 since 1972, that provides public service programming that is responsive to the needs and interests of the local community;

''(C) the Federal Government, in recognition of public television's integral role in serving the educational and informational needs of local communities, has invested more than $3,000,000,000 in public broadcasting since 1969; and

''(D) absent carriage requirements there is a substantial likelihood that citizens, who have supported local public television services, will be deprived of those services.

''(9) The Federal Government has a substantial interest in having cable systems carry the signals of local commercial television stations because the carriage of such signals is necessary to serve the goals contained in section 307(b) of the Communications Act of 1934 [47 U.S.C. 307(b)] of providing a fair, efficient, and equitable distribution of broadcast services.

''(10) A primary objective and benefit of our Nation's system of regulation of television broadcasting is the local origination of programming. There is a substantial governmental interest in ensuring its continuation.

''(11) Broadcast television stations continue to be an important source of local news and public affairs programming and other local broadcast services critical to an informed electorate.

''(12) Broadcast television programming is supported by revenues generated from advertising broadcast over stations. Such programming is otherwise free to those who own television sets and do not require cable transmission to receive broadcast signals. There is a substantial governmental interest in promoting the continued availability of such free television programming, especially for viewers who are unable to afford other means of receiving programming.

''(13) As a result of the growth of cable television, there has been a marked shift in market share from broadcast television to cable television services.

''(14) Cable television systems and broadcast television stations increasingly compete for television advertising revenues. As the proportion of households subscribing to cable television increases, proportionately more advertising revenues will be reallocated from broadcast to cable television systems.

''(15) A cable television system which carries the signal of a local television broadcaster is assisting the broadcaster to increase its viewership, and thereby attract additional advertising revenues that otherwise might be earned by the cable system operator. As a result, there is an economic incentive for cable systems to terminate the retransmission of the broadcast signal, refuse to carry new signals, or reposition a broadcast signal to a disadvantageous channel position. There is a substantial likelihood that absent the reimposition of such a requirement, additional local broadcast signals will be deleted, repositioned, or not carried.

''(16) As a result of the economic incentive that cable systems have to delete, reposition, or not carry local broadcast signals, coupled with the absence of a requirement that such systems carry local broadcast signals, the economic viability of free local broadcast television and its ability to originate quality local programming will be seriously jeopardized.

''(17) Consumers who subscribe to cable television often do so to obtain local broadcast signals which they otherwise would not be able to receive, or to obtain improved signals. Most subscribers to cable television systems do not or cannot maintain antennas to receive broadcast television services, do not have input selector switches to convert from a cable to antenna reception system, or cannot otherwise receive broadcast television services. The regulatory system created by the Cable Communications Policy Act of 1984 was premised upon the continued existence of mandatory carriage obligations for cable systems, ensuring that local stations would be protected from anticompetitive conduct by cable systems.

''(18) Cable television systems often are the single most efficient distribution system for television programming. A Government mandate for a substantial societal investment in alternative distribution systems for cable subscribers, such as the 'A/B' input selector antenna system, is not an enduring or feasible method of distribution and is not in the public interest.

''(19) At the same time, broadcast programming that is carried remains the most popular programming on cable systems, and a substantial portion of the benefits for which consumers pay cable systems is derived from carriage of the signals of network affiliates, independent television stations, and public television stations. Also cable programming placed on channels adjacent to popular off-the-air signals obtains a larger audience than on other channel positions. Cable systems, therefore, obtain great benefits from local broadcast signals which, until now, they have been able to obtain without the consent of the broadcaster or any copyright liability. This has resulted in an effective subsidy of the development of cable systems by local broadcasters. While at one time, when cable systems did not attempt to compete with local broadcasters for programming, audience, and advertising, this subsidy may have been appropriate, it is so no longer and results in a competitive imbalance between the 2 industries.

''(20) The Cable Communications Policy Act of 1984, in its amendments to the Communications Act of 1934 [47 U.S.C. 151 et seq.], limited the regulatory authority of franchising authorities over cable operators. Franchising authorities are finding it difficult under the current regulatory scheme to deny renewals to cable systems that are not adequately serving cable subscribers.

''(21) Cable systems should be encouraged to carry low-power television stations licensed to the communities served by those systems where the low-power station creates and broadcasts, as a substantial part of its programming day, local programming.

''(b) STATEMENT OF POLICY.—It is the policy of the Congress in this Act [enacting sections 334, 335, 534 to 537, 544a, 548, and 555a of this title, amending sections 325, 332, 522, 532, 533, 541 to 544, 546, 551 to 555, and 558 of this title, and enacting provisions set out as notes under this section and sections 325, 531, 543, and 554 of this title] to—

''(1) promote the availability to the public of a diversity of views and information through cable television and other video distribution media;

''(2) rely on the marketplace, to the maximum extent feasible, to achieve that availability;

''(3) ensure that cable operators continue to expand, where economically justified, their capacity and the programs offered over their cable systems;

''(4) where cable television systems are not subject to effective competition, ensure that consumer interests are protected in receipt of cable service; and

''(5) ensure that cable television operators do not have undue market power vis-a-vis video programmers and consumers.''

SPORTS PROGRAMMING MIGRATION STUDY AND REPORT

Pub. L. 102–385, §26, Oct. 5, 1992, 106 Stat. 1502, directed Federal Communications Commission to investigate and analyze, on a sport-by-sport basis, trends in migration of local, regional, and national sports programming from carriage by broadcast stations to carriage over cable programming networks and pay-per-view systems, including economic causes and conse-

quences of such trends, and further directed Commission to submit to Congress interim and final reports of such study, no later than July 1, 1993, and July 1, 1994, respectively, along with recommendations for legislative or regulatory activity.

APPLICABILITY OF ANTITRUST LAWS TO PUB. L. 102–385

Pub. L. 102–385, § 27, Oct. 5, 1992, 106 Stat. 1503, provided that: ''Nothing in this Act [enacting sections 334, 335, 534 to 537, 544a, 548, and 555a of this title, amending sections 325, 332, 522, 532, 533, 541 to 544, 546, 551 to 555, and 558 of this title, and enacting provisions set out as notes under this section and sections 325, 531, 543, and 554 of this title] or the amendments made by this Act shall be construed to alter or restrict in any manner the applicability of any Federal or State antitrust law.''

EFFECT OF CABLE COMMUNICATIONS POLICY ACT OF 1984 ON JURISDICTION OF FEDERAL COMMUNICATIONS COMMISSION RESPECTING WIRE OR RADIO COMMUNICATIONS THROUGH CABLE SYSTEMS

Section 3(b) of Pub. L. 98–549 provided that: ''The provisions of this Act [enacting this subchapter and section 611 of this title, amending sections 152, 224, 309, and 605 of this title, section 2511 of Title 18, Crimes and Criminal Procedure, and section 1805 of Title 50, War and National Defense, and enacting provisions set out as notes under this section and sections 543, 605, and 609 of this title] and amendments made by this Act shall not be construed to affect any jurisdiction the Federal Communications Commission may have under the Communications Act of 1934 [this chapter] with respect to any communication by wire or radio (other than cable service, as defined in section 602(5) of such Act [section 522(5) of this title]) which is provided through a cable system, or persons or facilities engaged in such communications.''

§ 522. Definitions

For purposes of this subchapter—

(1) the term ''activated channels'' means those channels engineered at the headend of a cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel designated for public, educational, or governmental use;

(2) the term ''affiliate'', when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person;

(3) the term ''basic cable service'' means any service tier which includes the retransmission of local television broadcast signals;

(4) the term ''cable channel'' or ''channel'' means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by the Commission by regulation);

(5) the term ''cable operator'' means any person or group of persons (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system;

(6) the term ''cable service'' means—

(A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and

(B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service;

(7) the term ''cable system'' means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of 1 or more television broadcast stations; (B) a facility that serves subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of subchapter II of this chapter, except that such facility shall be considered a cable system (other than for purposes of section 541(c) of this title) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with section 573 of this title; or (E) any facilities of any electric utility used solely for operating its electric utility system;

(8) the term ''Federal agency'' means any agency of the United States, including the Commission;

(9) the term ''franchise'' means an initial authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to section 546 of this title), issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system;

(10) the term ''franchising authority'' means any governmental entity empowered by Federal, State, or local law to grant a franchise;

(11) the term ''grade B contour'' means the field strength of a television broadcast station computed in accordance with regulations promulgated by the Commission;

(12) the term ''interactive on-demand services'' means a service providing video programming to subscribers over switched networks on an on-demand, point-to-point basis, but does not include services providing video programming prescheduled by the programming provider;

(13) the term ''multichannel video programming distributor'' means a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming;

(14) the term ''other programming service'' means information that a cable operator makes available to all subscribers generally;

(15) the term ''person'' means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity;

(16) the term ''public, educational, or governmental access facilities'' means—

(A) channel capacity designated for public, educational, or governmental use; and

(B) facilities and equipment for the use of such channel capacity;

(17) the term ''service tier'' means a category of cable service or other services provided by a cable operator and for which a separate rate is charged by the cable operator;

(18) the term ''State'' means any State, or political subdivision, or agency thereof;

(19) the term ''usable activated channels'' means activated channels of a cable system, except those channels whose use for the distribution of broadcast signals would conflict with technical and safety regulations as determined by the Commission; and

(20) the term ''video programming'' means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

(June 19, 1934, ch. 652, title VI, § 602, as added Pub. L. 98–549, § 2, Oct. 30, 1984, 98 Stat. 2780; amended Pub. L. 102–385, § 2(c), Oct. 5, 1992, 106 Stat. 1463; Pub. L. 104–104, title III, §§ 301(a), 302(b)(2), Feb. 8, 1996, 110 Stat. 114, 124.)

AMENDMENTS

1996—Par. (6)(B). Pub. L. 104–104, § 301(a)(1), inserted ''or use'' after ''the selection''.

Par. (7)(B). Pub. L. 104–104, § 301(a)(2), added subpar. (B) and struck out former subpar. (B) which read as follows: ''a facility that serves only subscribers in 1 or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities uses any public right-of-way;''.

Par. (7)(C) to (E). Pub. L. 104–104, § 302(b)(2)(A), which directed substitution of '', unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with section 573 of this title; or (E)'' for '', or (D)'', was executed by making the substitution for ''; or (D)'' to reflect the probable intent of Congress.

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

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

EFFECTIVE DATE OF 1992 AMENDMENT

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

EFFECTIVE DATE

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

PART II—USE OF CABLE CHANNELS AND CABLE OWNERSHIP RESTRICTIONS

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

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

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

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

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

(c) Enforcement authority

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

(d) Promulgation of rules and procedures

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

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

(2) rules and procedures under which such permitted use shall cease.

(e) Editorial control by cable operator

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

(f) "Institutional network" defined

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

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

AMENDMENTS

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

EFFECTIVE DATE

Section effective 60 days after Oct. 30, 1984, except where otherwise expressly provided, see section 9(a) of

Pub. L. 98–549, set out as a note under section 521 of this title.

REGULATIONS

Pub. L. 102–385, § 10(c), Oct. 5, 1992, 106 Stat. 1486, provided that: ''Within 180 days following the date of the enactment of this Act [Oct. 5, 1992], the Federal Communications Commission shall promulgate such regulations as may be necessary to enable a cable operator of a cable system to prohibit the use, on such system, of any channel capacity of any public, educational, or governmental access facility for any programming which contains obscene material, sexually explicit conduct, or material soliciting or promoting unlawful conduct.''

§ 532. Cable channels for commercial use

(a) Purpose

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

(b) Designation of channel capacity for commercial use

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

(A) An operator of any cable system with 36 or more (but not more than 54) activated channels shall designate 10 percent of such channels which are not otherwise required for use (or the use of which is not prohibited) by Federal law or regulation.

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

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

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

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

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

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

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

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

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

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

(1) If a person unaffiliated with the cable operator seeks to use channel capacity designated pursuant to subsection (b) of this section for commercial use, the cable operator shall establish, consistent with the purpose of this section and with rules prescribed by the Commission under paragraph (4), the price, terms, and conditions of such use which are at least sufficient to assure that such use will not adversely affect the operation, financial condition, or market development of the cable system.

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

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

(4)(A) The Commission shall have the authority to—

(i) determine the maximum reasonable rates that a cable operator may establish pursuant to paragraph (1) for commercial use of designated channel capacity, including the rate charged for the billing of rates to subscribers and for the collection of revenue from subscribers by the cable operator for such use;

(ii) establish reasonable terms and conditions for such use, including those for billing and collection; and

(iii) establish procedures for the expedited resolution of disputes concerning rates or carriage under this section.

(B) Within 180 days after October 5, 1992, the Commission shall establish rules for determin-

ing maximum reasonable rates under subparagraph (A)(i), for establishing terms and conditions under subparagraph (A)(ii), and for providing procedures under subparagraph (A)(iii).

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

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

(e) Petition to Commission; relief

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

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

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

(f) Presumption of reasonableness and good faith

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

(g) Promulgation of rules

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

(h) Cable service unprotected by Constitution

Any cable service offered pursuant to this section shall not be provided, or shall be provided subject to conditions, if such cable service in the judgment of the franchising authority or the cable operator is obscene, or is in conflict with community standards in that it is lewd, lascivious, filthy, or indecent or is otherwise unprotected by the Constitution of the United States. This subsection shall permit a cable operator to enforce prospectively a written and published policy of prohibiting programming that the cable operator reasonably believes describes or depicts sexual or excretory activities or organs in a patently offensive manner as measured by contemporary community standards.

(i) Programming from qualified minority or educational programming sources

(1) Notwithstanding the provisions of subsections (b) and (c) of this section, a cable operator required by this section to designate channel capacity for commercial use may use any such channel capacity for the provision of programming from a qualified minority programming source or from any qualified educational programming source, whether or not such source is affiliated with the cable operator. The channel capacity used to provide programming from a qualified minority programming source or from any qualified educational programming source pursuant to this subsection may not exceed 33 percent of the channel capacity designated pursuant to this section. No programming provided over a cable system on July 1, 1990, may qualify as minority programming or educational programming on that cable system under this subsection.

(2) For purposes of this subsection, the term ''qualified minority programming source'' means a programming source which devotes substantially all of its programming to coverage of minority viewpoints, or to programming directed at members of minority groups, and which is over 50 percent minority-owned, as the term ''minority'' is defined in section 309(i)(3)(C)(ii) of this title.

(3) For purposes of this subsection, the term ''qualified educational programming source'' means a programming source which devotes substantially all of its programming to educational or instructional programming that promotes public understanding of mathematics, the sciences, the humanities, and the arts and has a

documented annual expenditure on programming exceeding $15,000,000. The annual expenditure on programming means all annual costs incurred by the programming source to produce or acquire programs which are scheduled to be televised, and specifically excludes marketing, promotion, satellite transmission and operational costs, and general administrative costs.

(4) Nothing in this subsection shall substitute for the requirements to carry qualified noncommercial educational television stations as specified under section 535 of this title.

(j) Single channel access to indecent programming

(1) Within 120 days following October 5, 1992, the Commission shall promulgate regulations designed to limit the access of children to indecent programming, as defined by Commission regulations, and which cable operators have not voluntarily prohibited under subsection (h) of this section by—

(A) requiring cable operators to place on a single channel all indecent programs, as identified by program providers, intended for carriage on channels designated for commercial use under this section;

(B) requiring cable operators to block such single channel unless the subscriber requests access to such channel in writing; and

(C) requiring programmers to inform cable operators if the program would be indecent as defined by Commission regulations.

(2) Cable operators shall comply with the regulations promulgated pursuant to paragraph (1).

(June 19, 1934, ch. 652, title VI, § 612, as added Pub. L. 98–549, § 2, Oct. 30, 1984, 98 Stat. 2782; amended Pub. L. 102–385, §§ 9, 10(a), (b), Oct. 5, 1992, 106 Stat. 1484, 1486; Pub. L. 104–104, title V, § 506(b), Feb. 8, 1996, 110 Stat. 137.)

AMENDMENTS

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

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

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

''(A) the term 'activated channels' means those channels engineered at the headend of the cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel designated for public, educational, or governmental use; and

''(B) the term 'commercial use' means the provision of video programming, whether or not for profit.''

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

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

Subsec. (h). Pub. L. 102–385, § 10(a), inserted ''or the cable operator'' after ''franchising authority'' and inserted at end ''This subsection shall permit a cable operator to enforce prospectively a written and published policy of prohibiting programming that the cable operator reasonably believes describes or depicts sexual or excretory activities or organs in a patently offensive manner as measured by contemporary community standards.''

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

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

EFFECTIVE DATE OF 1992 AMENDMENT

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

EFFECTIVE DATE

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

§ 533. Ownership restrictions

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

It shall be unlawful for a cable operator to hold a license for multichannel multipoint distribution service, or to offer satellite master antenna television service separate and apart from any franchised cable service, in any portion of the franchise area served by that cable operator's cable system. The Commission—

(1) shall waive the requirements of this paragraph for all existing multichannel multipoint distribution services and satellite master antenna television services which are owned by a cable operator on October 5, 1992;

(2) may waive the requirements of this paragraph to the extent the Commission determines is necessary to ensure that all significant portions of a franchise area are able to obtain video programming; and

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

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

(c) Promulgation of rules

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

(d) Regulation of ownership by States or franchising authorities

Any State or franchising authority may not prohibit the ownership or control of a cable system by any person because of such person's ownership or control of any other media of mass communications or other media interests. Nothing in this section shall be construed to prevent any State or franchising authority from prohibiting the ownership or control of a cable system in a jurisdiction by any person (1) because of such person's ownership or control of any other cable system in such jurisdiction; or (2) in circumstances in which the State or franchising authority determines that the acquisition of such a cable system may eliminate or reduce competition in the delivery of cable service in such jurisdiction.

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

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

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

(f) Enhancement of effective competition

(1) In order to enhance effective competition, the Commission shall, within one year after October 5, 1992, conduct a proceeding—

(A) to prescribe rules and regulations establishing reasonable limits on the number of cable subscribers a person is authorized to reach through cable systems owned by such person, or in which such person has an attributable interest;

(B) to prescribe rules and regulations establishing reasonable limits on the number of channels on a cable system that can be occupied by a video programmer in which a cable operator has an attributable interest; and

(C) to consider the necessity and appropriateness of imposing limitations on the degree to which multichannel video programming distributors may engage in the creation or production of video programming.

(2) In prescribing rules and regulations under paragraph (1), the Commission shall, among other public interest objectives—

(A) ensure that no cable operator or group of cable operators can unfairly impede, either because of the size of any individual operator or because of joint actions by a group of operators of sufficient size, the flow of video programming from the video programmer to the consumer;

(B) ensure that cable operators affiliated with video programmers do not favor such programmers in determining carriage on their cable systems or do not unreasonably restrict the flow of the video programming of such programmers to other video distributors;

(C) take particular account of the market structure, ownership patterns, and other relationships of the cable television industry, including the nature and market power of the local franchise, the joint ownership of cable systems and video programmers, and the various types of non-equity controlling interests;

(D) account for any efficiencies and other benefits that might be gained through increased ownership or control;

(E) make such rules and regulations reflect the dynamic nature of the communications marketplace;

(F) not impose limitations which would bar cable operators from serving previously unserved rural areas; and

(G) not impose limitations which would impair the development of diverse and high quality video programming.

(g) Combination of interests under prior law

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

(h) "Media of mass communications" defined

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

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

AMENDMENTS

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

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

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

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

Subsec. (d). Pub. L. 102–385, § 11(b), substituted ''any other media'' for ''any media'' and inserted at end ''Nothing in this section shall be construed to prevent any State or franchising authority from prohibiting the ownership or control of a cable system in a jurisdiction by any person (1) because of such person's ownership or control of any other cable system in such jurisdiction; or (2) in circumstances in which the State or franchising authority determines that the acquisition of such a cable system may eliminate or reduce competition in the delivery of cable service in such jurisdiction.''

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

EFFECTIVE DATE OF 1992 AMENDMENT

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

EFFECTIVE DATE

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

§ 534. Carriage of local commercial television signals

(a) Carriage obligations

Each cable operator shall carry, on the cable system of that operator, the signals of local commercial television stations and qualified low power stations as provided by this section. Car-

riage of additional broadcast television signals on such system shall be at the discretion of such operator, subject to section 325(b) of this title.

(b) Signals required

(1) In general

(A) A cable operator of a cable system with 12 or fewer usable activated channels shall carry the signals of at least three local commercial television stations, except that if such a system has 300 or fewer subscribers, it shall not be subject to any requirements under this section so long as such system does not delete from carriage by that system any signal of a broadcast television station.

(B) A cable operator of a cable system with more than 12 usable activated channels shall carry the signals of local commercial television stations, up to one-third of the aggregate number of usable activated channels of such system.

(2) Selection of signals

Whenever the number of local commercial television stations exceeds the maximum number of signals a cable system is required to carry under paragraph (1), the cable operator shall have discretion in selecting which such stations shall be carried on its cable system, except that—

(A) under no circumstances shall a cable operator carry a qualified low power station in lieu of a local commercial television station; and

(B) if the cable operator elects to carry an affiliate of a broadcast network (as such term is defined by the Commission by regulation), such cable operator shall carry the affiliate of such broadcast network whose city of license reference point, as defined in section 76.53 of title 47, Code of Federal Regulations (in effect on January 1, 1991), or any successor regulation thereto, is closest to the principal headend of the cable system.

(3) Content to be carried

(A) A cable operator shall carry in its entirety, on the cable system of that operator, the primary video, accompanying audio, and line 21 closed caption transmission of each of the local commercial television stations carried on the cable system and, to the extent technically feasible, program-related material carried in the vertical blanking interval or on subcarriers. Retransmission of other material in the vertical blanking internal or other non-program-related material (including teletext and other subscription and advertiser-supported information services) shall be at the discretion of the cable operator. Where appropriate and feasible, operators may delete signal enhancements, such as ghost-canceling, from the broadcast signal and employ such enhancements at the system headend or headends.

(B) The cable operator shall carry the entirety of the program schedule of any television station carried on the cable system unless carriage of specific programming is prohibited, and other programming authorized to be substituted, under section 76.67 or subpart F of part 76 of title 47, Code of Federal Regulations (as in effect on January 1, 1991), or any successor regulations thereto.

(4) Signal quality

(A) Nondegradation; technical specifications

The signals of local commercial television stations that a cable operator carries shall be carried without material degradation. The Commission shall adopt carriage standards to ensure that, to the extent technically feasible, the quality of signal processing and carriage provided by a cable system for the carriage of local commercial television stations will be no less than that provided by the system for carriage of any other type of signal.

(B) Advanced television

At such time as the Commission prescribes modifications of the standards for television broadcast signals, the Commission shall initiate a proceeding to establish any changes in the signal carriage requirements of cable television systems necessary to ensure cable carriage of such broadcast signals of local commercial television stations which have been changed to conform with such modified standards.

(5) Duplication not required

Notwithstanding paragraph (1), a cable operator shall not be required to carry the signal of any local commercial television station that substantially duplicates the signal of another local commercial television station which is carried on its cable system, or to carry the signals of more than one local commercial television station affiliated with a particular broadcast network (as such term is defined by regulation). If a cable operator elects to carry on its cable system a signal which substantially duplicates the signal of another local commercial television station carried on the cable system, or to carry on its system the signals of more than one local commercial television station affiliated with a particular broadcast network, all such signals shall be counted toward the number of signals the operator is required to carry under paragraph (1).

(6) Channel positioning

Each signal carried in fulfillment of the carriage obligations of a cable operator under this section shall be carried on the cable system channel number on which the local commercial television station is broadcast over the air, or on the channel on which it was carried on July 19, 1985, or on the channel on which it was carried on January 1, 1992, at the election of the station, or on such other channel number as is mutually agreed upon by the station and the cable operator. Any dispute regarding the positioning of a local commercial television station shall be resolved by the Commission.

(7) Signal availability

Signals carried in fulfillment of the requirements of this section shall be provided to every subscriber of a cable system. Such signals shall be viewable via cable on all tele-

vision receivers of a subscriber which are connected to a cable system by a cable operator or for which a cable operator provides a connection. If a cable operator authorizes subscribers to install additional receiver connections, but does not provide the subscriber with such connections, or with the equipment and materials for such connections, the operator shall notify such subscribers of all broadcast stations carried on the cable system which cannot be viewed via cable without a converter box and shall offer to sell or lease such a converter box to such subscribers at rates in accordance with section 543(b)(3) of this title.

(8) Identification of signals carried

A cable operator shall identify, upon request by any person, the signals carried on its system in fulfillment of the requirements of this section.

(9) Notification

A cable operator shall provide written notice to a local commercial television station at least 30 days prior to either deleting from carriage or repositioning that station. No deletion or repositioning of a local commercial television station shall occur during a period in which major television ratings services measure the size of audiences of local television stations. The notification provisions of this paragraph shall not be used to undermine or evade the channel positioning or carriage requirements imposed upon cable operators under this section.

(10) Compensation for carriage

A cable operator shall not accept or request monetary payment or other valuable consideration in exchange either for carriage of local commercial television stations in fulfillment of the requirements of this section or for the channel positioning rights provided to such stations under this section, except that—

(A) any such station may be required to bear the costs associated with delivering a good quality signal or a baseband video signal to the principal headend of the cable system;

(B) a cable operator may accept payments from stations which would be considered distant signals under section 111 of title 17 as indemnification for any increased copyright liability resulting from carriage of such signal; and

(C) a cable operator may continue to accept monetary payment or other valuable consideration in exchange for carriage or channel positioning of the signal of any local commercial television station carried in fulfillment of the requirements of this section, through, but not beyond, the date of expiration of an agreement thereon between a cable operator and a local commercial television station entered into prior to June 26, 1990.

(c) Low power station carriage obligation

(1) Requirement

If there are not sufficient signals of full power local commercial television stations to fill the channels set aside under subsection (b) of this section—

(A) a cable operator of a cable system with a capacity of 35 or fewer usable activated channels shall be required to carry one qualified low power station; and

(B) a cable operator of a cable system with a capacity of more than 35 usable activated channels shall be required to carry two qualified low power stations.

(2) Use of public, educational, or governmental channels

A cable operator required to carry more than one signal of a qualified low power station under this subsection may do so, subject to approval by the franchising authority pursuant to section 531 of this title, by placing such additional station on public, educational, or governmental channels not in use for their designated purposes.

(d) Remedies

(1) Complaints by broadcast stations

Whenever a local commercial television station believes that a cable operator has failed to meet its obligations under this section, such station shall notify the operator, in writing, of the alleged failure and identify its reasons for believing that the cable operator is obligated to carry the signal of such station or has otherwise failed to comply with the channel positioning or repositioning or other requirements of this section. The cable operator shall, within 30 days of such written notification, respond in writing to such notification and either commence to carry the signal of such station in accordance with the terms requested or state its reasons for believing that it is not obligated to carry such signal or is in compliance with the channel positioning and repositioning and other requirements of this section. A local commercial television station that is denied carriage or channel positioning or repositioning in accordance with this section by a cable operator may obtain review of such denial by filing a complaint with the Commission. Such complaint shall allege the manner in which such cable operator has failed to meet its obligations and the basis for such allegations.

(2) Opportunity to respond

The Commission shall afford such cable operator an opportunity to present data and arguments to establish that there has been no failure to meet its obligations under this section.

(3) Remedial actions; dismissal

Within 120 days after the date a complaint is filed, the Commission shall determine whether the cable operator has met its obligations under this section. If the Commission determines that the cable operator has failed to meet such obligations, the Commission shall order the cable operator to reposition the complaining station or, in the case of an obligation to carry a station, to commence carriage of the station and to continue such carriage for at least 12 months. If the Commission determines that the cable operator has fully met the requirements of this section, it shall dismiss the complaint.

(e) Input selector switch rules abolished

No cable operator shall be required—

(1) to provide or make available any input selector switch as defined in section 76.5(mm) of title 47, Code of Federal Regulations, or any comparable device; or

(2) to provide information to subscribers about input selector switches or comparable devices.

(f) Regulations by Commission

Within 180 days after October 5, 1992, the Commission shall, following a rulemaking proceeding, issue regulations implementing the requirements imposed by this section. Such implementing regulations shall include necessary revisions to update section 76.51 of title 47 of the Code of Federal Regulations.

(g) Sales presentations and program length commercials

(1) Carriage pending proceeding

Pending the outcome of the proceeding under paragraph (2), nothing in this chapter shall require a cable operator to carry on any tier, or prohibit a cable operator from carrying on any tier, the signal of any commercial television station or video programming service that is predominantly utilized for the transmission of sales presentations or program length commercials.

(2) Proceeding concerning certain stations

Within 270 days after October 5, 1992, the Commission, notwithstanding prior proceedings to determine whether broadcast television stations that are predominantly utilized for the transmission of sales presentations or program length commercials are serving the public interest, convenience, and necessity, shall complete a proceeding in accordance with this paragraph to determine whether broadcast television stations that are predominantly utilized for the transmission of sales presentations or program length commercials are serving the public interest, convenience, and necessity. In conducting such proceeding, the Commission shall provide appropriate notice and opportunity for public comment. The Commission shall consider the viewing of such stations, the level of competing demands for the spectrum allocated to such stations, and the role of such stations in providing competition to nonbroadcast services offering similar programming. In the event that the Commission concludes that one or more of such stations are serving the public interest, convenience, and necessity, the Commission shall qualify such stations as local commercial television stations for purposes of subsection (a) of this section. In the event that the Commission concludes that one or more of such stations are not serving the public interest, convenience, and necessity, the Commission shall allow the licensees of such stations a reasonable period within which to provide different programming, and shall not deny such stations a renewal expectancy solely because their programming consisted predominantly of sales presentations or program length commercials.

(h) Definitions

(1) Local commercial television station

(A) In general

For purposes of this section, the term ''local commercial television station'' means any full power television broadcast station, other than a qualified noncommercial educational television station within the meaning of section 535(*l*)(1) of this title, licensed and operating on a channel regularly assigned to its community by the Commission that, with respect to a particular cable system, is within the same television market as the cable system.

(B) Exclusions

The term ''local commercial television station'' shall not include—

(i) low power television stations, television translator stations, and passive repeaters which operate pursuant to part 74 of title 47, Code of Federal Regulations, or any successor regulations thereto;

(ii) a television broadcast station that would be considered a distant signal under section 111 of title 17, if such station does not agree to indemnify the cable operator for any increased copyright liability resulting from carriage on the cable system; or

(iii) a television broadcast station that does not deliver to the principal headend of a cable system either a signal level of −45dBm for UHF signals or −49dBm for VHF signals at the input terminals of the signal processing equipment, if such station does not agree to be responsible for the costs of delivering to the cable system a signal of good quality or a baseband video signal.

(C) Market determinations

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

(ii) In considering requests filed pursuant to clause (i), the Commission shall afford particular attention to the value of localism by taking into account such factors as—

(I) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community;

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

(III) whether any other television station that is eligible to be carried by a cable sys-

tem in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community; and

(IV) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.

(iii) A cable operator shall not delete from carriage the signal of a commercial television station during the pendency of any proceeding pursuant to this subparagraph.

(iv) Within 120 days after the date on which a request is filed under this subparagraph (or 120 days after February 8, 1996, if later), the Commission shall grant or deny the request.

(2) Qualified low power station

The term ''qualified low power station'' means any television broadcast station conforming to the rules established for Low Power Television Stations contained in part 74 of title 47, Code of Federal Regulations, only if—

(A) such station broadcasts for at least the minimum number of hours of operation required by the Commission for television broadcast stations under part 73 of title 47, Code of Federal Regulations;

(B) such station meets all obligations and requirements applicable to television broadcast stations under part 73 of title 47, Code of Federal Regulations, with respect to the broadcast of nonentertainment programming; programming and rates involving political candidates, election issues, controversial issues of public importance, editorials, and personal attacks; programming for children; and equal employment opportunity; and the Commission determines that the provision of such programming by such station would address local news and informational needs which are not being adequately served by full power television broadcast stations because of the geographic distance of such full power stations from the low power station's community of license;

(C) such station complies with interference regulations consistent with its secondary status pursuant to part 74 of title 47, Code of Federal Regulations;

(D) such station is located no more than 35 miles from the cable system's headend, and delivers to the principal headend of the cable system an over-the-air signal of good quality, as determined by the Commission;

(E) the community of license of such station and the franchise area of the cable system are both located outside of the largest 160 Metropolitan Statistical Areas, ranked by population, as determined by the Office of Management and Budget on June 30, 1990, and the population of such community of license on such date did not exceed 35,000; and

(F) there is no full power television broadcast station licensed to any community within the county or other political subdivision (of a State) served by the cable system.

Nothing in this paragraph shall be construed to change the secondary status of any low power station as provided in part 74 of title 47, Code of Federal Regulations, as in effect on October 5, 1992.

(June 19, 1934, ch. 652, title VI, § 614, as added Pub. L. 102–385, § 4, Oct. 5, 1992, 106 Stat. 1471; amended Pub. L. 104–104, title III, § 301(d)(1), Feb. 8, 1996, 110 Stat. 116.)

REFERENCES IN TEXT

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

AMENDMENTS

1996—Subsec. (h)(1)(C)(i). Pub. L. 104–104, § 301(d)(1)(A), substituted ''by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns,'' for ''in the manner provided in section 73.3555(d)(3)(i) of title 47, Code of Federal Regulations, as in effect on May 1, 1991,''.

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

EFFECTIVE DATE

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

APPLICATION TO PENDING REQUESTS

Section 301(d)(2) of Pub. L. 104–104 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to—

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

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

§ 535. Carriage of noncommercial educational television

(a) Carriage obligations

In addition to the carriage requirements set forth in section 534 of this title, each cable operator of a cable system shall carry the signals of qualified noncommercial educational television stations in accordance with the provisions of this section.

(b) Requirements to carry qualified stations

(1) General requirement to carry each qualified station

Subject to paragraphs (2) and (3) and subsection (e) of this section, each cable operator shall carry, on the cable system of that cable operator, any qualified local noncommercial educational television station requesting carriage.

(2) Systems with 12 or fewer channels

(A) Notwithstanding paragraph (1), a cable operator of a cable system with 12 or fewer usable activated channels shall be required to carry the signal of one qualified local non-

commercial educational television station; except that a cable operator of such a system shall comply with subsection (c) of this section and may, in its discretion, carry the signals of other qualified noncommercial educational television stations.

(B) In the case of a cable system described in subparagraph (A) which operates beyond the presence of any qualified local noncommercial educational television station—

(i) the cable operator shall import and carry on that system the signal of one qualified noncommercial educational television station;

(ii) the selection for carriage of such a signal shall be at the election of the cable operator; and

(iii) in order to satisfy the requirements for carriage specified in this subsection, the cable operator of the system shall not be required to remove any other programming service actually provided to subscribers on March 29, 1990; except that such cable operator shall use the first channel available to satisfy the requirements of this subparagraph.

(3) Systems with 13 to 36 channels

(A) Subject to subsection (c) of this section, a cable operator of a cable system with 13 to 36 usable activated channels—

(i) shall carry the signal of at least one qualified local noncommercial educational television station but shall not be required to carry the signals of more than three such stations, and

(ii) may, in its discretion, carry additional such stations.

(B) In the case of a cable system described in this paragraph which operates beyond the presence of any qualified local noncommercial educational television station, the cable operator shall import and carry on that system the signal of at least one qualified noncommercial educational television station to comply with subparagraph (A)(i).

(C) The cable operator of a cable system described in this paragraph which carries the signal of a qualified local noncommercial educational station affiliated with a State public television network shall not be required to carry the signal of any additional qualified local noncommercial educational television stations affiliated with the same network if the programming of such additional stations is substantially duplicated by the programming of the qualified local noncommercial educational television station receiving carriage.

(D) A cable operator of a system described in this paragraph which increases the usable activated channel capacity of the system to more than 36 channels on or after March 29, 1990, shall, in accordance with the other provisions of this section, carry the signal of each qualified local noncommercial educational television station requesting carriage, subject to subsection (e) of this section.

(c) Continued carriage of existing stations

Notwithstanding any other provision of this section, all cable operators shall continue to provide carriage to all qualified local noncommercial educational television stations whose signals were carried on their systems as of March 29, 1990. The requirements of this subsection may be waived with respect to a particular cable operator and a particular such station, upon the written consent of the cable operator and the station.

(d) Placement of additional signals

A cable operator required to add the signals of qualified local noncommercial educational television stations to a cable system under this section may do so, subject to approval by the franchising authority pursuant to section 531 of this title, by placing such additional stations on public, educational, or governmental channels not in use for their designated purposes.

(e) Systems with more than 36 channels

A cable operator of a cable system with a capacity of more than 36 usable activated channels which is required to carry the signals of three qualified local noncommercial educational television stations shall not be required to carry the signals of additional such stations the programming of which substantially duplicates the programming broadcast by another qualified local noncommercial educational television station requesting carriage. Substantial duplication shall be defined by the Commission in a manner that promotes access to distinctive noncommercial educational television services.

(f) Waiver of nonduplication rights

A qualified local noncommercial educational television station whose signal is carried by a cable operator shall not assert any network nonduplication rights it may have pursuant to section 76.92 of title 47, Code of Federal Regulations, to require the deletion of programs aired on other qualified local noncommercial educational television stations whose signals are carried by that cable operator.

(g) Conditions of carriage

(1) Content to be carried

A cable operator shall retransmit in its entirety the primary video, accompanying audio, and line 21 closed caption transmission of each qualified local noncommercial educational television station whose signal is carried on the cable system, and, to the extent technically feasible, program-related material carried in the vertical blanking interval, or on subcarriers, that may be necessary for receipt of programming by handicapped persons or for educational or language purposes. Retransmission of other material in the vertical blanking interval or on subcarriers shall be within the discretion of the cable operator.

(2) Bandwidth and technical quality

A cable operator shall provide each qualified local noncommercial educational television station whose signal is carried in accordance with this section with bandwidth and technical capacity equivalent to that provided to commercial television broadcast stations carried on the cable system and shall carry the signal of each qualified local noncommercial educational television station without material degradation.

(3) Changes in carriage

The signal of a qualified local noncommercial educational television station shall not be repositioned by a cable operator unless the cable operator, at least 30 days in advance of such repositioning, has provided written notice to the station and all subscribers of the cable system. For purposes of this paragraph, repositioning includes (A) assignment of a qualified local noncommercial educational television station to a cable system channel number different from the cable system channel number to which the station was assigned as of March 29, 1990, and (B) deletion of the station from the cable system. The notification provisions of this paragraph shall not be used to undermine or evade the channel positioning or carriage requirements imposed upon cable operators under this section.

(4) Good quality signal required

Notwithstanding the other provisions of this section, a cable operator shall not be required to carry the signal of any qualified local noncommercial educational television station which does not deliver to the cable system's principal headend a signal of good quality or a baseband video signal, as may be defined by the Commission.

(5) Channel positioning

Each signal carried in fulfillment of the carriage obligations of a cable operator under this section shall be carried on the cable system channel number on which the qualified local noncommercial educational television station is broadcast over the air, or on the channel on which it was carried on July 19, 1985, at the election of the station, or on such other channel number as is mutually agreed upon by the station and the cable operator. Any dispute regarding the positioning of a qualified local noncommercial educational television station shall be resolved by the Commission.

(h) Availability of signals

Signals carried in fulfillment of the carriage obligations of a cable operator under this section shall be available to every subscriber as part of the cable system's lowest priced service tier that includes the retransmission of local commercial television broadcast signals.

(i) Payment for carriage prohibited

(1) In general

A cable operator shall not accept monetary payment or other valuable consideration in exchange for carriage of the signal of any qualified local noncommercial educational television station carried in fulfillment of the requirements of this section, except that such a station may be required to bear the cost associated with delivering a good quality signal or a baseband video signal to the principal headend of the cable system.

(2) Distant signal exception

Notwithstanding the provisions of this section, a cable operator shall not be required to add the signal of a qualified local noncommercial educational television station not already carried under the provision of subsection (c) of this section, where such signal would be considered a distant signal for copyright purposes unless such station indemnifies the cable operator for any increased copyright costs resulting from carriage of such signal.

(j) Remedies

(1) Complaint

Whenever a qualified local noncommercial educational television station believes that a cable operator of a cable system has failed to comply with the signal carriage requirements of this section, the station may file a complaint with the Commission. Such complaint shall allege the manner in which such cable operator has failed to comply with such requirements and state the basis for such allegations.

(2) Opportunity to respond

The Commission shall afford such cable operator an opportunity to present data, views, and arguments to establish that the cable operator has complied with the signal carriage requirements of this section.

(3) Remedial actions; dismissal

Within 120 days after the date a complaint is filed under this subsection, the Commission shall determine whether the cable operator has complied with the requirements of this section. If the Commission determines that the cable operator has failed to comply with such requirements, the Commission shall state with particularity the basis for such findings and order the cable operator to take such remedial action as is necessary to meet such requirements. If the Commission determines that the cable operator has fully complied with such requirements, the Commission shall dismiss the complaint.

(k) Identification of signals

A cable operator shall identify, upon request by any person, those signals carried in fulfillment of the requirements of this section.

(*l*) Definitions

For purposes of this section—

(1) Qualified noncommercial educational television station

The term ''qualified noncommercial educational television station'' means any television broadcast station which—

(A)(i) under the rules and regulations of the Commission in effect on March 29, 1990, is licensed by the Commission as a noncommercial educational television broadcast station and which is owned and operated by a public agency, nonprofit foundation, corporation, or association; and

(ii) has as its licensee an entity which is eligible to receive a community service grant, or any successor grant thereto, from the Corporation for Public Broadcasting, or any successor organization thereto, on the basis of the formula set forth in section 396(k)(6)(B) of this title; or

(B) is owned and operated by a municipality and transmits predominantly noncommercial programs for educational purposes.

Such term includes (I) the translator of any noncommercial educational television station with five watts or higher power serving the franchise area, (II) a full-service station or translator if such station or translator is licensed to a channel reserved for noncommercial educational use pursuant to section 73.606 of title 47, Code of Federal Regulations, or any successor regulations thereto, and (III) such stations and translators operating on channels not so reserved as the Commission determines are qualified as noncommercial educational stations.

(2) Qualified local noncommercial educational television station

The term ''qualified local noncommercial educational television station'' means a qualified noncommercial educational television station—

(A) which is licensed to a principal community whose reference point, as defined in section 76.53 of title 47, Code of Federal Regulations (as in effect on March 29, 1990), or any successor regulations thereto, is within 50 miles of the principal headend of the cable system; or

(B) whose Grade B service contour, as defined in section 73.683(a) of such title (as in effect on March 29, 1990), or any successor regulations thereto, encompasses the principal headend of the cable system.

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

EFFECTIVE DATE

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

§ 536. Regulation of carriage agreements

(a) Regulations

Within one year after October 5, 1992, the Commission shall establish regulations governing program carriage agreements and related practices between cable operators or other multichannel video programming distributors and video programming vendors. Such regulations shall—

(1) include provisions designed to prevent a cable operator or other multichannel video programming distributor from requiring a financial interest in a program service as a condition for carriage on one or more of such operator's systems;

(2) include provisions designed to prohibit a cable operator or other multichannel video programming distributor from coercing a video programming vendor to provide, and from retaliating against such a vendor for failing to provide, exclusive rights against other multichannel video programming distributors as a condition of carriage on a system;

(3) contain provisions designed to prevent a multichannel video programming distributor from engaging in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or nonaffiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors;

(4) provide for expedited review of any complaints made by a video programming vendor pursuant to this section;

(5) provide for appropriate penalties and remedies for violations of this subsection, including carriage; and

(6) provide penalties to be assessed against any person filing a frivolous complaint pursuant to this section.

(b) "Video programming vendor" defined

As used in this section, the term ''video programming vendor'' means a person engaged in the production, creation, or wholesale distribution of video programming for sale.

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

EFFECTIVE DATE

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

§ 537. Sales of cable systems

A franchising authority shall, if the franchise requires franchising authority approval of a sale or transfer, have 120 days to act upon any request for approval of such sale or transfer that contains or is accompanied by such information as is required in accordance with Commission regulations and by the franchising authority. If the franchising authority fails to render a final decision on the request within 120 days, such request shall be deemed granted unless the requesting party and the franchising authority agree to an extension of time.

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

AMENDMENTS

1996—Pub. L. 104–104 redesignated subsec. (e) as entire section, substituted ''A franchising authority'' for ''LIMITATION ON DURATION OF FRANCHISING AUTHORITY POWER TO DISAPPROVE TRANSFERS.—In the case of any sale or transfer of ownership of any cable system after the 36-month period following acquisition of such system, a franchising authority'', and struck out subsecs. (a) to (d) which related to three-year holding period requirement, treatment of multiple transfers, exceptions to holding requirement, and waiver authority.

EFFECTIVE DATE

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

PART III—FRANCHISING AND REGULATION

§ 541. General franchise requirements

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

(1) A franchising authority may award, in accordance with the provisions of this subchapter, 1 or more franchises within its jurisdiction; except that a franchising authority may not grant an exclusive franchise and may not unreason-

ably refuse to award an additional competitive franchise. Any applicant whose application for a second franchise has been denied by a final decision of the franchising authority may appeal such final decision pursuant to the provisions of section 555 of this title for failure to comply with this subsection.

(2) Any franchise shall be construed to authorize the construction of a cable system over public rights-of-way, and through easements, which is within the area to be served by the cable system and which have been dedicated for compatible uses, except that in using such easements the cable operator shall ensure—

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

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

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

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

(4) In awarding a franchise, the franchising authority—

(A) shall allow the applicant's cable system a reasonable period of time to become capable of providing cable service to all households in the franchise area;

(B) may require adequate assurance that the cable operator will provide adequate public, educational, and governmental access channel capacity, facilities, or financial support; and

(C) may require adequate assurance that the cable operator has the financial, technical, or legal qualifications to provide cable service.

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

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

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

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

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

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

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

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

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

(ii) to discontinue the operation of a cable system, to the extent such cable system is used for the provision of a telecommunications service, by reason of the failure of such cable operator or affiliate thereof to obtain a franchise or franchise renewal under this subchapter with respect to the provision of such telecommunications service.

(D) Except as otherwise permitted by sections 531 and 532 of this title, a franchising authority may not require a cable operator to provide any telecommunications service or facilities, other than institutional networks, as a condition of the initial grant of a franchise, a franchise renewal, or a transfer of a franchise.

(c) Status of cable system as common carrier or utility

Any cable system shall not be subject to regulation as a common carrier or utility by reason of providing any cable service.

(d) Informational tariffs; regulation by States; "State" defined

(1) A State or the Commission may require the filing of informational tariffs for any intrastate communications service provided by a cable system, other than cable service, that would be subject to regulation by the Commission or any State if offered by a common carrier subject, in whole or in part, to subchapter II of this chapter. Such informational tariffs shall specify the rates, terms, and conditions for the provision of such service, including whether it is made available to all subscribers generally, and shall take effect on the date specified therein.

(2) Nothing in this subchapter shall be construed to affect the authority of any State to regulate any cable operator to the extent that such operator provides any communication service other than cable service, whether offered on a common carrier or private contract basis.

(3) For purposes of this subsection, the term ''State'' has the meaning given it in section 153 of this title.

(e) State regulation of facilities serving subscribers in multiple dwelling units

Nothing in this subchapter shall be construed to affect the authority of any State to license or otherwise regulate any facility or combination of facilities which serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management and which does not use any public right-of-way.

(f) Local or municipal authority as multichannel video programming distributor

No provision of this chapter shall be construed to—

(1) prohibit a local or municipal authority that is also, or is affiliated with, a franchising authority from operating as a multichannel video programming distributor in the fran-

chise area, notwithstanding the granting of one or more franchises by such franchising authority; or

(2) require such local or municipal authority to secure a franchise to operate as a multichannel video programming distributor.

(June 19, 1934, ch. 652, title VI, § 621, as added Pub. L. 98–549, § 2, Oct. 30, 1984, 98 Stat. 2786; amended Pub. L. 102–385, §§ 7(a)(1), (b), (c), Oct. 5, 1992, 106 Stat. 1483; Pub. L. 104–104, § 3(d)(3), title III, § 303(a), Feb. 8, 1996, 110 Stat. 61, 124.)

AMENDMENTS

1996—Subsec. (b)(3). Pub. L. 104–104, § 303(a), added par. (3).

Subsec. (d)(3). Pub. L. 104–104, § 3(d)(3), substituted ''section 153'' for ''section 153(v)''.

1992—Subsec. (a)(1). Pub. L. 102–385, § 7(a)(1), inserted before period at end ''; except that a franchising authority may not grant an exclusive franchise and may not unreasonably refuse to award an additional competitive franchise. Any applicant whose application for a second franchise has been denied by a final decision of the franchising authority may appeal such final decision pursuant to the provisions of section 555 of this title for failure to comply with this subsection''.

Subsec. (a)(4). Pub. L. 102–385, § 7(b), added par. (4).

Subsec. (b)(1). Pub. L. 102–385, § 7(c)(1), inserted ''and subsection (f) of this section'' after ''paragraph (2)''.

Subsec. (f). Pub. L. 102–385, § 7(c)(2), added subsec. (f).

EFFECTIVE DATE OF 1992 AMENDMENT

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

EFFECTIVE DATE

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

§ 542. Franchise fees

(a) Payment under terms of franchise

Subject to the limitation of subsection (b) of this section, any cable operator may be required under the terms of any franchise to pay a franchise fee.

(b) Amount of fees per annum

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 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.

(c) Itemization of subscriber bills

Each cable operator may identify, consistent with the regulations prescribed by the Commission pursuant to section 543 of this title, as a separate line item on each regular bill of each subscriber, each of the following:

(1) The amount of the total bill assessed as a franchise fee and the identity of the franchising authority to which the fee is paid.

(2) The amount of the total bill assessed to satisfy any requirements imposed on the cable operator by the franchise agreement to support public, educational, or governmental channels or the use of such channels.

(3) The amount of any other fee, tax, assessment, or charge of any kind imposed by any governmental authority on the transaction between the operator and the subscriber.

(d) Court actions; reflection of costs in rate structures

In any court action under subsection (c) of this section, the franchising authority shall demonstrate that the rate structure reflects all costs of the franchise fees.

(e) Decreases passed through to subscribers

Any cable operator shall pass through to subscribers the amount of any decrease in a franchise fee.

(f) Itemization of franchise fee in bill

A cable operator may designate that portion of a subscriber's bill attributable to the franchise fee as a separate item on the bill.

(g) "Franchise fee" defined

For the purposes of this section—

(1) the term ''franchise fee'' includes any tax, fee, or assessment of any kind imposed by a franchising authority or other governmental entity on a cable operator or cable subscriber, or both, solely because of their status as such;

(2) the term ''franchise fee'' does not include—

(A) any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable subscribers);

(B) in the case of any franchise in effect on October 30, 1984, payments which are required by the franchise to be made by the cable operator during the term of such franchise for, or in support of the use of, public, educational, or governmental access facilities;

(C) in the case of any franchise granted after October 30, 1984, capital costs which are required by the franchise to be incurred by the cable operator for public, educational, or governmental access facilities;

(D) requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or

(E) any fee imposed under title 17.

(h) Uncompensated services; taxes, fees and other assessments; limitation on fees

(1) Nothing in this chapter shall be construed to limit any authority of a franchising authority to impose a tax, fee, or other assessment of

any kind on any person (other than a cable operator) with respect to cable service or other communications service provided by such person over a cable system for which charges are assessed to subscribers but not received by the cable operator.

(2) For any 12-month period, the fees paid by such person with respect to any such cable service or other communications service shall not exceed 5 percent of such person's gross revenues derived in such period from the provision of such service over the cable system.

(i) Regulatory authority of Federal agencies

Any Federal agency may not regulate the amount of the franchise fees paid by a cable operator, or regulate the use of funds derived from such fees, except as provided in this section.

(June 19, 1934, ch. 652, title VI, § 622, as added Pub. L. 98–549, § 2, Oct. 30, 1984, 98 Stat. 2787; amended Pub. L. 102–385, § 14, Oct. 5, 1992, 106 Stat. 1489; Pub. L. 104–104, title III, § 303(b), Feb. 8, 1996, 110 Stat. 125.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–104 inserted ''to provide cable services'' before period at end of first sentence.

1992—Subsec. (c). Pub. L. 102–385 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''A cable operator may pass through to subscribers the amount of any increase in a franchise fee, unless the franchising authority demonstrates that the rate structure specified in the franchise reflects all costs of franchise fees and so notifies the cable operator in writing.''

EFFECTIVE DATE OF 1992 AMENDMENT

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

EFFECTIVE DATE

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

§ 543. Regulation of rates

(a) Competition preference; local and Federal regulation

(1) In general

No Federal agency or State may regulate the rates for the provision of cable service except to the extent provided under this section and section 532 of this title. Any franchising authority may regulate the rates for the provision of cable service, or any other communications service provided over a cable system to cable subscribers, but only to the extent provided under this section. No Federal agency, State, or franchising authority may regulate the rates for cable service of a cable system that is owned or operated by a local government or franchising authority within whose jurisdiction that cable system is located and that is the only cable system located within such jurisdiction.

(2) Preference for competition

If the Commission finds that a cable system is subject to effective competition, the rates for the provision of cable service by such system shall not be subject to regulation by the Commission or by a State or franchising authority under this section. If the Commission finds that a cable system is not subject to effective competition—

(A) the rates for the provision of basic cable service shall be subject to regulation by a franchising authority, or by the Commission if the Commission exercises jurisdiction pursuant to paragraph (6), in accordance with the regulations prescribed by the Commission under subsection (b) of this section; and

(B) the rates for cable programming services shall be subject to regulation by the Commission under subsection (c) of this section.

(3) Qualification of franchising authority

A franchising authority that seeks to exercise the regulatory jurisdiction permitted under paragraph (2)(A) shall file with the Commission a written certification that—

(A) the franchising authority will adopt and administer regulations with respect to the rates subject to regulation under this section that are consistent with the regulations prescribed by the Commission under subsection (b) of this section;

(B) the franchising authority has the legal authority to adopt, and the personnel to administer, such regulations; and

(C) procedural laws and regulations applicable to rate regulation proceedings by such authority provide a reasonable opportunity for consideration of the views of interested parties.

(4) Approval by Commission

A certification filed by a franchising authority under paragraph (3) shall be effective 30 days after the date on which it is filed unless the Commission finds, after notice to the authority and a reasonable opportunity for the authority to comment, that—

(A) the franchising authority has adopted or is administering regulations with respect to the rates subject to regulation under this section that are not consistent with the regulations prescribed by the Commission under subsection (b) of this section;

(B) the franchising authority does not have the legal authority to adopt, or the personnel to administer, such regulations; or

(C) procedural laws and regulations applicable to rate regulation proceedings by such authority do not provide a reasonable opportunity for consideration of the views of interested parties.

If the Commission disapproves a franchising authority's certification, the Commission shall notify the franchising authority of any revisions or modifications necessary to obtain approval.

(5) Revocation of jurisdiction

Upon petition by a cable operator or other interested party, the Commission shall review the regulation of cable system rates by a franchising authority under this subsection. A copy of the petition shall be provided to the franchising authority by the person filing the

petition. If the Commission finds that the franchising authority has acted inconsistently with the requirements of this subsection, the Commission shall grant appropriate relief. If the Commission, after the franchising authority has had a reasonable opportunity to comment, determines that the State and local laws and regulations are not in conformance with the regulations prescribed by the Commission under subsection (b) of this section, the Commission shall revoke the jurisdiction of such authority.

(6) Exercise of jurisdiction by Commission

If the Commission disapproves a franchising authority's certification under paragraph (4), or revokes such authority's jurisdiction under paragraph (5), the Commission shall exercise the franchising authority's regulatory jurisdiction under paragraph (2)(A) until the franchising authority has qualified to exercise that jurisdiction by filing a new certification that meets the requirements of paragraph (3). Such new certification shall be effective upon approval by the Commission. The Commission shall act to approve or disapprove any such new certification within 90 days after the date it is filed.

(7) Aggregation of equipment costs

(A) In general

The Commission shall allow cable operators, pursuant to any rules promulgated under subsection (b)(3) of this section, to aggregate, on a franchise, system, regional, or company level, their equipment costs into broad categories, such as converter boxes, regardless of the varying levels of functionality of the equipment within each such broad category. Such aggregation shall not be permitted with respect to equipment used by subscribers who receive only a rate regulated basic service tier.

(B) Revision to Commission rules; forms

Within 120 days of February 8, 1996, the Commission shall issue revisions to the appropriate rules and forms necessary to implement subparagraph (A).

(b) Establishment of basic service tier rate regulations

(1) Commission obligation to subscribers

The Commission shall, by regulation, ensure that the rates for the basic service tier are reasonable. Such regulations shall be designed to achieve the goal of protecting subscribers of any cable system that is not subject to effective competition from rates for the basic service tier that exceed the rates that would be charged for the basic service tier if such cable system were subject to effective competition.

(2) Commission regulations

Within 180 days after October 5, 1992, the Commission shall prescribe, and periodically thereafter revise, regulations to carry out its obligations under paragraph (1). In prescribing such regulations, the Commission—

(A) shall seek to reduce the administrative burdens on subscribers, cable operators, franchising authorities, and the Commission;

(B) may adopt formulas or other mechanisms and procedures in complying with the requirements of subparagraph (A); and

(C) shall take into account the following factors:

(i) the rates for cable systems, if any, that are subject to effective competition;

(ii) the direct costs (if any) of obtaining, transmitting, and otherwise providing signals carried on the basic service tier, including signals and services carried on the basic service tier pursuant to paragraph (7)(B), and changes in such costs;

(iii) only such portion of the joint and common costs (if any) of obtaining, transmitting, and otherwise providing such signals as is determined, in accordance with regulations prescribed by the Commission, to be reasonably and properly allocable to the basic service tier, and changes in such costs;

(iv) the revenues (if any) received by a cable operator from advertising from programming that is carried as part of the basic service tier or from other consideration obtained in connection with the basic service tier;

(v) the reasonably and properly allocable portion of any amount assessed as a franchise fee, tax, or charge of any kind imposed by any State or local authority on the transactions between cable operators and cable subscribers or any other fee, tax, or assessment of general applicability imposed by a governmental entity applied against cable operators or cable subscribers;

(vi) any amount required, in accordance with paragraph (4), to satisfy franchise requirements to support public, educational, or governmental channels or the use of such channels or any other services required under the franchise; and

(vii) a reasonable profit, as defined by the Commission consistent with the Commission's obligations to subscribers under paragraph (1).

(3) Equipment

The regulations prescribed by the Commission under this subsection shall include standards to establish, on the basis of actual cost, the price or rate for—

(A) installation and lease of the equipment used by subscribers to receive the basic service tier, including a converter box and a remote control unit and, if requested by the subscriber, such addressable converter box or other equipment as is required to access programming described in paragraph (8); and

(B) installation and monthly use of connections for additional television receivers.

(4) Costs of franchise requirements

The regulations prescribed by the Commission under this subsection shall include standards to identify costs attributable to satisfying franchise requirements to support public, educational, and governmental channels or the use of such channels or any other services required under the franchise.

(5) Implementation and enforcement

The regulations prescribed by the Commission under this subsection shall include additional standards, guidelines, and procedures concerning the implementation and enforcement of such regulations, which shall include—

(A) procedures by which cable operators may implement and franchising authorities may enforce the regulations prescribed by the Commission under this subsection;

(B) procedures for the expeditious resolution of disputes between cable operators and franchising authorities concerning the administration of such regulations;

(C) standards and procedures to prevent unreasonable charges for changes in the subscriber's selection of services or equipment subject to regulation under this section, which standards shall require that charges for changing the service tier selected shall be based on the cost of such change and shall not exceed nominal amounts when the system's configuration permits changes in service tier selection to be effected solely by coded entry on a computer terminal or by other similarly simple method; and

(D) standards and procedures to assure that subscribers receive notice of the availability of the basic service tier required under this section.

(6) Notice

The procedures prescribed by the Commission pursuant to paragraph (5)(A) shall require a cable operator to provide 30 days' advance notice to a franchising authority of any increase proposed in the price to be charged for the basic service tier.

(7) Components of basic tier subject to rate regulation

(A) Minimum contents

Each cable operator of a cable system shall provide its subscribers a separately available basic service tier to which subscription is required for access to any other tier of service. Such basic service tier shall, at a minimum, consist of the following:

(i) All signals carried in fulfillment of the requirements of sections 534 and 535 of this title.

(ii) Any public, educational, and governmental access programming required by the franchise of the cable system to be provided to subscribers.

(iii) Any signal of any television broadcast station that is provided by the cable operator to any subscriber, except a signal which is secondarily transmitted by a satellite carrier beyond the local service area of such station.

(B) Permitted additions to basic tier

A cable operator may add additional video programming signals or services to the basic service tier. Any such additional signals or services provided on the basic service tier shall be provided to subscribers at rates determined under the regulations prescribed by the Commission under this subsection.

(8) Buy-through of other tiers prohibited

(A) Prohibition

A cable operator may not require the subscription to any tier other than the basic service tier required by paragraph (7) as a condition of access to video programming offered on a per channel or per program basis. A cable operator may not discriminate between subscribers to the basic service tier and other subscribers with regard to the rates charged for video programming offered on a per channel or per program basis.

(B) Exception; limitation

The prohibition in subparagraph (A) shall not apply to a cable system that, by reason of the lack of addressable converter boxes or other technological limitations, does not permit the operator to offer programming on a per channel or per program basis in the same manner required by subparagraph (A). This subparagraph shall not be available to any cable operator after—

(i) the technology utilized by the cable system is modified or improved in a way that eliminates such technological limitation; or

(ii) 10 years after October 5, 1992, subject to subparagraph (C).

(C) Waiver

If, in any proceeding initiated at the request of any cable operator, the Commission determines that compliance with the requirements of subparagraph (A) would require the cable operator to increase its rates, the Commission may, to the extent consistent with the public interest, grant such cable operator a waiver from such requirements for such specified period as the Commission determines reasonable and appropriate.

(c) Regulation of unreasonable rates

(1) Commission regulations

Within 180 days after October 5, 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 franchising authority (in accordance with paragraph (3)) 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 the first complaint filed with the franchising authority under

paragraph (3) 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.

(3) Review of rate changes

The Commission shall review any complaint submitted by a franchising authority after February 8, 1996, concerning an increase in rates for cable programming services and issue a final order within 90 days after it receives such a complaint, unless the parties agree to extend the period for such review. A franchising authority may not file a complaint under this paragraph unless, within 90 days after such increase becomes effective it receives subscriber complaints.

(4) Sunset of upper tier rate regulation

This subsection shall not apply to cable programming services provided after March 31, 1999.

(d) Uniform rate structure required

A cable operator shall have a rate structure, for the provision of cable service, that is uniform throughout the geographic area in which cable service is provided over its cable system. This subsection does not apply to (1) a cable operator with respect to the provision of cable service over its cable system in any geographic area in which the video programming services offered by the operator in that area are subject to effective competition, or (2) any video programming offered on a per channel or per program basis. Bulk discounts to multiple dwelling units shall not be subject to this subsection, except that a cable operator of a cable system that is not subject to effective competition may not charge predatory prices to a multiple dwelling unit. Upon a prima facie showing by a complainant that there are reasonable grounds to believe that the discounted price is predatory, the cable system shall have the burden of showing that its discounted price is not predatory.

(e) Discrimination; services for the hearing impaired

Nothing in this subchapter shall be construed as prohibiting any Federal agency, State, or a franchising authority from—

(1) prohibiting discrimination among subscribers and potential subscribers to cable service, except that no Federal agency, State, or franchising authority may prohibit a cable operator from offering reasonable discounts to senior citizens or other economically disadvantaged group discounts; or

(2) requiring and regulating the installation or rental of equipment which facilitates the reception of cable service by hearing impaired individuals.

(f) Negative option billing prohibited

A cable operator shall not charge a subscriber for any service or equipment that the subscriber has not affirmatively requested by name. For purposes of this subsection, a subscriber's failure to refuse a cable operator's proposal to provide such service or equipment shall not be deemed to be an affirmative request for such service or equipment.

(g) Collection of information

The Commission shall, by regulation, require cable operators to file with the Commission or a franchising authority, as appropriate, within one year after October 5, 1992, and annually thereafter, such financial information as may be needed for purposes of administering and enforcing this section.

(h) Prevention of evasions

Within 180 days after October 5, 1992, the Commission shall, by regulation, establish standards, guidelines, and procedures to prevent evasions, including evasions that result from retiering, of the requirements of this section and shall, thereafter, periodically review and revise such standards, guidelines, and procedures.

(i) Small system burdens

In developing and prescribing regulations pursuant to this section, the Commission shall design such regulations to reduce the administrative burdens and cost of compliance for cable systems that have 1,000 or fewer subscribers.

(j) Rate regulation agreements

During the term of an agreement made before July 1, 1990, by a franchising authority and a cable operator providing for the regulation of basic cable service rates, where there was not effective competition under Commission rules in effect on that date, nothing in this section (or the regulations thereunder) shall abridge the ability of such franchising authority to regulate rates in accordance with such an agreement.

(k) Reports on average prices

The Commission shall annually publish statistical reports on the average rates for basic cable

service and other cable programming, and for converter boxes, remote control units, and other equipment, of—

(1) cable systems that the Commission has found are subject to effective competition under subsection (a)(2) of this section, compared with

(2) cable systems that the Commission has found are not subject to such effective competition.

(*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;

(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; or

(D) a local exchange carrier or its affiliate (or any multichannel video programming distributor using the facilities of such carrier or its affiliate) offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, but only if the video programming services so offered in that area are comparable to the video programming services provided by the unaffiliated cable operator in that area.

(2) The term ''cable programming service'' means any video programming provided over a cable system, regardless of service tier, including installation or rental of equipment used for the receipt of such video programming, other than (A) video programming carried on the basic service tier, and (B) video programming offered on a per channel or per program basis.

(m) Special rules for small companies

(1) In general

Subsections (a), (b), and (c) of this section do not apply to a small cable operator with respect to—

(A) cable programming services, or

(B) a basic service tier that was the only service tier subject to regulation as of December 31, 1994,

in any franchise area in which that operator services 50,000 or fewer subscribers.

(2) "Small cable operator" defined

For purposes of this subsection, the term ''small cable operator'' means a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.

(n) Treatment of prior year losses

Notwithstanding any other provision of this section or of section 532 of this title, losses associated with a cable system (including losses associated with the grant or award of a franchise) that were incurred prior to September 4, 1992, with respect to a cable system that is owned and operated by the original franchisee of such system shall not be disallowed, in whole or in part, in the determination of whether the rates for any tier of service or any type of equipment that is subject to regulation under this section are lawful.

(June 19, 1934, ch. 652, title VI, §623, as added Pub. L. 98–549, §2, Oct. 30, 1984, 98 Stat. 2788; amended Pub. L. 102–385, §3(a), Oct. 5, 1992, 106 Stat. 1464; Pub. L. 104–104, title III, §301(b), (c), (j), (k)(1), Feb. 8, 1996, 110 Stat. 114, 116, 118.)

AMENDMENTS

1996—Subsec. (a)(7). Pub. L. 104–104, §301(j), added par. (7).

Subsec. (c)(1)(B). Pub. L. 104–104, §301(b)(1)(A), substituted ''franchising authority (in accordance with paragraph (3))'' for ''subscriber, franchising authority, or other relevant State or local government entity''.

Subsec. (c)(1)(C). Pub. L. 104–104, §301(b)(1)(B), substituted ''the first complaint filed with the franchising authority under paragraph (3)'' for ''such complaint''.

Subsec. (c)(3), (4). Pub. L. 104–104, §301(b)(1)(C), added pars. (3) and (4) and struck out heading and text of former par. (3). Text read as follows: ''Except during the 180-day period following the effective date of the regulations prescribed by the Commission under paragraph (1), the procedures established under subparagraph (B) of such paragraph shall be available only with respect to complaints filed within a reasonable period of time following a change in rates that is initiated after that effective date, including a change in rates that results from a change in that system's service tiers.''

Subsec. (d). Pub. L. 104–104, §301(b)(2), inserted at end ''This subsection does not apply to (1) a cable operator with respect to the provision of cable service over its cable system in any geographic area in which the video programming services offered by the operator in that area are subject to effective competition, or (2) any video programming offered on a per channel or per program basis. Bulk discounts to multiple dwelling units shall not be subject to this subsection, except that a cable operator of a cable system that is not subject to effective competition may not charge predatory prices to a multiple dwelling unit. Upon a prima facie showing by a complainant that there are reasonable grounds to believe that the discounted price is predatory, the cable system shall have the burden of showing that its discounted price is not predatory.''

Subsec. (*l*)(1)(D). Pub. L. 104–104, §301(b)(3), added subpar. (D).

Subsec. (m). Pub. L. 104–104, §301(c), added subsec. (m).

Subsec. (n). Pub. L. 104–104, §301(k)(1), added subsec. (n).

1992—Pub. L. 102–385 amended section generally, substituting present provisions for former provisions which related in subsec. (a) to limitation on regulatory

power of Federal agencies, States, or franchising authorities, in subsec. (b) to promulgation, scope, content, periodic review, and amendment of regulations, in subsec. (c) to regulation by franchising authority during initial 2-year period, in subsec. (d) to automatic granting of rate increase requests upon agency inaction within 180-day period, in subsec. (e) to additional increases in rates and to reduction by amount of increase under franchise provisions, in subsec. (f) to nondiscrimination and facilitation of reception by hearing-impaired individuals, in subsec. (g) to continued effectiveness of limitation or the preemption of regulation under prior State law, and in subsec. (h) to reports and recommendations to Congress.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 301(k)(2) of Pub. L. 104–104 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on the date of enactment of this Act [Feb. 8, 1996] and shall be applicable to any rate proposal filed on or after September 4, 1993, upon which no final action has been taken by December 1, 1995.''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 3(b) of Pub. L. 102–385 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect 180 days after the date of enactment of this Act [Oct. 5, 1992], except that the authority of the Federal Communications Commission to prescribe regulations is effective on such date of enactment.''

EFFECTIVE DATE

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

RESTORATION, RETIERMENT AND REPRICING OF SERVICE PREVIOUSLY ELIMINATED, RETIERED, OR REPRICED

Section 9(b) of Pub. L. 98–549 provided that: ''Nothing in section 623 or 624 of the Communications Act of 1934 [sections 543 and 544 of this title], as added by this Act, shall be construed to allow a franchising authority, or a State or any political subdivision of a State, to require a cable operator to restore, retier, or reprice any cable service which was lawfully eliminated, retiered, or repriced as of September 26, 1984.''

§ 544. Regulation of services, facilities, and equipment

(a) Regulation by franchising authority

Any franchising authority may not regulate the services, facilities, and equipment provided by a cable operator except to the extent consistent with this subchapter.

(b) Requests for proposals; establishment and enforcement of requirements

In the case of any franchise granted after the effective date of this subchapter, the franchising authority, to the extent related to the establishment or operation of a cable system—

(1) in its request for proposals for a franchise (including requests for renewal proposals, subject to section 546 of this title), may establish requirements for facilities and equipment, but may not, except as provided in subsection (h) of this section, establish requirements for video programming or other information services; and

(2) subject to section 545 of this title, may enforce any requirements contained within the franchise—

(A) for facilities and equipment; and

(B) for broad categories of video programming or other services.

(c) Enforcement authority respecting franchises effective under prior law

In the case of any franchise in effect on the effective date of this subchapter, the franchising authority may, subject to section 545 of this title, enforce requirements contained within the franchise for the provision of services, facilities, and equipment, whether or not related to the establishment or operation of a cable system.

(d) Cable service unprotected by Constitution; blockage of premium channel upon request

(1) Nothing in this subchapter shall be construed as prohibiting a franchising authority and a cable operator from specifying, in a franchise or renewal thereof, that certain cable services shall not be provided or shall be provided subject to conditions, if such cable services are obscene or are otherwise unprotected by the Constitution of the United States.

(2) In order to restrict the viewing of of of[1] programming which is obscene or indecent, upon the request of a subscriber, a cable operator shall provide (by sale or lease) a device by which the subscriber can prohibit viewing of a particular cable service during periods selected by that subscriber.

(3)(A) If a cable operator provides a premium channel without charge to cable subscribers who do not subscribe to such premium channel, the cable operator shall, not later than 30 days before such premium channel is provided without charge—

(i) notify all cable subscribers that the cable operator plans to provide a premium channel without charge;

(ii) notify all cable subscribers when the cable operator plans to offer a premium channel without charge;

(iii) notify all cable subscribers that they have a right to request that the channel carrying the premium channel be blocked; and

(iv) block the channel carrying the premium channel upon the request of a subscriber.

(B) For the purpose of this section, the term ''premium channel'' shall mean any pay service offered on a per channel or per program basis, which offers movies rated by the Motion Picture Association of America as X, NC–17, or R.

(e) Technical standards

Within one year after October 5, 1992, the Commission shall prescribe regulations which establish minimum technical standards relating to cable systems' technical operation and signal quality. The Commission shall update such standards periodically to reflect improvements in technology. No State or franchising authority may prohibit, condition, or restrict a cable system's use of any type of subscriber equipment or any transmission technology.

(f) Limitation on regulatory powers of Federal agencies, States, or franchising authorities; exceptions

(1) Any Federal agency, State, or franchising authority may not impose requirements regard-

[1] So in original.

ing the provision or content of cable services, except as expressly provided in this subchapter.

(2) Paragraph (1) shall not apply to—

(A) any rule, regulation, or order issued under any Federal law, as such rule, regulation, or order (i) was in effect on September 21, 1983, or (ii) may be amended after such date if the rule, regulation, or order as amended is not inconsistent with the express provisions of this subchapter; and

(B) any rule, regulation, or order under title 17.

(g) Access to emergency information

Notwithstanding any such rule, regulation, or order, each cable operator shall comply with such standards as the Commission shall prescribe to ensure that viewers of video programming on cable systems are afforded the same emergency information as is afforded by the emergency broadcasting system pursuant to Commission regulations in subpart G of part 73, title 47, Code of Federal Regulations.

(h) Notice of changes in and comments on services

A franchising authority may require a cable operator to do any one or more of the following:

(1) Provide 30 days' advance written notice of any change in channel assignment or in the video programming service provided over any such channel.

(2) Inform subscribers, via written notice, that comments on programming and channel position changes are being recorded by a designated office of the franchising authority.

(i) Disposition of cable upon termination of service

Within 120 days after October 5, 1992, the Commission shall prescribe rules concerning the disposition, after a subscriber to a cable system terminates service, of any cable installed by the cable operator within the premises of such subscriber.

(June 19, 1934, ch. 652, title VI, § 624, as added Pub. L. 98–549, § 2, Oct. 30, 1984, 98 Stat. 2789; amended Pub. L. 102–385, §§ 15, 16, Oct. 5, 1992, 106 Stat. 1490; Pub. L. 103–414, title III, §§ 303(a)(23), 304(a)(12), Oct. 25, 1994, 108 Stat. 4295, 4297; Pub. L. 104–104, title III, § 301(e), Feb. 8, 1996, 110 Stat. 116.)

REFERENCES IN TEXT

For ''the effective date of this subchapter'', referred to in subsecs. (b) and (c), as 60 days after Oct. 30, 1984, except where otherwise expressly provided, see section 9(a) of Pub. L. 98–549, set out as an Effective Date note under section 521 of this title.

AMENDMENTS

1996—Subsec. (e). Pub. L. 104–104 substituted ''No State or franchising authority may prohibit, condition, or restrict a cable system's use of any type of subscriber equipment or any transmission technology.'' for ''A franchising authority may require as part of a franchise (including a modification, renewal, or transfer thereof) provisions for the enforcement of the standards prescribed under this subsection. A franchising authority may apply to the Commission for a waiver to impose standards that are more stringent than the standards prescribed by the Commission under this subsection.''

1994—Subsec. (d)(2). Pub. L. 103–414, § 304(a)(12), struck out designation ''(A)'', inserted ''of'' after ''restrict the viewing'', and struck out subpar. (B) which read as follows: ''Subparagraph (A) shall take effect 180 days after the effective date of this subchapter.''

Pub. L. 103–414, § 303(a)(23), inserted ''of'' after ''restrict the viewing'' in subpar. (A).

1992—Subsec. (b)(1). Pub. L. 102–385, § 16(c)(1), inserted '', except as provided in subsection (h) of this section,'' after ''but may not''.

Subsec. (d)(3). Pub. L. 102–385, § 15, added par. (3).

Subsec. (e). Pub. L. 102–385, § 16(a), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''The Commission may establish technical standards relating to the facilities and equipment of cable systems which a franchising authority may require in the franchise.''

Subsec. (g). Pub. L. 102–385, § 16(b), added subsec. (g).

Subsec. (h). Pub. L. 102–385, § 16(c)(2), added subsec. (h).

Subsec. (i). Pub. L. 102–385, § 16(d), added subsec. (i).

EFFECTIVE DATE OF 1992 AMENDMENT

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

EFFECTIVE DATE

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

RESTORATION, RETIERMENT AND REPRICING OF SERVICE PREVIOUSLY ELIMINATED, RETIERED, OR REPRICED

Section not to be construed to allow a franchising authority, or a State or political subdivision thereof, to require a cable operator to restore, retier or reprice cable service previously eliminated, retiered, or repriced as of Sept. 26, 1984, see section 9(b) of Pub. L. 98–549, set out as a note under section 543 of this title.

§ 544a. Consumer electronics equipment compatibility

(a) Findings

The Congress finds that—

(1) new and recent models of television receivers and video cassette recorders often contain premium features and functions that are disabled or inhibited because of cable scrambling, encoding, or encryption technologies and devices, including converter boxes and remote control devices required by cable operators to receive programming;

(2) if these problems are allowed to persist, consumers will be less likely to purchase, and electronics equipment manufacturers will be less likely to develop, manufacture, or offer for sale, television receivers and video cassette recorders with new and innovative features and functions;

(3) cable operators should use technologies that will prevent signal thefts while permitting consumers to benefit from such features and functions in such receivers and recorders; and

(4) compatibility among televisions, video cassette recorders, and cable systems can be assured with narrow technical standards that mandate a minimum degree of common design and operation, leaving all features, functions, protocols, and other product and service options for selection through open competition in the market.

(b) Compatible interfaces

(1) Report; regulations

Within 1 year after October 5, 1992, the Commission, in consultation with representatives of the cable industry and the consumer electronics industry, shall report to Congress on means of assuring compatibility between televisions and video cassette recorders and cable systems, consistent with the need to prevent theft of cable service, so that cable subscribers will be able to enjoy the full benefit of both the programming available on cable systems and the functions available on their televisions and video cassette recorders. Within 180 days after the date of submission of the report required by this subsection, the Commission shall issue such regulations as are necessary to assure such compatibility.

(2) Scrambling and encryption

In issuing the regulations referred to in paragraph (1), the Commission shall determine whether and, if so, under what circumstances to permit cable systems to scramble or encrypt signals or to restrict cable systems in the manner in which they encrypt or scramble signals, except that the Commission shall not limit the use of scrambling or encryption technology where the use of such technology does not interfere with the functions of subscribers' television receivers or video cassette recorders.

(c) Rulemaking requirements

(1) Factors to be considered

In prescribing the regulations required by this section, the Commission shall consider—

(A) the need to maximize open competition in the market for all features, functions, protocols, and other product and service options of converter boxes and other cable converters unrelated to the descrambling or decryption of cable television signals;

(B) the costs and benefits to consumers of imposing compatibility requirements on cable operators and television manufacturers in a manner that, while providing effective protection against theft or unauthorized reception of cable service, will minimize interference with or nullification of the special functions of subscribers' television receivers or video cassette recorders, including functions that permit the subscriber—

(i) to watch a program on one channel while simultaneously using a video cassette recorder to tape a program on another channel;

(ii) to use a video cassette recorder to tape two consecutive programs that appear on different channels; and

(iii) to use advanced television picture generation and display features; and

(C) the need for cable operators to protect the integrity of the signals transmitted by the cable operator against theft or to protect such signals against unauthorized reception.

(2) Regulations required

The regulations prescribed by the Commission under this section shall include such regulations as are necessary—

(A) to specify the technical requirements with which a television receiver or video cassette recorder must comply in order to be sold as ''cable compatible'' or ''cable ready'';

(B) to require cable operators offering channels whose reception requires a converter box—

(i) to notify subscribers that they may be unable to benefit from the special functions of their television receivers and video cassette recorders, including functions that permit subscribers—

(I) to watch a program on one channel while simultaneously using a video cassette recorder to tape a program on another channel;

(II) to use a video cassette recorder to tape two consecutive programs that appear on different channels; and

(III) to use advanced television picture generation and display features; and

(ii) to the extent technically and economically feasible, to offer subscribers the option of having all other channels delivered directly to the subscribers' television receivers or video cassette recorders without passing through the converter box;

(C) to promote the commercial availability, from cable operators and retail vendors that are not affiliated with cable systems, of converter boxes and of remote control devices compatible with converter boxes;

(D) to ensure that any standards or regulations developed under the authority of this section to ensure compatibility between televisions, video cassette recorders, and cable systems do not affect features, functions, protocols, and other product and service options other than those specified in paragraph (1)(B), including telecommunications interface equipment, home automation communications, and computer network services;

(E) to require a cable operator who offers subscribers the option of renting a remote control unit—

(i) to notify subscribers that they may purchase a commercially available remote control device from any source that sells such devices rather than renting it from the cable operator; and

(ii) to specify the types of remote control units that are compatible with the converter box supplied by the cable operator; and

(F) to prohibit a cable operator from taking any action that prevents or in any way disables the converter box supplied by the cable operator from operating compatibly with commercially available remote control units.

(d) Review of regulations

The Commission shall periodically review and, if necessary, modify the regulations issued pursuant to this section in light of any actions taken in response to such regulations and to reflect improvements and changes in cable systems, television receivers, video cassette recorders, and similar technology.

(June 19, 1934, ch. 652, title VI, § 624A, as added Pub. L. 102–385, § 17, Oct. 5, 1992, 106 Stat. 1491; amended Pub. L. 104–104, title III, § 301(f), Feb. 8, 1996, 110 Stat. 116.)

AMENDMENTS

1996—Subsec. (a)(4). Pub. L. 104–104, § 301(f)(1), added par. (4).

Subsec. (c)(1)(A) to (C). Pub. L. 104–104, § 301(f)(2), added subpar. (A) and redesignated former subpars. (A) and (B) as (B) and (C), respectively.

Subsec. (c)(2)(D) to (F). Pub. L. 104–104, § 301(f)(3), added subpar. (D) and redesignated former subpars. (D) and (E) as (E) and (F), respectively.

EFFECTIVE DATE

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

§ 545. Modification of franchise obligations

(a) Grounds for modification by franchising authority; public proceeding; time of decision

(1) During the period a franchise is in effect, the cable operator may obtain from the franchising authority modifications of the requirements in such franchise—

(A) in the case of any such requirement for facilities or equipment, including public, educational, or governmental access facilities or equipment, if the cable operator demonstrates that (i) it is commercially impracticable for the operator to comply with such requirement, and (ii) the proposal by the cable operator for modification of such requirement is appropriate because of commercial impracticability; or

(B) in the case of any such requirement for services, if the cable operator demonstrates that the mix, quality, and level of services required by the franchise at the time it was granted will be maintained after such modification.

(2) Any final decision by a franchising authority under this subsection shall be made in a public proceeding. Such decision shall be made within 120 days after receipt of such request by the franchising authority, unless such 120 day period is extended by mutual agreement of the cable operator and the franchising authority.

(b) Judicial proceedings; grounds for modification by court

(1) Any cable operator whose request for modification under subsection (a) of this section has been denied by a final decision of a franchising authority may obtain modification of such franchise requirements pursuant to the provisions of section 555 of this title.

(2) In the case of any proposed modification of a requirement for facilities or equipment, the court shall grant such modification only if the cable operator demonstrates to the court that—

(A) it is commercially impracticable for the operator to comply with such requirement; and

(B) the terms of the modification requested are appropriate because of commercial impracticability.

(3) In the case of any proposed modification of a requirement for services, the court shall grant such modification only if the cable operator demonstrates to the court that the mix, quality, and level of services required by the franchise at the time it was granted will be maintained after such modification.

(c) Rearrangement, replacement, or removal of service

Notwithstanding subsections (a) and (b) of this section, a cable operator may, upon 30 days' advance notice to the franchising authority, rearrange, replace, or remove a particular cable service required by the franchise if—

(1) such service is no longer available to the operator; or

(2) such service is available to the operator only upon the payment of a royalty required under section 801(b)(2) of title 17, which the cable operator can document—

(A) is substantially in excess of the amount of such payment required on the date of the operator's offer to provide such service, and

(B) has not been specifically compensated for through a rate increase or other adjustment.

(d) Rearrangement of particular services from one service tier to another or other offering of service

Notwithstanding subsections (a) and (b) of this section, a cable operator may take such actions to rearrange a particular service from one service tier to another, or otherwise offer the service, if the rates for all of the service tiers involved in such actions are not subject to regulation under section 543 of this title.

(e) Requirements for services relating to public, educational, or governmental access

A cable operator may not obtain modification under this section of any requirement for services relating to public, educational, or governmental access.

(f) "Commercially impracticable" defined

For purposes of this section, the term ''commercially impracticable'' means, with respect to any requirement applicable to a cable operator, that it is commercially impracticable for the operator to comply with such requirement as a result of a change in conditions which is beyond the control of the operator and the nonoccurrence of which was a basic assumption on which the requirement was based.

(June 19, 1934, ch. 652, title VI, § 625, as added Pub. L. 98–549, § 2, Oct. 30, 1984, 98 Stat. 2790.)

EFFECTIVE DATE

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

§ 546. Renewal

(a) Commencement of proceedings; public notice and participation

(1) A franchising authority may, on its own initiative during the 6-month period which begins with the 36th month before the franchise expiration, commence a proceeding which affords the public in the franchise area appro-

priate notice and participation for the purpose of (A) identifying the future cable-related community needs and interests, and (B) reviewing the performance of the cable operator under the franchise during the then current franchise term. If the cable operator submits, during such 6-month period, a written renewal notice requesting the commencement of such a proceeding, the franchising authority shall commence such a proceeding not later than 6 months after the date such notice is submitted.

(2) The cable operator may not invoke the renewal procedures set forth in subsections (b) through (g) of this section unless—

(A) such a proceeding is requested by the cable operator by timely submission of such notice; or

(B) such a proceeding is commenced by the franchising authority on its own initiative.

(b) Submission of renewal proposals; contents; time

(1) Upon completion of a proceeding under subsection (a) of this section, a cable operator seeking renewal of a franchise may, on its own initiative or at the request of a franchising authority, submit a proposal for renewal.

(2) Subject to section 544 of this title, any such proposal shall contain such material as the franchising authority may require, including proposals for an upgrade of the cable system.

(3) The franchising authority may establish a date by which such proposal shall be submitted.

(c) Notice of proposal; renewal; preliminary assessment of nonrenewal; administrative review; issues; notice and opportunity for hearing; transcript; written decision

(1) Upon submittal by a cable operator of a proposal to the franchising authority for the renewal of a franchise pursuant to subsection (b) of this section, the franchising authority shall provide prompt public notice of such proposal and, during the 4-month period which begins on the date of the submission of the cable operator's proposal pursuant to subsection (b) of this section, renew the franchise or, issue a preliminary assessment that the franchise should not be renewed and, at the request of the operator or on its own initiative, commence an administrative proceeding, after providing prompt public notice of such proceeding, in accordance with paragraph (2) to consider whether—

(A) the cable operator has substantially complied with the material terms of the existing franchise and with applicable law;

(B) the quality of the operator's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the system, has been reasonable in light of community needs;

(C) the operator has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the operator's proposal; and

(D) the operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

(2) In any proceeding under paragraph (1), the cable operator shall be afforded adequate notice and the cable operator and the franchise authority, or its designee, shall be afforded fair opportunity for full participation, including the right to introduce evidence (including evidence related to issues raised in the proceeding under subsection (a) of this section), to require the production of evidence, and to question witnesses. A transcript shall be made of any such proceeding.

(3) At the completion of a proceeding under this subsection, the franchising authority shall issue a written decision granting or denying the proposal for renewal based upon the record of such proceeding, and transmit a copy of such decision to the cable operator. Such decision shall state the reasons therefor.

(d) Basis for denial

Any denial of a proposal for renewal that has been submitted in compliance with subsection (b) of this section shall be based on one or more adverse findings made with respect to the factors described in subparagraphs (A) through (D) of subsection (c)(1) of this section, pursuant to the record of the proceeding under subsection (c) of this section. A franchising authority may not base a denial of renewal on a failure to substantially comply with the material terms of the franchise under subsection (c)(1)(A) of this section or on events considered under subsection (c)(1)(B) of this section in any case in which a violation of the franchise or the events considered under subsection (c)(1)(B) of this section occur after the effective date of this subchapter unless the franchising authority has provided the operator with notice and the opportunity to cure, or in any case in which it is documented that the franchising authority has waived its right to object, or the cable operator gives written notice of a failure or inability to cure and the franchising authority fails to object within a reasonable time after receipt of such notice.

(e) Judicial review; grounds for relief

(1) Any cable operator whose proposal for renewal has been denied by a final decision of a franchising authority made pursuant to this section, or has been adversely affected by a failure of the franchising authority to act in accordance with the procedural requirements of this section, may appeal such final decision or failure pursuant to the provisions of section 555 of this title.

(2) The court shall grant appropriate relief if the court finds that—

(A) any action of the franchising authority, other than harmless error, is not in compliance with the procedural requirements of this section; or

(B) in the event of a final decision of the franchising authority denying the renewal proposal, the operator has demonstrated that the adverse finding of the franchising authority with respect to each of the factors described in subparagraphs (A) through (D) of subsection (c)(1) of this section on which the denial is based is not supported by a preponderance of the evidence, based on the record of the proceeding conducted under subsection (c) of this section.

(f) Finality of administrative decision

Any decision of a franchising authority on a proposal for renewal shall not be considered

final unless all administrative review by the State has occurred or the opportunity therefor has lapsed.

(g) "Franchise expiration" defined

For purposes of this section, the term ''franchise expiration'' means the date of the expiration of the term of the franchise, as provided under the franchise, as it was in effect on October 30, 1984.

(h) Alternative renewal procedures

Notwithstanding the provisions of subsections (a) through (g) of this section, a cable operator may submit a proposal for the renewal of a franchise pursuant to this subsection at any time, and a franchising authority may, after affording the public adequate notice and opportunity for comment, grant or deny such proposal at any time (including after proceedings pursuant to this section have commenced). The provisions of subsections (a) through (g) of this section shall not apply to a decision to grant or deny a proposal under this subsection. The denial of a renewal pursuant to this subsection shall not affect action on a renewal proposal that is submitted in accordance with subsections (a) through (g) of this section.

(i) Effect of renewal procedures upon action to revoke franchise for cause

Notwithstanding the provisions of subsections (a) through (h) of this section, any lawful action to revoke a cable operator's franchise for cause shall not be negated by the subsequent initiation of renewal proceedings by the cable operator under this section.

(June 19, 1934, ch. 652, title VI, § 626, as added Pub. L. 98–549, § 2, Oct. 30, 1984, 98 Stat. 2791; amended Pub. L. 102–385, § 18, Oct. 5, 1992, 106 Stat. 1493.)

REFERENCES IN TEXT

For ''the effective date of this subchapter'', referred to in subsec. (d), as 60 days after Oct. 30, 1984, except where otherwise expressly provided, see section 9(a) of Pub. L. 98–549, set out as an Effective Date note under section 521 of this title.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–385, § 18(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''During the 6-month period which begins with the 36th month before the franchise expiration, the franchising authority may on its own initiative, and shall at the request of the cable operator, commence proceedings which afford the public in the franchise area appropriate notice and participation for the purpose of—

''(1) identifying the future cable-related community needs and interests; and

''(2) reviewing the performance of the cable operator under the franchise during the then current franchise term.''

Subsec. (c)(1). Pub. L. 102–385, § 18(b), inserted ''pursuant to subsection (b) of this section'' after ''renewal of a franchise'' and substituted ''date of the submission of the cable operator's proposal pursuant to subsection (b) of this section'' for ''completion of any proceedings under subsection (a) of this section''.

Subsec. (c)(1)(B). Pub. L. 102–385, § 18(c), substituted ''mix or quality'' for ''mix, quality, or level''.

Subsec. (d). Pub. L. 102–385, § 18(d), inserted ''that has been submitted in compliance with subsection (b) of this section'' after ''Any denial of a proposal for renewal'' and substituted ''or the cable operator gives written notice of a failure or inability to cure and the franchising authority fails to object within a reasonable time after receipt of such notice'' for ''or has effectively acquiesced''.

Subsec. (e)(2)(A). Pub. L. 102–385, § 18(e), inserted '', other than harmless error,'' after ''franchising authority''.

Subsec. (i). Pub. L. 102–385, § 18(f), added subsec. (i).

EFFECTIVE DATE OF 1992 AMENDMENT

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

EFFECTIVE DATE

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

§ 547. Conditions of sale

(a) If a renewal of a franchise held by a cable operator is denied and the franchising authority acquires ownership of the cable system or effects a transfer of ownership of the system to another person, any such acquisition or transfer shall be—

(1) at fair market value, determined on the basis of the cable system valued as a going concern but with no value allocated to the franchise itself, or

(2) in the case of any franchise existing on the effective date of this subchapter, at a price determined in accordance with the franchise if such franchise contains provisions applicable to such an acquisition or transfer.

(b) If a franchise held by a cable operator is revoked for cause and the franchising authority acquires ownership of the cable system or effects a transfer of ownership of the system to another person, any such acquisition or transfer shall be—

(1) at an equitable price, or

(2) in the case of any franchise existing on the effective date of this subchapter, at a price determined in accordance with the franchise if such franchise contains provisions applicable to such an acquisition or transfer.

(June 19, 1934, ch. 652, title VI, § 627, as added Pub. L. 98–549, § 2, Oct. 30, 1984, 98 Stat. 2793.)

REFERENCES IN TEXT

For ''the effective date of this subchapter'', referred to in subsecs. (a)(2) and (b)(2), as 60 days after Oct. 30, 1984, except where otherwise expressly provided, see section 9(a) of Pub. L. 98–549, set out as an Effective Date note under section 521 of this title.

EFFECTIVE DATE

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

§ 548. Development of competition and diversity in video programming distribution

(a) Purpose

The purpose of this section is to promote the public interest, convenience, and necessity by increasing competition and diversity in the multichannel video programming market, to in-

crease the availability of satellite cable programming and satellite broadcast programming to persons in rural and other areas not currently able to receive such programming, and to spur the development of communications technologies.

(b) Prohibition

It shall be unlawful for a cable operator, a satellite cable programming vendor in which a cable operator has an attributable interest, or a satellite broadcast programming vendor to engage in unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or to prevent any multichannel video programming distributor from providing satellite cable programming or satellite broadcast programming to subscribers or consumers.

(c) Regulations required

(1) Proceeding required

Within 180 days after October 5, 1992, 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) of this section.

(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 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 October 5, 1992; 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.

(3) Limitations

(A) Geographic limitations

Nothing in this section shall require any person who is engaged in the national or regional distribution of video programming to make such programming available in any geographic area beyond which such programming has been authorized or licensed for distribution.

(B) Applicability to satellite retransmissions

Nothing in this section shall apply (i) to the signal of any broadcast affiliate of a national television network or other television signal that is retransmitted by satellite but that is not satellite broadcast programming, or (ii) to any internal satellite communication of any broadcast network or cable network that is not satellite broadcast programming.

(4) Public interest determinations on exclusive contracts

In determining whether an exclusive contract is in the public interest for purposes of paragraph (2)(D), the Commission shall consider each of the following factors with respect to the effect of such contract on the distribution of video programming in areas that are served by a cable operator:

(A) the effect of such exclusive contract on the development of competition in local and national multichannel video programming distribution markets;

(B) the effect of such exclusive contract on competition from multichannel video pro-

gramming distribution technologies other than cable;

(C) the effect of such exclusive contract on the attraction of capital investment in the production and distribution of new satellite cable programming;

(D) the effect of such exclusive contract on diversity of programming in the multichannel video programming distribution market; and

(E) the duration of the exclusive contract.

(5) Sunset provision

The prohibition required by paragraph (2)(D) shall cease to be effective 10 years after October 5, 1992, unless the Commission finds, in a proceeding conducted during the last year of such 10-year period, that such prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming.

(d) Adjudicatory proceeding

Any multichannel video programming distributor aggrieved by conduct that it alleges constitutes a violation of subsection (b) of this section, or the regulations of the Commission under subsection (c) of this section, may commence an adjudicatory proceeding at the Commission.

(e) Remedies for violations

(1) Remedies authorized

Upon completion of such adjudicatory proceeding, the Commission shall have the power to order appropriate remedies, including, if necessary, the power to establish prices, terms, and conditions of sale of programming to the aggrieved multichannel video programming distributor.

(2) Additional remedies

The remedies provided in paragraph (1) are in addition to and not in lieu of the remedies available under subchapter V of this chapter or any other provision of this chapter.

(f) Procedures

The Commission shall prescribe regulations to implement this section. The Commission's regulations shall—

(1) provide for an expedited review of any complaints made pursuant to this section;

(2) establish procedures for the Commission to collect such data, including the right to obtain copies of all contracts and documents reflecting arrangements and understandings alleged to violate this section, as the Commission requires to carry out this section; and

(3) provide for penalties to be assessed against any person filing a frivolous complaint pursuant to this section.

(g) Reports

The Commission shall, beginning not later than 18 months after promulgation of the regulations required by subsection (c) of this section, annually report to Congress on the status of competition in the market for the delivery of video programming.

(h) Exemptions for prior contracts

(1) In general

Nothing in this section shall affect any contract that grants exclusive distribution rights to any person with respect to satellite cable programming and that was entered into on or before June 1, 1990, except that the provisions of subsection (c)(2)(C) of this section shall apply for distribution to persons in areas not served by a cable operator.

(2) Limitation on renewals

A contract that was entered into on or before June 1, 1990, but that is renewed or extended after October 5, 1992, shall not be exempt under paragraph (1).

(i) Definitions

As used in this section:

(1) The term ''satellite cable programming'' has the meaning provided under section 605 of this title, except that such term does not include satellite broadcast programming.

(2) The term ''satellite cable programming vendor'' means a person engaged in the production, creation, or wholesale distribution for sale of satellite cable programming, but does not include a satellite broadcast programming vendor.

(3) The term ''satellite broadcast programming'' means broadcast video programming when such programming is retransmitted by satellite and the entity retransmitting such programming is not the broadcaster or an entity performing such retransmission on behalf of and with the specific consent of the broadcaster.

(4) The term ''satellite broadcast programming vendor'' means a fixed service satellite carrier that provides service pursuant to section 119 of title 17 with respect to satellite broadcast programming.

(j) Common carriers

Any provision that applies to a cable operator under this section shall apply to a common carrier or its affiliate that provides video programming by any means directly to subscribers. Any such provision that applies to a satellite cable programming vendor in which a cable operator has an attributable interest shall apply to any satellite cable programming vendor in which such common carrier has an attributable interest. For the purposes of this subsection, two or fewer common officers or directors shall not by itself establish an attributable interest by a common carrier in a satellite cable programming vendor (or its parent company).

(June 19, 1934, ch. 652, title VI, §628, as added Pub. L. 102–385, §19, Oct. 5, 1992, 106 Stat. 1494; amended Pub. L. 104–104, title III, §301(h), Feb. 8, 1996, 110 Stat. 117.)

AMENDMENTS

1996—Subsec. (j). Pub. L. 104–104 added subsec. (j).

EFFECTIVE DATE

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

§ 549. Competitive availability of navigation devices

(a) Commercial consumer availability of equipment used to access services provided by multichannel video programming distributors

The Commission shall, in consultation with appropriate industry standard-setting organizations, adopt regulations to assure the commercial availability, to consumers of multichannel video programming and other services offered over multichannel video programming systems, of converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems, from manufacturers, retailers, and other vendors not affiliated with any multichannel video programming distributor. Such regulations shall not prohibit any multichannel video programming distributor from also offering converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems, to consumers, if the system operator's charges to consumers for such devices and equipment are separately stated and not subsidized by charges for any such service.

(b) Protection of system security

The Commission shall not prescribe regulations under subsection (a) of this section which would jeopardize security of multichannel video programming and other services offered over multichannel video programming systems, or impede the legal rights of a provider of such services to prevent theft of service.

(c) Waiver

The Commission shall waive a regulation adopted under subsection (a) of this section for a limited time upon an appropriate showing by a provider of multichannel video programming and other services offered over multichannel video programming systems, or an equipment provider, that such waiver is necessary to assist the development or introduction of a new or improved multichannel video programming or other service offered over multichannel video programming systems, technology, or products. Upon an appropriate showing, the Commission shall grant any such waiver request within 90 days of any application filed under this subsection, and such waiver shall be effective for all service providers and products in that category and for all providers of services and products.

(d) Avoidance of redundant regulations

(1) Commercial availability determinations

Determinations made or regulations prescribed by the Commission with respect to commercial availability to consumers of converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems, before February 8, 1996, shall fulfill the requirements of this section.

(2) Regulations

Nothing in this section affects section 64.702(e) of the Commission's regulations (47 C.F.R. 64.702(e)) or other Commission regulations governing interconnection and competitive provision of customer premises equipment used in connection with basic common carrier communications services.

(e) Sunset

The regulations adopted under this section shall cease to apply when the Commission determines that—

(1) the market for the multichannel video programming distributors is fully competitive;

(2) the market for converter boxes, and interactive communications equipment, used in conjunction with that service is fully competitive; and

(3) elimination of the regulations would promote competition and the public interest.

(f) Commission's authority

Nothing in this section shall be construed as expanding or limiting any authority that the Commission may have under law in effect before February 8, 1996.

(June 19, 1934, ch. 652, title VI, § 629, as added Pub. L. 104–104, title III, § 304, Feb. 8, 1996, 110 Stat. 125.)

PART IV—MISCELLANEOUS PROVISIONS

§ 551. Protection of subscriber privacy

(a) Notice to subscriber regarding personally identifiable information; definitions

(1) At the time of entering into an agreement to provide any cable service or other service to a subscriber and at least once a year thereafter, a cable operator shall provide notice in the form of a separate, written statement to such subscriber which clearly and conspicuously informs the subscriber of—

(A) the nature of personally identifiable information collected or to be collected with respect to the subscriber and the nature of the use of such information;

(B) the nature, frequency, and purpose of any disclosure which may be made of such information, including an identification of the types of persons to whom the disclosure may be made;

(C) the period during which such information will be maintained by the cable operator;

(D) the times and place at which the subscriber may have access to such information in accordance with subsection (d) of this section; and

(E) the limitations provided by this section with respect to the collection and disclosure of information by a cable operator and the right of the subscriber under subsections (f) and (h) of this section to enforce such limitations.

In the case of subscribers who have entered into such an agreement before the effective date of this section, such notice shall be provided within 180 days of such date and at least once a year thereafter.

(2) For purposes of this section, other than subsection (h) of this section—

(A) the term ''personally identifiable information'' does not include any record of aggregate data which does not identify particular persons;

(B) the term ''other service'' includes any wire or radio communications service provided using any of the facilities of a cable operator that are used in the provision of cable service; and

(C) the term ''cable operator'' includes, in addition to persons within the definition of cable operator in section 522 of this title, any person who (i) is owned or controlled by, or under common ownership or control with, a cable operator, and (ii) provides any wire or radio communications service.

(b) Collection of personally identifiable information using cable system

(1) Except as provided in paragraph (2), a cable operator shall not use the cable system to collect personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned.

(2) A cable operator may use the cable system to collect such information in order to—

(A) obtain information necessary to render a cable service or other service provided by the cable operator to the subscriber; or

(B) detect unauthorized reception of cable communications.

(c) Disclosure of personally identifiable information

(1) Except as provided in paragraph (2), a cable operator shall not disclose personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned and shall take such actions as are necessary to prevent unauthorized access to such information by a person other than the subscriber or cable operator.

(2) A cable operator may disclose such information if the disclosure is—

(A) necessary to render, or conduct a legitimate business activity related to, a cable service or other service provided by the cable operator to the subscriber;

(B) subject to subsection (h) of this section, made pursuant to a court order authorizing such disclosure, if the subscriber is notified of such order by the person to whom the order is directed;

(C) a disclosure of the names and addresses of subscribers to any cable service or other service, if—

(i) the cable operator has provided the subscriber the opportunity to prohibit or limit such disclosure, and

(ii) the disclosure does not reveal, directly or indirectly, the—

(I) extent of any viewing or other use by the subscriber of a cable service or other service provided by the cable operator, or

(II) the nature of any transaction made by the subscriber over the cable system of the cable operator; or

(D) to a government entity as authorized under chapters 119, 121, or 206 of title 18, except that such disclosure shall not include records revealing cable subscriber selection of video programming from a cable operator.

(d) Subscriber access to information

A cable subscriber shall be provided access to all personally identifiable information regarding that subscriber which is collected and maintained by a cable operator. Such information shall be made available to the subscriber at reasonable times and at a convenient place designated by such cable operator. A cable subscriber shall be provided reasonable opportunity to correct any error in such information.

(e) Destruction of information

A cable operator shall destroy personally identifiable information if the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under subsection (d) of this section or pursuant to a court order.

(f) Civil action in United States district court; damages; attorney's fees and costs; nonexclusive nature of remedy

(1) Any person aggrieved by any act of a cable operator in violation of this section may bring a civil action in a United States district court.

(2) The court may award—

(A) actual damages but not less than liquidated damages computed at the rate of $100 a day for each day of violation or $1,000, whichever is higher;

(B) punitive damages; and

(C) reasonable attorneys' fees and other litigation costs reasonably incurred.

(3) The remedy provided by this section shall be in addition to any other lawful remedy available to a cable subscriber.

(g) Regulation by States or franchising authorities

Nothing in this subchapter shall be construed to prohibit any State or any franchising authority from enacting or enforcing laws consistent with this section for the protection of subscriber privacy.

(h) Disclosure of information to governmental entity pursuant to court order

Except as provided in subsection (c)(2)(D) of this section, a governmental entity may obtain personally identifiable information concerning a cable subscriber pursuant to a court order only if, in the court proceeding relevant to such court order—

(1) such entity offers clear and convincing evidence that the subject of the information is reasonably suspected of engaging in criminal activity and that the information sought would be material evidence in the case; and

(2) the subject of the information is afforded the opportunity to appear and contest such entity's claim.

(June 19, 1934, ch. 652, title VI, §631, as added Pub. L. 98–549, §2, Oct. 30, 1984, 98 Stat. 2794; amended Pub. L. 102–385, §20, Oct. 5, 1992, 106 Stat. 1497; Pub. L. 107–56, title II, §211, Oct. 26, 2001, 115 Stat. 283.)

REFERENCES IN TEXT

For ''the effective date of this section'', referred to in subsec. (a)(1), as 60 days after Oct. 30, 1984, except where

otherwise expressly provided, see section 9(a) of Pub. L. 98–549, set out as an Effective Date note under section 521 of this title.

AMENDMENTS

2001—Subsec. (c)(2)(D). Pub. L. 107–56, § 211(1), added subpar. (D).

Subsec. (h). Pub. L. 107–56, § 211(2), substituted ''Except as provided in subsection (c)(2)(D) of this section, a governmental entity'' for ''A governmental entity'' in introductory provisions.

1992—Subsec. (a)(2). Pub. L. 102–385, § 20(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''For purposes of this section, the term 'personally identifiable information' does not include any record of aggregate data which does not identify particular persons.''

Subsec. (c)(1). Pub. L. 102–385, § 20(b), inserted before period at end ''and shall take such actions as are necessary to prevent unauthorized access to such information by a person other than the subscriber or cable operator''.

EFFECTIVE DATE OF 1992 AMENDMENT

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

EFFECTIVE DATE

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

§ 552. Consumer protection and customer service

(a) Franchising authority enforcement

A franchising authority may establish and enforce—

(1) customer service requirements of the cable operator; and

(2) construction schedules and other construction-related requirements, including construction-related performance requirements, of the cable operator.

(b) Commission standards

The Commission shall, within 180 days of October 5, 1992, establish standards by which cable operators may fulfill their customer service requirements. Such standards shall include, at a minimum, requirements governing—

(1) cable system office hours and telephone availability;

(2) installations, outages, and service calls; and

(3) communications between the cable operator and the subscriber (including standards governing bills and refunds).

(c) Subscriber notice

A cable operator may provide notice of service and rate changes to subscribers using any reasonable written means at its sole discretion. Notwithstanding section 543(b)(6) of this title or any other provision of this chapter, a cable operator shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, State, or franchising authority on the transaction between the operator and the subscriber.

(d) Consumer protection laws and customer service agreements

(1) Consumer protection laws

Nothing in this subchapter shall be construed to prohibit any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted by this subchapter.

(2) Customer service requirement agreements

Nothing in this section shall be construed to preclude a franchising authority and a cable operator from agreeing to customer service requirements that exceed the standards established by the Commission under subsection (b) of this section. Nothing in this subchapter shall be construed to prevent the establishment or enforcement of any municipal law or regulation, or any State law, concerning customer service that imposes customer service requirements that exceed the standards set by the Commission under this section, or that addresses matters not addressed by the standards set by the Commission under this section.

(June 19, 1934, ch. 652, title VI, § 632, as added Pub. L. 98–549, § 2, Oct. 30, 1984, 98 Stat. 2796; amended Pub. L. 102–385, § 8, Oct. 5, 1992, 106 Stat. 1484; Pub. L. 104–104, title III, § 301(g), Feb. 8, 1996, 110 Stat. 117.)

AMENDMENTS

1996—Subsecs. (c), (d). Pub. L. 104–104 added subsec. (c) and redesignated former subsec. (c) as (d).

1992—Pub. L. 102–385 amended section generally. Prior to amendment, section read as follows:

''(a) A franchising authority may require, as part of a franchise (including a franchise renewal, subject to section 546 of this title), provisions for enforcement of—

''(1) customer service requirements of the cable operator; and

''(2) construction schedules and other construction-related requirements of the cable operator.

''(b) A franchising authority may enforce any provision, contained in any franchise, relating to requirements described in paragraph (1) or (2) of subsection (a) of this section, to the extent not inconsistent with this subchapter.

''(c) Nothing in this subchapter shall be construed to prohibit any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not inconsistent with this subchapter.''

EFFECTIVE DATE OF 1992 AMENDMENT

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

EFFECTIVE DATE

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

§ 553. Unauthorized reception of cable service

(a) Unauthorized interception or receipt or assistance in intercepting or receiving service; "assist in intercepting or receiving" defined

(1) No person shall intercept or receive or assist in intercepting or receiving any communications service offered over a cable system, unless specifically authorized to do so by a cable operator or as may otherwise be specifically authorized by law.

(2) For the purpose of this section, the term ''assist in intercepting or receiving'' shall include the manufacture or distribution of equipment intended by the manufacturer or distributor (as the case may be) for unauthorized reception of any communications service offered over a cable system in violation of subparagraph (1).

(b) Penalties for willful violation

(1) Any person who willfully violates subsection (a)(1) of this section shall be fined not more than $1,000 or imprisoned for not more than 6 months, or both.

(2) Any person who violates subsection (a)(1) of this section willfully and for purposes of commercial advantage or private financial gain shall be fined not more than $50,000 or imprisoned for not more than 2 years, or both, for the first such offense and shall be fined not more than $100,000 or imprisoned for not more than 5 years, or both, for any subsequent offense.

(3) For purposes of all penalties and remedies established for violations of subsection (a)(1) of this section, the prohibited activity established herein as it applies to each such device shall be deemed a separate violation.

(c) Civil action in district court; injunctions; damages; attorney's fees and costs; regulation by States or franchising authorities

(1) Any person aggrieved by any violation of subsection (a)(1) of this section may bring a civil action in a United States district court or in any other court of competent jurisdiction.

(2) The court may—

(A) grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain violations of subsection (a)(1) of this section;

(B) award damages as described in paragraph (3); and

(C) direct the recovery of full costs, including awarding reasonable attorneys' fees to an aggrieved party who prevails.

(3)(A) Damages awarded by any court under this section shall be computed in accordance with either of the following clauses:

(i) the party aggrieved may recover the actual damages suffered by him as a result of the violation and any profits of the violator that are attributable to the violation which are not taken into account in computing the actual damages; in determining the violator's profits, the party aggrieved shall be required to prove only the violator's gross revenue, and the violator shall be required to prove his deductible expenses and the elements of profit attributable to factors other than the violation; or

(ii) the party aggrieved may recover an award of statutory damages for all violations involved in the action, in a sum of not less than $250 or more than $10,000 as the court considers just.

(B) In any case in which the court finds that the violation was committed willfully and for purposes of commercial advantage or private financial gain, the court in its discretion may increase the award of damages, whether actual or statutory under subparagraph (A), by an amount of not more than $50,000.

(C) In any case where the court finds that the violator was not aware and had no reason to believe that his acts constituted a violation of this section, the court in its discretion may reduce the award of damages to a sum of not less than $100.

(D) Nothing in this subchapter shall prevent any State or franchising authority from enacting or enforcing laws, consistent with this section, regarding the unauthorized interception or reception of any cable service or other communications service.

(June 19, 1934, ch. 652, title VI, § 633, as added Pub. L. 98–549, § 2, Oct. 30, 1984, 98 Stat. 2796; amended Pub. L. 102–385, § 21, Oct. 5, 1992, 106 Stat. 1498.)

AMENDMENTS

1992—Subsec. (b)(2). Pub. L. 102–385, § 21(1), substituted ''$50,000'' for ''$25,000'', ''2 years'' for ''1 year'', ''$100,000'' for ''$50,000'', and ''5 years'' for ''2 years''.

Subsec. (b)(3). Pub. L. 102–385, § 21(2), added par. (3).

EFFECTIVE DATE OF 1992 AMENDMENT

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

EFFECTIVE DATE

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

§ 554. Equal employment opportunity

(a) Entities within scope of coverage

This section shall apply to any corporation, partnership, association, joint-stock company, or trust engaged primarily in the management or operation of any cable system.

(b) Discrimination prohibited

Equal opportunity in employment shall be afforded by each entity specified in subsection (a) of this section, and no person shall be discriminated against in employment by such entity because of race, color, religion, national origin, age, or sex.

(c) Equal opportunity programs; establishment; maintenance; execution; terms

Any entity specified in subsection (a) of this section shall establish, maintain, and execute a positive continuing program of specific practices designed to ensure equal opportunity in every aspect of its employment policies and practices. Under the terms of its program, each such entity shall—

(1) define the responsibility of each level of management to ensure a positive application and vigorous enforcement of its policy of equal opportunity, and establish a procedure to review and control managerial and supervisory performance;

(2) inform its employees and recognized employee organizations of the equal employment opportunity policy and program and enlist their cooperation;

(3) communicate its equal employment opportunity policy and program and its employment needs to sources of qualified applicants without regard to race, color, religion, national origin, age, or sex, and solicit their recruitment assistance on a continuing basis;

(4) conduct a continuing program to exclude every form of prejudice or discrimination based on race, color, religion, national origin, age, or sex, from its personnel policies and practices and working conditions; and

(5) conduct a continuing review of job structure and employment practices and adopt positive recruitment, training, job design, and other measures needed to ensure genuine equality of opportunity to participate fully in all its organizational units, occupations, and levels of responsibility.

(d) Revision of rules; required provisions; annual statistical report; notice and comment on amendments

(1) Not later than 270 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, and after notice and opportunity for hearing, the Commission shall prescribe revisions in the rules under this section in order to implement the amendments made to this section by such Act. Such revisions shall be designed to promote equality of employment opportunities for females and minorities in each of the job categories itemized in paragraph (3).

(2) Such rules shall specify the terms under which an entity specified in subsection (a) of this section shall, to the extent possible—

(A) disseminate its equal opportunity program to job applicants, employees, and those with whom it regularly does business;

(B) use minority organizations, organizations for women, media, educational institutions, and other potential sources of minority and female applicants, to supply referrals whenever jobs are available in its operation;

(C) evaluate its employment profile and job turnover against the availability of minorities and women in its franchise area;

(D) undertake to offer promotions of minorities and women to positions of greater responsibility;

(E) encourage minority and female entrepreneurs to conduct business with all parts of its operation; and

(F) analyze the results of its efforts to recruit, hire, promote, and use the services of minorities and women and explain any difficulties encountered in implementing its equal employment opportunity program.

(3)(A) Such rules also shall require an entity specified in subsection (a) of this section with more than 5 full-time employees to file with the Commission an annual statistical report identifying by race, sex, and job title the number of employees in each of the following full-time and part-time job categories:

(i) Corporate officers.
(ii) General Manager.
(iii) Chief Technician.
(iv) Comptroller.
(v) General Sales Manager.
(vi) Production Manager.
(vii) Managers.
(viii) Professionals.
(ix) Technicians.
(x) Sales Personnel.
(xi) Office and Clerical Personnel.
(xii) Skilled Craftspersons.
(xiii) Semiskilled Operatives.
(xiv) Unskilled Laborers.
(xv) Service Workers.

(B) The report required by subparagraph (A) shall be made on separate forms, provided by the Commission, for full-time and part-time employees. The Commission's rules shall sufficiently define the job categories listed in clauses (i) through (vi) of such subparagraph so as to ensure that only employees who are principal decisionmakers and who have supervisory authority are reported for such categories. The Commission shall adopt rules that define the job categories listed in clauses (vii) through (xv) in a manner that is consistent with the Commission policies in effect on June 1, 1990. The Commission shall prescribe the method by which entities shall be required to compute and report the number of minorities and women in the job categories listed in clauses (i) through (x) and the number of minorities and women in the job categories listed in clauses (i) through (xv) in proportion to the total number of qualified minorities and women in the relevant labor market. The report shall include information on hiring, promotion, and recruitment practices necessary for the Commission to evaluate the efforts of entities to comply with the provisions of paragraph (2) of this subsection. The report shall be available for public inspection at the entity's central location and at every location where 5 or more full-time employees are regularly assigned to work. Nothing in this subsection shall be construed as prohibiting the Commission from collecting or continuing to collect statistical or other employment information in a manner that it deems appropriate to carry out this section.

(4) The Commission may amend such rules from time to time to the extent necessary to carry out the provisions of this section. Any such amendment shall be made after notice and opportunity for comment.

(e) Annual certification of compliance; periodic investigation of employment practices

(1) On an annual basis, the Commission shall certify each entity described in subsection (a) of this section as in compliance with this section if, on the basis of information in the possession of the Commission, including the report filed pursuant to subsection (d)(3) of this section, such entity was in compliance, during the annual period involved, with the requirements of subsections (b), (c), and (d) of this section.

(2) The Commission shall, periodically but not less frequently than every five years, investigate the employment practices of each entity described in subsection (a) of this section, in the aggregate, as well as in individual job categories, and determine whether such entity is in compliance with the requirements of subsections (b), (c), and (d) of this section, including whether such entity's employment practices deny or abridge women and minorities equal employment opportunities. As part of such investigation, the Commission shall review whether the entity's reports filed pursuant to subsection (d)(3) of this section accurately reflect employee responsibilities in the reported job classifications.

(f) Substantial failure to comply; penalties; notice to public and franchising authorities

(1) If the Commission finds after notice and hearing that the entity involved has willfully or repeatedly without good cause failed to comply with the requirements of this section, such failure shall constitute a substantial failure to comply with this subchapter. The failure to obtain certification under subsection (e) of this section shall not itself constitute the basis for a determination of substantial failure to comply with this title. For purposes of this paragraph, the term ''repeatedly'', when used with respect to failures to comply, refers to 3 or more failures during any 7-year period.

(2) Any person who is determined by the Commission, through an investigation pursuant to subsection (e) of this section or otherwise, to have failed to meet or failed to make best efforts to meet the requirements of this section, or rules under this section, shall be liable to the United States for a forfeiture penalty of $500 for each violation. Each day of a continuing violation shall constitute a separate offense. Any entity defined in subsection (a) of this section shall not be liable for more than 180 days of forfeitures which accrued prior to notification by the Commission of a potential violation. Nothing in this paragraph shall limit the forfeiture imposed on any person as a result of any violation that continues subsequent to such notification. In addition, any person liable for such penalty may also have any license under this chapter for cable auxiliary relay service suspended until the Commission determines that the failure involved has been corrected. Whoever knowingly makes any false statement or submits documentation which he knows to be false, pursuant to an application for certification under this section shall be in violation of this section.

(3) The provisions of paragraphs (3) and (4), and the last 2 sentences of paragraph (2), of section 503(b) of this title shall apply to forfeitures under this subsection.

(4) The Commission shall provide for notice to the public and appropriate franchising authorities of any penalty imposed under this section.

(g) Discrimination complaints; investigation; enforcement

Employees or applicants for employment who believe they have been discriminated against in violation of the requirements of this section, or rules under this section, or any other interested person, may file a complaint with the Commission. A complaint by any such person shall be in writing, and shall be signed and sworn to by that person. The regulations under subsection (d)(1) of this section shall specify a program, under authorities otherwise available to the Commission, for the investigation of complaints and violations, and for the enforcement of this section.

(h) "Cable operator" defined; owners of multiple unit dwellings

(1) For purposes of this section, the term ''cable operator'' includes any operator of any satellite master antenna television system, including a system described in section 522(7)(A) of this title and any multichannel video programming distributor.

(2) Such term does not include any operator of a system which, in the aggregate, serves fewer than 50 subscribers.

(3) In any case in which a cable operator is the owner of a multiple unit dwelling, the requirements of this section shall only apply to such cable operator with respect to its employees who are primarily engaged in cable telecommunications.

(i) Regulatory powers of States and franchising authorities; nonexclusive nature of remedies and enforcement provisions; covered franchises

(1) Nothing in this section shall affect the authority of any State or any franchising authority—

(A) to establish or enforce any requirement which is consistent with the requirements of this section, including any requirement which affords equal employment opportunity protection for employees;

(B) to establish or enforce any provision requiring or encouraging any cable operator to conduct business with enterprises which are owned or controlled by members of minority groups (as defined in section 309(i)(3)(C)(ii) of this title) or which have their principal operations located within the community served by the cable operator; or

(C) to enforce any requirement of a franchise in effect on the effective date of this subchapter.

(2) The remedies and enforcement provisions of this section are in addition to, and not in lieu of, those available under this or any other law.

(3) The provisions of this section shall apply to any cable operator, whether operating pursuant to a franchise granted before, on, or after October 30, 1984.

(June 19, 1934, ch. 652, title VI, §634, as added Pub. L. 98–549, §2, Oct. 30, 1984, 98 Stat. 2797; amended Pub. L. 102–385, §22(b)–(e), Oct. 5, 1992, 106 Stat. 1498, 1499; Pub. L. 103–414, title III, §303(a)(24), Oct. 25, 1994, 108 Stat. 4295.)

REFERENCES IN TEXT

The Cable Television Consumer Protection and Competition Act of 1992, referred to in subsec. (d)(1), is Pub. L. 102–385, Oct. 5, 1992, 106 Stat. 1460. For complete classification of this Act to the Code, see Short Title of 1992 Amendments note set out under section 609 of this title and Tables.

For ''the effective date of this subchapter'', referred to in subsec. (i)(1)(C), as 60 days after Oct. 30, 1984, except where otherwise expressly provided, see section 9(a) of Pub. L. 98–549, set out as an Effective Date note under section 521 of this title.

AMENDMENTS

1994—Subsec. (h)(1). Pub. L. 103–414 substituted ''section 522(7)(A)'' for ''section 522(6)(A)''.

1992—Subsec. (d)(1). Pub. L. 102–385, §22(b), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Not later than 270 days after the effective date of this section, and after notice and opportunity for hearing, the Commission shall prescribe rules to carry out this section.''

Subsec. (d)(3). Pub. L. 102–385, §22(c), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''Such rules also shall require an entity specified in subsection (a) of this section with more than 5 full-time employees to file with the Commission an annual sta-

tistical report identifying by race and sex the number of employees in each of the following full-time and part-time job categories:

''(A) officials and managers;

''(B) professionals;

''(C) technicians;

''(D) sales persons;

''(E) office and clerical personnel;

''(F) skilled craft persons;

''(G) semiskilled operatives;

''(H) unskilled laborers; and

''(I) service workers.

The report shall include the number of minorities and women in the relevant labor market for each of the above categories. The statistical report shall be available to the public at the central office and at every location where more than 5 full-time employees are regularly assigned to work.''

Subsec. (f)(2). Pub. L. 102–385, § 22(d), substituted ''$500'' for ''$200''.

Subsec. (h)(1). Pub. L. 102–385, § 22(e), inserted before period at end ''and any multichannel video programming distributor''.

EFFECTIVE DATE OF 1992 AMENDMENT

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

EFFECTIVE DATE

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

CONGRESSIONAL FINDINGS: EMPLOYMENT OF WOMEN AND MINORITIES IN MANAGEMENT POSITIONS IN TELEVISION INDUSTRY

Section 22(a) of Pub. L. 102–385 provided that: ''The Congress finds and declares that—

''(1) despite the existence of regulations governing equal employment opportunity, females and minorities are not employed in significant numbers in positions of management authority in the cable and broadcast television industries;

''(2) increased numbers of females and minorities in positions of management authority in the cable and broadcast television industries advances the Nation's policy favoring diversity in the expression of views in the electronic media; and

''(3) rigorous enforcement of equal employment opportunity rules and regulations is required in order to effectively deter racial and gender discrimination.''

STUDY AND REPORT ON EFFECT AND OPERATION OF AMENDMENTS BY SECTION 22 OF PUB. L. 102–385

Section 22(g) of Pub. L. 102–385 provided that: ''Not later than 2 years after the date of enactment of this Act [Oct. 5, 1992], the Commission shall submit to the Congress a report pursuant to a proceeding to review and obtain public comment on the effect and operation of the amendments made by this section [enacting section 334 of this title and amending this section]. In conducting such review, the Commission shall consider the effectiveness of its procedures, regulations, policies, standards, and guidelines in promoting equality of employment opportunity and promotion opportunity, and particularly the effectiveness of its procedures, regulations, policies, standards, and guidelines in promoting the congressional policy favoring increased employment opportunity for women and minorities in positions of management authority. The Commission shall forward to the Congress such legislative recommendations to improve equal employment opportunity in the broadcasting and cable industries as it deems necessary.''

§ 555. Judicial proceedings

(a) Actions to review determinations by franchising authorities

Any cable operator adversely affected by any final determination made by a franchising authority under section 541(a)(1), 545 or 546 of this title may commence an action within 120 days after receiving notice of such determination, which may be brought in—

(1) the district court of the United States for any judicial district in which the cable system is located; or

(2) in any State court of general jurisdiction having jurisdiction over the parties.

(b) Available relief

The court may award any appropriate relief consistent with the provisions of the relevant section described in subsection (a) of this section and with the provisions of subsection (a) of this section.

(c) Review of constitutionality of sections 534 and 535

(1) Notwithstanding any other provision of law, any civil action challenging the constitutionality of section 534 or 535 of this title or any provision thereof shall be heard by a district court of three judges convened pursuant to the provisions of section 2284 of title 28.

(2) Notwithstanding any other provision of law, an interlocutory or final judgment, decree, or order of the court of three judges in an action under paragraph (1) holding section 534 or 535 of this title or any provision thereof unconstitutional shall be reviewable as a matter of right by direct appeal to the Supreme Court. Any such appeal shall be filed not more than 20 days after entry of such judgment, decree, or order.

(June 19, 1934, ch. 652, title VI, § 635, as added Pub. L. 98–549, § 2, Oct. 30, 1984, 98 Stat. 2800; amended Pub. L. 102–385, §§ 7(a)(2), 23, 24(b), Oct. 5, 1992, 106 Stat. 1483, 1500, 1501.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–385, § 7(a)(2), inserted ''541(a)(1),'' after ''section''.

Subsec. (b). Pub. L. 102–385, § 24(b), inserted ''and with the provisions of subsection (a) of this section'' after ''subsection (a) of this section''.

Subsec. (c). Pub. L. 102–385, § 23, added subsec. (c).

EFFECTIVE DATE OF 1992 AMENDMENT

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

EFFECTIVE DATE

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

§ 555a. Limitation of franchising authority liability

(a) Suits for damages prohibited

In any court proceeding pending on or initiated after October 5, 1992, involving any claim against a franchising authority or other governmental entity, or any official, member, employee, or agent of such authority or entity,

arising from the regulation of cable service or from a decision of approval or disapproval with respect to a grant, renewal, transfer, or amendment of a franchise, any relief, to the extent such relief is required by any other provision of Federal, State, or local law, shall be limited to injunctive relief and declaratory relief.

(b) Exception for completed cases

The limitation contained in subsection (a) of this section shall not apply to actions that, prior to such violation, have been determined by a final order of a court of binding jurisdiction, no longer subject to appeal, to be in violation of a cable operator's rights.

(c) Discrimination claims permitted

Nothing in this section shall be construed as limiting the relief authorized with respect to any claim against a franchising authority or other governmental entity, or any official, member, employee, or agent of such authority or entity, to the extent such claim involves discrimination on the basis of race, color, sex, age, religion, national origin, or handicap.

(d) Rule of construction

Nothing in this section shall be construed as creating or authorizing liability of any kind, under any law, for any action or failure to act relating to cable service or the granting of a franchise by any franchising authority or other governmental entity, or any official, member, employee, or agent of such authority or entity.

(June 19, 1934, ch. 652, title VI, § 635A, as added Pub. L. 102–385, § 24(a), Oct. 5, 1992, 106 Stat. 1500.)

EFFECTIVE DATE

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

§ 556. Coordination of Federal, State, and local authority

(a) Regulation by States, political subdivisions, State and local agencies, and franchising authorities

Nothing in this subchapter shall be construed to affect any authority of any State, political subdivision, or agency thereof, or franchising authority, regarding matters of public health, safety, and welfare, to the extent consistent with the express provisions of this subchapter.

(b) State jurisdiction with regard to cable services

Nothing in this subchapter shall be construed to restrict a State from exercising jurisdiction with regard to cable services consistent with this subchapter.

(c) Preemption

Except as provided in section 557 of this title, any provision of law of any State, political subdivision, or agency thereof, or franchising authority, or any provision of any franchise granted by such authority, which is inconsistent with this chapter shall be deemed to be preempted and superseded.

(d) "State" defined

For purposes of this section, the term ''State'' has the meaning given such term in section 153 of this title.

(June 19, 1934, ch. 652, title VI, § 636, as added Pub. L. 98–549, § 2, Oct. 30, 1984, 98 Stat. 2800; amended Pub. L. 104–104, § 3(d)(3), Feb. 8, 1996, 110 Stat. 61.)

AMENDMENTS

1996—Subsec. (d). Pub. L. 104–104 substituted ''section 153'' for ''section 153(v)''.

EFFECTIVE DATE

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

§ 557. Existing franchises

(a) The provisions of—

(1) any franchise in effect on the effective date of this subchapter, including any such provisions which relate to the designation, use, or support for the use of channel capacity for public, educational, or governmental use, and

(2) any law of any State (as defined in section 153 of this title) in effect on October 30, 1984, or any regulation promulgated pursuant to such law, which relates to such designation, use or support of such channel capacity,

shall remain in effect, subject to the express provisions of this subchapter, and for not longer than the then current remaining term of the franchise as such franchise existed on such effective date.

(b) For purposes of subsection (a) of this section and other provisions of this subchapter, a franchise shall be considered in effect on the effective date of this subchapter if such franchise was granted on or before such effective date.

(June 19, 1934, ch. 652, title VI, § 637, as added Pub. L. 98–549, § 2, Oct. 30, 1984, 98 Stat. 2800; amended Pub. L. 104–104, § 3(d)(3), Feb. 8, 1996, 110 Stat. 61.)

REFERENCES IN TEXT

For ''the effective date of this subchapter'' and ''such effective date'', referred to in subsecs. (a) and (b), as 60 days after Oct. 30, 1984, except where otherwise expressly provided, see section 9(a) of Pub. L. 98–549, set out as an Effective Date note under section 521 of this title.

AMENDMENTS

1996—Subsec. (a)(2). Pub. L. 104–104 substituted ''section 153'' for ''section 153(v)''.

EFFECTIVE DATE

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

§ 558. Criminal and civil liability

Nothing in this subchapter shall be deemed to affect the criminal or civil liability of cable programmers or cable operators pursuant to the Federal, State, or local law of libel, slander, obscenity, incitement, invasions of privacy, false or misleading advertising, or other similar laws, except that cable operators shall not incur any such liability for any program carried on any channel designated for public, educational, gov-

ernmental use or on any other channel obtained under section 532 of this title or under similar arrangements unless the program involves obscene material.

(June 19, 1934, ch. 652, title VI, § 638, as added Pub. L. 98–549, § 2, Oct. 30, 1984, 98 Stat. 2801; amended Pub. L. 102–385, § 10(d), Oct. 5, 1992, 106 Stat. 1486.)

AMENDMENTS

1992—Pub. L. 102–385 inserted before period at end ''unless the program involves obscene material''.

EFFECTIVE DATE OF 1992 AMENDMENT

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

EFFECTIVE DATE

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

§ 559. 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 under title 18 or imprisoned not more than 2 years, or both.

(June 19, 1934, ch. 652, title VI, § 639, as added Pub. L. 98–549, § 2, Oct. 30, 1984, 98 Stat. 2801; amended Pub. L. 104–104, title V, § 503, Feb. 8, 1996, 110 Stat. 136.)

AMENDMENTS

1996—Pub. L. 104–104 substituted ''under title 18'' for ''not more than $10,000''.

EFFECTIVE DATE

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

§ 560. Scrambling of cable channels for nonsubscribers

(a) Subscriber request

Upon request by a cable service subscriber, a cable operator shall, without charge, fully scramble or otherwise fully block the audio and video programming of each channel carrying such programming so that one not a subscriber does not receive it.

(b) "Scramble" defined

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 viewed or heard in an understandable manner.

(June 19, 1934, ch. 652, title VI, § 640, as added Pub. L. 104–104, title V, § 504, Feb. 8, 1996, 110 Stat. 136.)

§ 561. Scrambling of sexually explicit adult video service programming

(a) Requirement

In providing sexually explicit adult programming or other programming that is indecent on any channel of its service primarily dedicated to sexually-oriented programming, a multichannel video programming distributor shall fully scramble or otherwise fully block the video and audio portion of such channel so that one not a subscriber to such channel or programming does not receive it.

(b) Implementation

Until a multichannel video programming distributor complies with the requirement set forth in subsection (a) of this section, the distributor shall limit the access of children to the programming referred to in that subsection by not providing such programming during the hours of the day (as determined by the Commission) when a significant number of children are likely to view it.

(c) "Scramble" defined

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 viewed or heard in an understandable manner.

(June 19, 1934, ch. 652, title VI, § 641, as added Pub. L. 104–104, title V, § 505(a), Feb. 8, 1996, 110 Stat. 136.)

EFFECTIVE DATE

Section 505(b) of Pub. L. 104–104 provided that: ''The amendment made by subsection (a) [enacting this section] shall take effect 30 days after the date of enactment of this Act [Feb. 8, 1996].''

PART V—VIDEO PROGRAMMING SERVICES PROVIDED BY TELEPHONE COMPANIES

§ 571. Regulatory treatment of video programming services

(a) Limitations on cable regulation

(1) Radio-based systems

To the extent that a common carrier (or any other person) is providing video programming to subscribers using radio communication, such carrier (or other person) shall be subject to the requirements of subchapter III of this chapter and section 572 of this title, but shall not otherwise be subject to the requirements of this subchapter.

(2) Common carriage of video traffic

To the extent that a common carrier is providing transmission of video programming on a common carrier basis, such carrier shall be subject to the requirements of subchapter II of this chapter and section 572 of this title, but shall not otherwise be subject to the requirements of this subchapter. This paragraph shall not affect the treatment under section 522(7)(C) of this title of a facility of a common carrier as a cable system.

(3) Cable systems and open video systems

To the extent that a common carrier is providing video programming to its subscribers in any manner other than that described in paragraphs (1) and (2)—

(A) such carrier shall be subject to the requirements of this subchapter, unless such programming is provided by means of an open video system for which the Commission

has approved a certification under section 573 of this title; or

(B) if such programming is provided by means of an open video system for which the Commission has approved a certification under section 573 of this title, such carrier shall be subject to the requirements of this part, but shall be subject to parts I through IV of this subchapter only as provided in 573(c) of this title.

(4) Election to operate as open video system

A common carrier that is providing video programming in a manner described in paragraph (1) or (2), or a combination thereof, may elect to provide such programming by means of an open video system that complies with section 573 of this title. If the Commission approves such carrier's certification under section 573 of this title, such carrier shall be subject to the requirements of this part, but shall be subject to parts I through IV of this subchapter only as provided in 573(c) of this title.

(b) Limitations on interconnection obligations

A local exchange carrier that provides cable service through an open video system or a cable system shall not be required, pursuant to subchapter II of this chapter, to make capacity available on a nondiscriminatory basis to any other person for the provision of cable service directly to subscribers.

(c) Additional regulatory relief

A common carrier shall not be required to obtain a certificate under section 214 of this title with respect to the establishment or operation of a system for the delivery of video programming.

(June 19, 1934, ch. 652, title VI, § 651, as added Pub. L. 104–104, title III, § 302(a), Feb. 8, 1996, 110 Stat. 118.)

§ 572. Prohibition on buy outs

(a) Acquisitions by carriers

No local exchange carrier or any affiliate of such carrier owned by, operated by, controlled by, or under common control with such carrier may purchase or otherwise acquire directly or indirectly more than a 10 percent financial interest, or any management interest, in any cable operator providing cable service within the local exchange carrier's telephone service area.

(b) Acquisitions by cable operators

No cable operator or affiliate of a cable operator that is owned by, operated by, controlled by, or under common ownership with such cable operator may purchase or otherwise acquire, directly or indirectly, more than a 10 percent financial interest, or any management interest, in any local exchange carrier providing telephone exchange service within such cable operator's franchise area.

(c) Joint ventures

A local exchange carrier and a cable operator whose telephone service area and cable franchise area, respectively, are in the same market may not enter into any joint venture or partnership to provide video programming directly to subscribers or to provide telecommunications services within such market.

(d) Exceptions

(1) Rural systems

Notwithstanding subsections (a), (b), and (c) of this section, a local exchange carrier (with respect to a cable system located in its telephone service area) and a cable operator (with respect to the facilities of a local exchange carrier used to provide telephone exchange service in its cable franchise area) may obtain a controlling interest in, management interest in, or enter into a joint venture or partnership with the operator of such system or facilities for the use of such system or facilities to the extent that—

(A) such system or facilities only serve incorporated or unincorporated—

(i) places or territories that have fewer than 35,000 inhabitants; and

(ii) are outside an urbanized area, as defined by the Bureau of the Census; and

(B) in the case of a local exchange carrier, such system, in the aggregate with any other system in which such carrier has an interest, serves less than 10 percent of the households in the telephone service area of such carrier.

(2) Joint use

Notwithstanding subsection (c) of this section, a local exchange carrier may obtain, with the concurrence of the cable operator on the rates, terms, and conditions, the use of that part of the transmission facilities of a cable system extending from the last multiuser terminal to the premises of the end user, if such use is reasonably limited in scope and duration, as determined by the Commission.

(3) Acquisitions in competitive markets

Notwithstanding subsections (a) and (c) of this section, a local exchange carrier may obtain a controlling interest in, or form a joint venture or other partnership with, or provide financing to, a cable system (hereinafter in this paragraph referred to as "the subject cable system"), if—

(A) the subject cable system operates in a television market that is not in the top 25 markets, and such market has more than 1 cable system operator, and the subject cable system is not the cable system with the most subscribers in such television market;

(B) the subject cable system and the cable system with the most subscribers in such television market held on May 1, 1995, cable television franchises from the largest municipality in the television market and the boundaries of such franchises were identical on such date;

(C) the subject cable system is not owned by or under common ownership or control of any one of the 50 cable system operators with the most subscribers as such operators existed on May 1, 1995; and

(D) the system with the most subscribers in the television market is owned by or under common ownership or control of any one of the 10 largest cable system operators as such operators existed on May 1, 1995.

(4) Exempt cable systems

Subsection (a) of this section does not apply to any cable system if—

(A) the cable system serves no more than 17,000 cable subscribers, of which no less than 8,000 live within an urban area, and no less than 6,000 live within a nonurbanized area as of June 1, 1995;

(B) the cable system is not owned by, or under common ownership or control with, any of the 50 largest cable system operators in existence on June 1, 1995; and

(C) the cable system operates in a television market that was not in the top 100 television markets as of June 1, 1995.

(5) Small cable systems in nonurban areas

Notwithstanding subsections (a) and (c) of this section, a local exchange carrier with less than $100,000,000 in annual operating revenues (or any affiliate of such carrier owned by, operated by, controlled by, or under common control with such carrier) may purchase or otherwise acquire more than a 10 percent financial interest in, or any management interest in, or enter into a joint venture or partnership with, any cable system within the local exchange carrier's telephone service area that serves no more than 20,000 cable subscribers, if no more than 12,000 of those subscribers live within an urbanized area, as defined by the Bureau of the Census.

(6) Waivers

The Commission may waive the restrictions of subsections[1] (a), (b), or (c) of this section only if—

(A) the Commission determines that, because of the nature of the market served by the affected cable system or facilities used to provide telephone exchange service—

(i) the affected cable operator or local exchange carrier would be subjected to undue economic distress by the enforcement of such provisions;

(ii) the system or facilities would not be economically viable if such provisions were enforced; or

(iii) the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served; and

(B) the local franchising authority approves of such waiver.

(e) "Telephone service area" defined

For purposes of this section, the term ''telephone service area'' when used in connection with a common carrier subject in whole or in part to subchapter II of this chapter means the area within which such carrier provided telephone exchange service as of January 1, 1993, but if any common carrier after such date transfers its telephone exchange service facilities to another common carrier, the area to which such facilities provide telephone exchange service shall be treated as part of the telephone service area of the acquiring common carrier and not of the selling common carrier.

(June 19, 1934, ch. 652, title VI, § 652, as added Pub. L. 104–104, title III, § 302(a), Feb. 8, 1996, 110 Stat. 119.)

[1] So in original. Probably should be ''subsection''.

§ 573. Establishment of open video systems

(a) Open video systems

(1) Certificates of compliance

A local exchange carrier may provide cable service to its cable service subscribers in its telephone service area through an open video system that complies with this section. To the extent permitted by such regulations as the Commission may prescribe consistent with the public interest, convenience, and necessity, an operator of a cable system or any other person may provide video programming through an open video system that complies with this section. An operator of an open video system shall qualify for reduced regulatory burdens under subsection (c) of this section if the operator of such system certifies to the Commission that such carrier complies with the Commission's regulations under subsection (b) of this section and the Commission approves such certification. The Commission shall publish notice of the receipt of any such certification and shall act to approve or disapprove any such certification within 10 days after receipt of such certification.

(2) Dispute resolution

The Commission shall have the authority to resolve disputes under this section and the regulations prescribed thereunder. Any such dispute shall be resolved within 180 days after notice of such dispute is submitted to the Commission. At that time or subsequently in a separate damages proceeding, the Commission may, in the case of any violation of this section, require carriage, award damages to any person denied carriage, or any combination of such sanctions. Any aggrieved party may seek any other remedy available under this chapter.

(b) Commission actions

(1) Regulations required

Within 6 months after February 8, 1996, the Commission shall complete all actions necessary (including any reconsideration) to prescribe regulations that—

(A) except as required pursuant to section 531, 534, or 535 of this title, prohibit an operator of an open video system from discriminating among video programming providers with regard to carriage on its open video system, and ensure that the rates, terms, and conditions for such carriage are just and reasonable, and are not unjustly or unreasonably discriminatory;

(B) if demand exceeds the channel capacity of the open video system, prohibit an operator of an open video system and its affiliates from selecting the video programming services for carriage on more than one-third of the activated channel capacity on such system, but nothing in this subparagraph shall be construed to limit the number of chan-

nels that the carrier and its affiliates may offer to provide directly to subscribers;

(C) permit an operator of an open video system to carry on only one channel any video programming service that is offered by more than one video programming provider (including the local exchange carrier's video programming affiliate): *Provided*, That subscribers have ready and immediate access to any such video programming service;

(D) extend to the distribution of video programming over open video systems the Commission's regulations concerning sports exclusivity (47 C.F.R. 76.67), network nonduplication (47 C.F.R. 76.92 et seq.), and syndicated exclusivity (47 C.F.R. 76.151 et seq.); and

(E)(i) prohibit an operator of an open video system from unreasonably discriminating in favor of the operator or its affiliates with regard to material or information (including advertising) provided by the operator to subscribers for the purposes of selecting programming on the open video system, or in the way such material or information is presented to subscribers;

(ii) require an operator of an open video system to ensure that video programming providers or copyright holders (or both) are able suitably and uniquely to identify their programming services to subscribers;

(iii) if such identification is transmitted as part of the programming signal, require the carrier to transmit such identification without change or alteration; and

(iv) prohibit an operator of an open video system from omitting television broadcast stations or other unaffiliated video programming services carried on such system from any navigational device, guide, or menu.

(2) Consumer access

Subject to the requirements of paragraph (1) and the regulations thereunder, nothing in this section prohibits a common carrier or its affiliate from negotiating mutually agreeable terms and conditions with over-the-air broadcast stations and other unaffiliated video programming providers to allow consumer access to their signals on any level or screen of any gateway, menu, or other program guide, whether provided by the carrier or its affiliate.

(c) Reduced regulatory burdens for open video systems

(1) In general

Any provision that applies to a cable operator under—

(A) sections 533 (other than subsection (a) thereof), 536, 543(f), 548, 551, and 554 of this title, shall apply,

(B) sections 531, 534, and 535 of this title, and section 325 of this title, shall apply in accordance with the regulations prescribed under paragraph (2), and

(C) sections 532 and 537 of this title, and parts III and IV of this subchapter (other than sections 543(f), 548, 551, and 554 of this title), shall not apply,

to any operator of an open video system for which the Commission has approved a certification under this section.

(2) Implementation

(A) Commission action

In the rulemaking proceeding to prescribe the regulations required by subsection (b)(1) of this section, the Commission shall, to the extent possible, impose obligations that are no greater or lesser than the obligations contained in the provisions described in paragraph (1)(B) of this subsection. The Commission shall complete all action (including any reconsideration) to prescribe such regulations no later than 6 months after February 8, 1996.

(B) Fees

An operator of an open video system under this part may be subject to the payment of fees on the gross revenues of the operator for the provision of cable service imposed by a local franchising authority or other governmental entity, in lieu of the franchise fees permitted under section 542 of this title. The rate at which such fees are imposed shall not exceed the rate at which franchise fees are imposed on any cable operator transmitting video programming in the franchise area, as determined in accordance with regulations prescribed by the Commission. An operator of an open video system may designate that portion of a subscriber's bill attributable to the fee under this subparagraph as a separate item on the bill.

(3) Regulatory streamlining

With respect to the establishment and operation of an open video system, the requirements of this section shall apply in lieu of, and not in addition to, the requirements of subchapter II of this chapter.

(4) Treatment as cable operator

Nothing in this chapter precludes a video programming provider making use of an open video system from being treated as an operator of a cable system for purposes of section 111 of title 17.

(d) "Telephone service area" defined

For purposes of this section, the term ''telephone service area'' when used in connection with a common carrier subject in whole or in part to subchapter II of this chapter means the area within which such carrier is offering telephone exchange service.

(June 19, 1934, ch. 652, title VI, §653, as added Pub. L. 104–104, title III, §302(a), Feb. 8, 1996, 110 Stat. 121.)

SUBCHAPTER VI—MISCELLANEOUS PROVISIONS

§601. Interstate Commerce Commission and Postmaster General; duties, powers, and functions transferred to Commission

(a) All duties, powers, and functions of the Interstate Commerce Commission under sections 9 to 15 of this title, relating to operation of telegraph lines by railroad and telegraph companies granted Government aid in the construction of their lines, are imposed upon and vested in the Commission: *Provided*, That such

transfer of duties, powers, and functions shall not be construed to affect the duties, powers, functions, or jurisdiction of the Interstate Commerce Commission under, or to interfere with or prevent the enforcement of, subtitle IV of title 49.

(b) All duties, powers, and functions of the Postmaster General with respect to telegraph companies and telegraph lines under any existing provision of law are imposed upon and vested in the Commission.

(June 19, 1934, ch. 652, title VII, § 701, formerly title VI, § 601, 48 Stat. 1101; renumbered title VII, § 701, Pub. L. 98–549, § 6(a), Oct. 30, 1984, 98 Stat. 2804.)

CODIFICATION

In subsec. (a), ''subtitle IV of title 49'' substituted for ''the Interstate Commerce Act and all Acts amendatory thereof or supplemental thereto [49 U.S.C. 1 et seq.]'' on authority of Pub. L. 95–473, § 3(b), Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV (§ 10101 et seq.) of Title 49, Transportation.

TRANSFER OF FUNCTIONS

Office of Postmaster General of Post Office Department abolished and functions, powers, and duties of Postmaster General transferred to United States Postal Service by Pub. L. 91–375, § 4(a), Aug. 12, 1970, 84 Stat. 773, set out as a note under section 201 of Title 39, Postal Service.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.

§§ 602, 603. Repealed. Pub. L. 103–414, title III, § 304(a)(13), Oct. 25, 1994, 108 Stat. 4297

Section 602, acts June 19, 1934, ch. 652, title VII, § 702(a), (b), formerly title VI, § 602(a), (b), 48 Stat. 1102; May 20, 1937, ch. 229, § 15, 50 Stat. 197; Mar. 18, 1940, ch. 66, 54 Stat. 54; renumbered title VII, § 702(a), (b), Oct. 30, 1984, Pub. L. 98–549, § 6(a), 98 Stat. 2804, repealed certain prior provisions relating to communications and directed Commission to study and report, not later than Jan. 1, 1941, on radio requirements necessary for ships navigating Great Lakes and inland waters of the United States.

Section 603, act June 19, 1934, ch. 652, title VII, § 703, formerly title VI, § 603, 48 Stat. 1102; renumbered title VII, § 703, Oct. 30, 1984, Pub. L. 98–549, § 6(a), 98 Stat. 2804, related to transfers from Federal Radio Commission, Interstate Commerce Commission, and Postmaster General.

§ 604. Effect of transfer

(a) Orders, determinations, rules, regulations, permits, contracts, licenses, and privileges

All orders, determinations, rules, regulations, permits, contracts, licenses, and privileges which have been issued, made, or granted by the Interstate Commerce Commission, the Federal Radio Commission, or the Postmaster General, under any provision of law repealed or amended by this chapter or in the exercise of duties, powers, or functions transferred to the Commission by this chapter, and which are in effect at the time this section takes effect, shall continue in effect until modified, terminated, superseded, or repealed by the Commission or by operation of law.

(b) Availability of records

All records transferred to the Commission under this chapter shall be available for use by the Commission to the same extent as if such records were originally records of the Commission. All final valuations and determinations of depreciation charges by the Interstate Commerce Commission with respect to common carriers engaged in radio or wire communication, and all orders of the Interstate Commerce Commission with respect to such valuations and determinations, shall have the same force and effect as though made by the Commission under this chapter.

(June 19, 1934, ch. 652, title VII, § 704, formerly title VI, § 604, 48 Stat. 1103; renumbered title VII, § 704, Pub. L. 98–549, § 6(a), Oct. 30, 1984, 98 Stat. 2804; amended Pub. L. 103–414, title III, § 304(a)(14), Oct. 25, 1994, 108 Stat. 4297.)

REFERENCES IN TEXT

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

AMENDMENTS

1994—Subsecs. (b), (c). Pub. L. 103–414 redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: ''Any proceeding, hearing, or investigation commenced or pending before the Federal Radio Commission, the Interstate Commerce Commission, or the Postmaster General, at the time of the organization of the Commission, shall be continued by the Commission in the same manner as though originally commenced before the Commission, if such proceeding, hearing, or investigation (1) involves the administration of duties, powers, and functions transferred to the Commission by this chapter, or (2) involves the exercise of jurisdiction similar to that granted to the Commission under the provisions of this chapter.''

Subsec. (d). Pub. L. 103–414, § 303(a)(14)(A), struck out subsec. (d) which read as follows: ''The provisions of this chapter shall not affect suits commenced prior to the date of the organization of the Commission; and all such suits shall be continued, proceedings therein had, appeals therein taken and judgments therein rendered, in the same manner and with the same effect as if this chapter had not been passed. No suit, action, or other proceeding lawfully commenced by or against any agency or officer of the United States, in relation to the discharge of official duties, shall abate by reason of any transfer of authority, power, and duties from such agency or officer to the Commission under the provisions of this chapter, but the court, upon motion or supplemental petition filed at any time within twelve months after such transfer, showing the necessity for a survival of such suit, action, or other proceeding to obtain a settlement of the questions involved, may allow the same to be maintained by or against the Commission.''

TRANSFER OF FUNCTIONS

Office of Postmaster General of Post Office Department abolished and functions, powers, and duties of

Postmaster General transferred to United States Postal Service by Pub. L. 91–375, § 4(a), Aug. 12, 1970, 84 Stat. 773, set out as a note under section 201 of Title 39, Postal Service.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

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§ 605. Unauthorized publication or use of communications

(a) Practices prohibited

Except as authorized by chapter 119, title 18, no person receiving, assisting in receiving, transmitting, or assisting in transmitting, any interstate or foreign communication by wire or radio shall divulge or publish the existence, contents, substance, purport, effect, or meaning thereof, except through authorized channels of transmission or reception, (1) to any person other than the addressee, his agent, or attorney, (2) to a person employed or authorized to forward such communication to its destination, (3) to proper accounting or distributing officers of the various communicating centers over which the communication may be passed, (4) to the master of a ship under whom he is serving, (5) in response to a subpena issued by a court of competent jurisdiction, or (6) on demand of other lawful authority. No person not being authorized by the sender shall intercept any radio communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person. No person not being entitled thereto shall receive or assist in receiving any interstate or foreign communication by radio and use such communication (or any information therein contained) for his own benefit or for the benefit of another not entitled thereto. No person having received any intercepted radio communication or having become acquainted with the contents, substance, purport, effect, or meaning of such communication (or any part thereof) knowing that such communication was intercepted, shall divulge or publish the existence, contents, substance, purport, effect, or meaning of such communication (or any part thereof) or use such communication (or any information therein contained) for his own benefit or for the benefit of another not entitled thereto. This section shall not apply to the receiving, divulging, publishing, or utilizing the contents of any radio communication which is transmitted by any station for the use of the general public, which relates to ships, aircraft, vehicles, or persons in distress, or which is transmitted by an amateur radio station operator or by a citizens band radio operator.

(b) Exceptions

The provisions of subsection (a) of this section shall not apply to the interception or receipt by any individual, or the assisting (including the manufacture or sale) of such interception or receipt, of any satellite cable programming for private viewing if—

(1) the programming involved is not encrypted; and

(2)(A) a marketing system is not established under which—

(i) an agent or agents have been lawfully designated for the purpose of authorizing private viewing by individuals, and

(ii) such authorization is available to the individual involved from the appropriate agent or agents; or

(B) a marketing system described in subparagraph (A) is established and the individuals receiving such programming has obtained authorization for private viewing under that system.

(c) Scrambling of Public Broadcasting Service programming

No person shall encrypt or continue to encrypt satellite delivered programs included in the National Program Service of the Public Broadcasting Service and intended for public viewing by retransmission by television broadcast stations; except that as long as at least one unencrypted satellite transmission of any program subject to this subsection is provided, this subsection shall not prohibit additional encrypted satellite transmissions of the same program.

(d) Definitions

For purposes of this section—

(1) the term ''satellite cable programming'' means video programming which is transmitted via satellite and which is primarily intended for the direct receipt by cable operators for their retransmission to cable subscribers;

(2) the term ''agent'', with respect to any person, includes an employee of such person;

(3) the term ''encrypt'', when used with respect to satellite cable programming, means to transmit such programming in a form whereby the aural and visual characteristics (or both) are modified or altered for the purpose of preventing the unauthorized receipt of such programming by persons without authorized equipment which is designed to eliminate the effects of such modification or alteration;

(4) the term ''private viewing'' means the viewing for private use in an individual's dwelling unit by means of equipment, owned or operated by such individual, capable of receiving satellite cable programming directly from a satellite;

(5) the term ''private financial gain'' shall not include the gain resulting to any individual for the private use in such individual's dwelling unit of any programming for which the individual has not obtained authorization for that use; and

(6) the term ''any person aggrieved'' shall include any person with proprietary rights in the intercepted communication by wire or radio, including wholesale or retail distributors of satellite cable programming, and, in the case of a violation of paragraph (4) of subsection (e) of this section, shall also include

any person engaged in the lawful manufacture, distribution, or sale of equipment necessary to authorize or receive satellite cable programming.

(e) Penalties; civil actions; remedies; attorney's fees and costs; computation of damages; regulation by State and local authorities

(1) Any person who willfully violates subsection (a) of this section shall be fined not more than $2,000 or imprisoned for not more than 6 months, or both.

(2) Any person who violates subsection (a) of this section willfully and for purposes of direct or indirect commercial advantage or private financial gain shall be fined not more than $50,000 or imprisoned for not more than 2 years, or both, for the first such conviction and shall be fined not more than $100,000 or imprisoned for not more than 5 years, or both, for any subsequent conviction.

(3)(A) Any person aggrieved by any violation of subsection (a) of this section or paragraph (4) of this subsection may bring a civil action in a United States district court or in any other court of competent jurisdiction.

(B) The court—

(i) may grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain violations of subsection (a) of this section;

(ii) may award damages as described in subparagraph (C); and

(iii) shall direct the recovery of full costs, including awarding reasonable attorneys' fees to an aggrieved party who prevails.

(C)(i) Damages awarded by any court under this section shall be computed, at the election of the aggrieved party, in accordance with either of the following subclauses;

(I) the party aggrieved may recover the actual damages suffered by him as a result of the violation and any profits of the violator that are attributable to the violation which are not taken into account in computing the actual damages; in determining the violator's profits, the party aggrieved shall be required to prove only the violator's gross revenue, and the violator shall be required to prove his deductible expenses and the elements of profit attributable to factors other than the violation; or

(II) the party aggrieved may recover an award of statutory damages for each violation of subsection (a) of this section involved in the action in a sum of not less than $1,000 or more than $10,000, as the court considers just, and for each violation of paragraph (4) of this subsection involved in the action an aggrieved party may recover statutory damages in a sum not less than $10,000, or more than $100,000, as the court considers just.

(ii) In any case in which the court finds that the violation was committed willfully and for purposes of direct or indirect commercial advantage or private financial gain, the court in its discretion may increase the award of damages, whether actual or statutory, by an amount of not more than $100,000 for each violation of subsection (a) of this section.

(iii) In any case where the court finds that the violator was not aware and had no reason to believe that his acts constituted a violation of this section, the court in its discretion may reduce the award of damages to a sum of not less than $250.

(4) Any person who manufactures, assembles, modifies, imports, exports, sells, or distributes any electronic, mechanical, or other device or equipment, knowing or having reason to know that the device or equipment is primarily of assistance in the unauthorized decryption of satellite cable programming, or direct-to-home satellite services, or is intended for any other activity prohibited by subsection (a) of this section, shall be fined not more than $500,000 for each violation, or imprisoned for not more than 5 years for each violation, or both. For purposes of all penalties and remedies established for violations of this paragraph, the prohibited activity established herein as it applies to each such device shall be deemed a separate violation.

(5) The penalties under this subsection shall be in addition to those prescribed under any other provision of this subchapter.

(6) Nothing in this subsection shall prevent any State, or political subdivision thereof, from enacting or enforcing any laws with respect to the importation, sale, manufacture, or distribution of equipment by any person with the intent of its use to assist in the interception or receipt of radio communications prohibited by subsection (a) of this section.

(f) Rights, obligations, and liabilities under other laws unaffected

Nothing in this section shall affect any right, obligation, or liability under title 17, any rule, regulation, or order thereunder, or any other applicable Federal, State, or local law.

(g) Universal encryption standard

The Commission shall initiate an inquiry concerning the need for a universal encryption standard that permits decryption of satellite cable programming intended for private viewing. In conducting such inquiry, the Commission shall take into account—

(1) consumer costs and benefits of any such standard, including consumer investment in equipment in operation;

(2) incorporation of technological enhancements, including advanced television formats;

(3) whether any such standard would effectively prevent present and future unauthorized decryption of satellite cable programming;

(4) the costs and benefits of any such standard on other authorized users of encrypted satellite cable programming, including cable systems and satellite master antenna television systems;

(5) the effect of any such standard on competition in the manufacture of decryption equipment; and

(6) the impact of the time delay associated with the Commission procedures necessary for establishment of such standards.

(h) Rulemaking for encryption standard

If the Commission finds, based on the information gathered from the inquiry required by subsection (g) of this section, that a universal encryption standard is necessary and in the public interest, the Commission shall initiate a rulemaking to establish such a standard.

(June 19, 1934, ch. 652, title VII, §705, formerly title VI, §605, 48 Stat. 1103; Pub. L. 90–351, title III, §803, June 19, 1968, 82 Stat. 223; Pub. L. 97–259, title I, §126, Sept. 13, 1982, 96 Stat. 1099; renumbered title VII, §705, and amended Pub. L. 98–549, §§5(a), 6(a), Oct. 30, 1984, 98 Stat. 2802, 2804; Pub. L. 100–626, §11, Nov. 7, 1988, 102 Stat. 3211; Pub. L. 100–667, title II, §§204, 205, Nov. 16, 1988, 102 Stat. 3958, 3959; Pub. L. 103–414, title III, §§303(a)(25)–(28), 304(a)(15), Oct. 25, 1994, 108 Stat. 4295–4297; Pub. L. 104–104, title II, §205(a), Feb. 8, 1996, 110 Stat. 114.)

AMENDMENTS

1996—Subsec. (e)(4). Pub. L. 104–104 inserted ''or direct-to-home satellite services,'' after ''programming,''.

1994—Subsec. (d)(6). Pub. L. 103–414, §303(a)(25), substituted ''subsection (e)'' for ''subsection (d)''.

Subsec. (e)(3)(A). Pub. L. 103–414, §303(a)(26), substituted ''paragraph (4) of this subsection'' for ''paragraph (4) of subsection (d) of this section''.

Subsec. (f). Pub. L. 103–414, §303(a)(27), redesignated subsec. (f), relating to universal encryption standard, as (g).

Subsec. (g). Pub. L. 103–414, §304(a)(15), which directed substitution of ''The Commission'' for ''within 6 months after November 16, 1988, the Federal Communications Commission'', was executed by making the substitution in text which read ''Within 6 months'' rather than ''within 6 months'' in introductory provisions to reflect the probable intent of Congress.

Pub. L. 103–414, §303(a)(27), redesignated subsec. (f), relating to universal encryption standard, as (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 103–414, §303(a)(27), (28), redesignated subsec. (g) as (h) and substituted ''subsection (g)'' for ''subsection (f)''.

1988—Subsecs. (c), (d). Pub. L. 100–626 added subsec. (c) and redesignated former subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (d)(6). Pub. L. 100–667, §205(1), which directed the addition of par. (6) to subsec. (c), was executed to subsec. (d) to reflect the probable intent of Congress and the intervening redesignation of subsec. (c) as (d) by Pub. L. 100–626.

Subsec. (e). Pub. L. 100–667, §205(2)–(12), which directed the amendment of subsec. (d)(1) to (4) of this section, was executed to subsec. (e)(1) to (4) of this section, see below, to reflect the probable intent of Congress and the intervening redesignation of subsec. (d) as (e) by Pub. L. 100–626.

Pub. L. 100–626 redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (e)(1). Pub. L. 100–667, §205(2), substituted ''$2,000'' for ''$1,000''.

Subsec. (e)(2). Pub. L. 100–667, §205(3), substituted ''$50,000 or imprisoned for not more than 2 years, or both, for the first such conviction and shall be fined not more than $100,000 or imprisoned for not more than 5 years'' for ''$25,000 or imprisoned for not more than 1 year, or both, for the first such conviction and shall be fined not more than $50,000 or imprisoned for not more than 2 years''.

Subsec. (e)(3)(A). Pub. L. 100–667, §205(4), inserted ''or paragraph (4) of subsection (d) of this section'' before ''may bring''.

Subsec. (e)(3)(B). Pub. L. 100–667, §205(5)–(8), struck out ''may'' after ''The court'' and substituted ''may grant'' for ''grant'' in cl. (i), ''may award'' for ''award'' in cl. (ii), and ''shall direct'' for ''direct'' in cl. (iii).

Subsec. (e)(3)(C)(i)(II). Pub. L. 100–667, §205(9), inserted ''of subsection (a) of this section'' after ''violation'', substituted ''$1,000'' for ''$250'', and inserted before period at end '', and for each violation of paragraph (4) of this subsection involved in the action an aggrieved party may recover statutory damages in a sum not less than $10,000, or more than $100,000, as the court considers just''.

Subsec. (e)(3)(C)(ii). Pub. L. 100–667, §205(10), substituted ''$100,000 for each violation of subsection (a) of this section'' for ''$50,000''.

Subsec. (e)(3)(C)(iii). Pub. L. 100–667, §205(11), substituted ''$250'' for ''$100''.

Subsec. (e)(4). Pub. L. 100–667, §205(12), added par. (4) and struck out former par. (4) which read as follows: ''The importation, manufacture, sale, or distribution of equipment by any person with the intent of its use to assist in any activity prohibited by subsection (a) of this section shall be subject to penalties and remedies under this subsection to the same extent and in the same manner as a person who has engaged in such prohibited activity.''

Subsec. (f). Pub. L. 100–667, §204, added subsec. (f) relating to universal encryption standard.

Pub. L. 100–626 redesignated subsec. (e), relating to rights, obligations, and liabilities under other laws, as (f).

Subsec. (g). Pub. L. 100–667, §204, added subsec. (g).

1984—Pub. L. 98–549, §5(a), designated existing provisions as subsec. (a) and added subsecs. (b) to (e).

1982—Pub. L. 97–259 struck out ''broadcast or'' after ''communication which is'', substituted ''any station'' for ''amateurs or others'', struck out ''or'' after ''general public,'', and substituted ''ships, aircraft, vehicles, or persons in distress, or which is transmitted by an amateur radio station operator or by a citizens band radio operator'' for ''ships in distress''.

1968—Pub. L. 90–351 inserted ''Except as authorized by chapter 119, title 18'', designated existing provisions as cls. (1) to (6), inserted ''radio'' before ''communication'' in second and fourth sentences, struck out ''wire or'' before ''radio'' in third sentence, and substituted ''intercepted'' for ''obtained'' in fourth sentence.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–667 effective Jan. 1, 1989, see section 206 of Pub. L. 100–667, set out as an Effective Date note under section 119 of Title 17, Copyrights.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 5(b) of Pub. L. 98–549 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the effective date of this Act [Dec. 29, 1984].''

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

§606. War powers of President

(a) Priority communications

During the continuance of a war in which the United States is engaged, the President is authorized, if he finds it necessary for the national defense and security, to direct that such communications as in his judgment may be essential to the national defense and security shall have preference or priority with any carrier subject to this chapter. He may give these directions at and for such times as he may determine, and may modify, change, suspend, or annul them and for any such purpose he is authorized to issue orders directly, or through such person or persons as he designates for the purpose, or through the Commission. Any carrier complying with any such order or direction for preference or priority herein authorized shall be exempt from any and all provisions in existing law imposing civil or criminal penalties, obligations, or liabilities upon carriers by reason of giving preference or priority in compliance with such order or direction.

(b) Obstruction of interstate or foreign communications

It shall be unlawful for any person during any war in which the United States is engaged to knowingly or willfully, by physical force or intimidation by threats of physical force, obstruct or retard or aid in obstructing or retarding interstate or foreign communication by radio or wire. The President is authorized, whenever in his judgment the public interest requires, to employ the armed forces of the United States to prevent any such obstruction or retardation of communication: *Provided*, That nothing in this section shall be construed to repeal, modify, or affect either section 17 of title 15 or section 52 of title 29.

(c) Suspension or amendment of rules and regulations applicable to certain emission stations or devices

Upon proclamation by the President that there exists war or a threat of war, or a state of public peril or disaster or other national emergency, or in order to preserve the neutrality of the United States, the President, if he deems it necessary in the interest of national security or defense, may suspend or amend, for such time as he may see fit, the rules and regulations applicable to any or all stations or devices capable of emitting electromagnetic radiations within the jurisdiction of the United States as prescribed by the Commission, and may cause the closing of any station for radio communication, or any device capable of emitting electromagnetic radiations between 10 kilocycles and 100,000 megacycles, which is suitable for use as a navigational aid beyond five miles, and the removal therefrom of its apparatus and equipment, or he may authorize the use or control of any such station or device and/or its apparatus and equipment, by any department of the Government under such regulations as he may prescribe upon just compensation to the owners. The authority granted to the President, under this subsection, to cause the closing of any station or device and the removal therefrom of its apparatus and equipment, or to authorize the use or control of any station or device and/or its apparatus and equipment, may be exercised in the Canal Zone.

(d) Suspension or amendment of rules and regulations applicable to wire communications; closing of facilities; Government use of facilities

Upon proclamation by the President that there exists a state or threat of war involving the United States, the President, if he deems it necessary in the interest of the national security and defense, may, during a period ending not later than six months after the termination of such state or threat of war and not later than such earlier date as the Congress by concurrent resolution may designate, (1) suspend or amend the rules and regulations applicable to any or all facilities or stations for wire communication within the jurisdiction of the United States as prescribed by the Commission, (2) cause the closing of any facility or station for wire communication and the removal therefrom of its apparatus and equipment, or (3) authorize the use or control of any such facility or station and its apparatus and equipment by any department of the Government under such regulations as he may prescribe, upon just compensation to the owners.

(e) Compensation

The President shall ascertain the just compensation for such use or control and certify the amount ascertained to Congress for appropriation and payment to the person entitled thereto. If the amount so certified is unsatisfactory to the person entitled thereto, such person shall be paid only 75 per centum of the amount and shall be entitled to sue the United States to recover such further sum as added to such payment of 75 per centum will make such amount as will be just compensation for the use and control. Such suit shall be brought in the manner provided by section 1346 or section 1491 of title 28.

(f) Affect on State laws and powers

Nothing in subsection (c) or (d) of this section shall be construed to amend, repeal, impair, or affect existing laws or powers of the States in relation to taxation or the lawful police regulations of the several States, except wherein such laws, powers, or regulations may affect the transmission of Government communications, or the issue of stocks and bonds by any communication system or systems.

(g) Limitations upon Presidential power

Nothing in subsection (c) or (d) of this section shall be construed to authorize the President to make any amendment to the rules and regulations of the Commission which the Commission would not be authorized by law to make; and nothing in subsection (d) of this section shall be construed to authorize the President to take any action the force and effect of which shall continue beyond the date after which taking of such action would not have been authorized.

(h) Penalties

Any person who willfully does or causes or suffers to be done any act prohibited pursuant to the exercise of the President's authority under this section, or who willfully fails to do any act which he is required to do pursuant to the exercise of the President's authority under this section, or who willfully causes or suffers such failure, shall, upon conviction thereof, be punished for such offense by a fine of not more than $1,000 or by imprisonment for not more than one year, or both, and, if a firm, partnership, association, or corporation, by fine of not more than $5,000, except that any person who commits such an offense with intent to injure the United States, or with intent to secure an advantage to any foreign nation, shall, upon conviction thereof, be punished by a fine of not more than $20,000 or by imprisonment for not more than 20 years, or both.

(June 19, 1934, ch. 652, title VII, § 706, formerly title VI, § 606, 48 Stat. 1104; Jan. 26, 1942, ch. 18, §§ 1, 2, 56 Stat. 18; Dec. 29, 1942, ch. 836, 56 Stat. 1096; July 25, 1947, ch. 327, § 1, 61 Stat. 449; Oct. 24, 1951, ch. 553, §§ 1, 2, 65 Stat. 611; renumbered title VII, § 706, Pub. L. 98–549, § 6(a), Oct. 30, 1984, 98 Stat. 2804.)

REFERENCES IN TEXT

For definition of Canal Zone, referred to in subsec. (c), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

CODIFICATION

In subsec. (e), ''section 1346 or section 1491 of title 28'' substituted for ''paragraph 20 of section 24 or by section 145, of the Judicial Code, as amended'' (which were classified to sections 41(20) and 250 of former Title 28, Judicial Code and Judiciary) on authority of act June 25, 1948, ch. 646, 62 Stat. 869, the first section of which enacted Title 28, Judiciary and Judicial Procedure. Section 1346 of Title 28 sets forth the basic jurisdiction of the district courts in cases in which the United States is defendant. Section 1491 of Title 28 sets forth the basic jurisdiction of the United States Court of Claims. Sections 24(20) and 145 of the Judicial Code were also classified to sections 1496, 1501, 1503, 2401, 2402, and 2501 of Title 28.

AMENDMENTS

1951—Subsec. (c). Act Oct. 24, 1951, §1, clarified scope of President's powers to use, control, and close radio facilities of all kinds which might be useful to an enemy for navigational purposes.

Subsec. (h). Act Oct. 24, 1951, §2, added subsec. (h).

1947—Subsec. (h). Act July 25, 1947, struck out subsec. (h) which related to modification of certain sections of this title until six months after termination of World War II for the protection of vessels in wartime.

1942—Subsecs. (d), (e). Act Jan. 26, 1942, §1, added subsec. (d) and redesignated former subsec. (d) as (e).

Subsecs. (f), (g). Act Jan. 26, 1942, §2, added subsecs. (f) and (g).

Subsec. (h). Act Dec. 29, 1942, added subsec. (h).

TERMINATION OF WAR AND EMERGENCIES

Act July 25, 1947, ch. 327, §3, 61 Stat. 451, provided that in the interpretation of this section, the date July 25, 1947, shall be deemed to be the date of termination of any state of war theretofore declared by Congress and of the national emergencies proclaimed by the President on Sept. 8, 1939, and May 27, 1941.

EXECUTIVE ORDER NO. 8964

Ex. Ord. No. 8964, eff. Dec. 10, 1941, 6 F.R. 6367, relating to the use and control of radio stations and preference or priority of communications was revoked by Ex. Ord. No. 9831, eff. Feb. 24, 1947, 12 F.R. 1363.

EX. ORD. NO. 9831. BOARD OF WAR COMMUNICATIONS ABOLISHED

Ex. Ord. No. 9831, eff. Feb. 24, 1947, 12 F.R. 1363, provided:

By virtue of the authority vested in me by the Constitution and statutes, including the Communications Act of 1934 (48 Stat. 1104, as amended; 47 U.S.C. 606) and as President of the United States, and in the interest of the internal management of the Government, it is hereby ordered as follows:

1. The Board of War Communications, established as the Defense Communications Board by Executive Order No. 8546 of September 24, 1940, is abolished, and all property and records thereof are transferred to the Federal Communications Commission.

2. Executive Orders Nos. 8546 of September 24, 1940, 8960 of December 6, 1941, 8964 of December 10, 1941, 9089 of March 6, 1942, and 9183 of June 15, 1942, are revoked.

HARRY S TRUMAN.

EXECUTIVE ORDER NO. 10312

Ex. Ord. No. 10312, eff. Dec. 10, 1951, 16 F.R. 12452, as amended by Ex. Ord. No. 10438, eff. Mar. 13, 1953, 18 F.R. 1491; Ex. Ord. No. 10773, eff. July 1, 1958, 23 F.R. 5061; Ex. Ord. No. 10782, eff. Sept. 6, 1958, 23 F.R. 6971; Ex. Ord. No. 11051, eff. Sept. 27, 1962, 27 F.R. 9683, relating to delegation of authority to the Federal Communications Commission was revoked by Ex. Ord. No. 11490, eff. Oct. 28, 1969, 34 F.R. 17567.

EXECUTIVE ORDER NO. 10705

Ex. Ord. No. 10705, Apr. 17, 1957, 22 F.R. 2729, as amended by Ex. Ord. No. 10773, July 1, 1958, 23 F.R. 5061; Ex. Ord. No. 10782, Sept. 6, 1958, 23 F.R. 6971; Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683; Ex. Ord. No. 11556, Sept. 4, 1970, 35 F.R. 14193, which related to the delegation of authority to the Director of the Office of Telecommunications Policy, was revoked by Ex. Ord. No. 12046, Mar. 27, 1978, 43 F.R. 13349, set out as a note under section 305 of this title.

§607. Effective date of chapter

This chapter shall take effect upon the organization of the Commission, except that this section and sections 151 and 154 of this title shall take effect July 1, 1934. The Commission shall be deemed to be organized upon such date as four members of the Commission have taken office.

(June 19, 1934, ch. 652, title VII, §707, formerly title VI, §607, 48 Stat. 1105; renumbered title VII, §707, Pub. L. 98–549, §6(a), Oct. 30, 1984, 98 Stat. 2804.)

REFERENCES IN TEXT

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

§608. Separability

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

(June 19, 1934, ch. 652, title VII, §708, formerly title VI, §608, 48 Stat. 1105; renumbered title VII, §708, Pub. L. 98–549, §6(a), Oct. 30, 1984, 98 Stat. 2804.)

§609. Short title

This chapter may be cited as the ''Communications Act of 1934.''

(June 19, 1934, ch. 652, title VII, §709, formerly title VI, §609, 48 Stat. 1105; renumbered title VII, §709, Pub. L. 98–549, §6(a), Oct. 30, 1984, 98 Stat. 2804.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning act June 19, 1934, ch. 652, 48 Stat. 1064, as amended, known as the Communications Act of 1934, which enacted this chapter, amended section 35 of this title, section 21 of Title 15, Commerce and Trade, section 487 of former Title 46, Shipping, and sections 1, 2, 5, and 15 of former Title 49, Transportation, and repealed sections 484 to 487 of former Title 46. For complete classification of this Act to the Code, see Tables.

SHORT TITLE OF 2006 AMENDMENT

Pub. L. 109–459, §1, Dec. 22, 2006, 120 Stat. 3399, provided that: ''This Act [enacting and repealing provisions set out as notes under section 201 of this title] may be cited as the 'Call Home Act of 2006'.''

Pub. L. 109–235, §1, June 15, 2006, 120 Stat. 491, provided that: ''This Act [amending section 503 of this

title] may be cited as the 'Broadcast Decency Enforcement Act of 2005'.''

SHORT TITLE OF 2005 AMENDMENT

Pub. L. 109–21, §1, July 9, 2005, 119 Stat. 359, provided that: ''This Act [amending section 227 of this title and enacting provisions set out as a note under section 227 of this title] may be cited as the 'Junk Fax Prevention Act of 2005'.''

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–435, §1, Dec. 3, 2004, 118 Stat. 2615, provided that: ''This Act [enacting and amending provisions set out as notes under section 151 of this title] may be cited as the 'Internet Tax Nondiscrimination Act'.''

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107–195, §1, June 19, 2002, 116 Stat. 715, provided that: ''This Act [amending section 309 of this title, enacting provisions set out as notes under sections 309 and 337 of this title, amending provisions set out as a note under section 337 of this title, and repealing provisions set out as a note under section 309 of this title] may be cited as the 'Auction Reform Act of 2002'.''

SHORT TITLE OF 2001 AMENDMENT

Pub. L. 107–75, §1, Nov. 28, 2001, 115 Stat. 703, provided that: ''This Act [amending provisions set out as a note under section 151 of this title] may be cited as the 'Internet Tax Nondiscrimination Act'.''

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(4) [div. B, title XVII, §1731], Dec. 21, 2000, 114 Stat. 2763, 2763A–350, provided that: ''This subtitle [subtitle C (§§1731–1733) of title XVII of div. B of H.R. 5666, as enacted by section 1(a)(4) of Pub. L. 106–554, amending section 254 of this title and enacting provisions set out as a note under section 254 of this title] may be cited as the 'Neighborhood Children's Internet Protection Act'.''

SHORT TITLE OF 1999 AMENDMENTS

Pub. L. 106–113, div. B, §1000(a)(9) [title V, §5008(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–594, provided that: ''This section [amending section 336 of this title and enacting provisions set out as a note under section 336 of this title] may be cited as the 'Community Broadcasters Protection Act of 1999'.''

Pub. L. 106–81, §1, Oct. 26, 1999, 113 Stat. 1286, provided that: ''This Act [enacting sections 615 to 615b of this title, amending sections 222 and 251 of this title, and enacting provisions set out as a note under section 615 of this title] may be cited as the 'Wireless Communications and Public Safety Act of 1999'.''

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–277, div. C, title XIV, §1401, Oct. 21, 1998, 112 Stat. 2681–736, provided that: ''This title [enacting section 231 of this title, amending sections 223 and 230 of this title, and enacting provisions set out as notes under sections 223 and 231 of this title] may be cited as the 'Child Online Protection Act'.''

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–104, §1(a), Feb. 8, 1996, 110 Stat. 56, provided that: ''This Act [enacting sections 160, 161, 222, 230, 251 to 261, 271 to 276, 336, 363, 549, 560, 561, 571 to 573, 613, and 614 of this title and section 79z–5c of Title 15, Commerce and Trade, amending sections 151, 153 to 155, 204, 208, 214, 220, 221, 223 to 225, 228, 302a, 303, 305, 307 to 310, 312, 319, 330, 332, 360, 382, 385, 402, 522, 531 to 534, 537, 541 to 544a, 548, 552, 556, 557, 559, and 605 of this title, sections 18, 79, 79z–6, and 5714 of Title 15, and sections 1462, 1465, and 2422 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as notes under this section and sections 151 to 153, 156, 157, 204, 214, 223, 228, 303, 308, 332, 534, 543, and 561 of this title and section 1462 of Title 18] may be cited as the 'Telecommunications Act of 1996'.''

Pub. L. 104–104, title V, §501, Feb. 8, 1996, 110 Stat. 133, provided that: ''This title [enacting sections 230, 560, and 561 of this title, amending sections 223, 303, 330, 531, 532, and 559 of this title and sections 1462, 1465, and 2422 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as notes under sections 223, 303, and 561 of this title and section 1462 of Title 18] may be cited as the 'Communications Decency Act of 1996'.''

SHORT TITLE OF 1992 AMENDMENTS

Pub. L. 102–385, §1, Oct. 5, 1992, 106 Stat. 1460, provided that: ''This Act [enacting sections 334, 335, 534 to 537, 544a, 548, and 555a of this title, amending sections 325, 332, 522, 532, 533, 541 to 544, 546, 551 to 555, and 558 of this title, and enacting provisions set out as notes under sections 325, 521, 531, 543, and 554 of this title] may be cited as the 'Cable Television Consumer Protection and Competition Act of 1992'.''

Pub. L. 102–356, §1, Aug. 26, 1992, 106 Stat. 949, provided that: ''This Act [amending sections 303b, 391, 393, and 396 of this title, enacting provisions set out as notes under sections 303 and 396 of this title, and repealing provisions set out as a note under section 303 of this title] may be cited as the 'Public Telecommunications Act of 1992'.''

SHORT TITLE OF 1991 AMENDMENT

Pub. L. 102–243, §1, Dec. 20, 1991, 105 Stat. 2394, provided that: ''This Act [enacting section 227 of this title, amending sections 152 and 331 of this title, and enacting provisions set out as notes under section 227 of this title] may be cited as the 'Telephone Consumer Protection Act of 1991'.''

SHORT TITLE OF 1990 AMENDMENTS

Pub. L. 101–437, §1, Oct. 17, 1990, 104 Stat. 996, provided that: ''This Act [enacting sections 303a, 303b, and 394 of this title, amending section 397 of this title, renumbering former section 394 of this title as section 393a, and enacting provisions set out as notes under this section and sections 303a and 394 of this title] may be cited as the 'Children's Television Act of 1990'.''

Pub. L. 101–437, title II, §201, Oct. 17, 1990, 104 Stat. 997, provided that: ''This title [enacting section 394 of this title, amending section 397 of this title, renumbering former section 394 of this title as section 393a, and enacting provisions set out as a note under section 394 of this title] may be cited as the 'National Endowment for Children's Educational Television Act of 1990'.''

Pub. L. 101–435, §1, Oct. 17, 1990, 104 Stat. 986, provided that: ''This Act [enacting section 226 of this title and provisions set out as a note under section 226 of this title] may be cited as the 'Telephone Operator Consumer Services Improvement Act of 1990'.''

Pub. L. 101–431, §1, Oct. 15, 1990, 104 Stat. 960, provided that: ''This Act [amending sections 303 and 330 of this title and enacting provisions set out as notes under section 303 of this title] may be cited as the 'Television Decoder Circuitry Act of 1990'.''

Pub. L. 101–396, §1, Sept. 28, 1990, 104 Stat. 848, provided: ''That this Act [enacting section 333 of this title, amending sections 154, 156, 203, 303, 310, and 503 of this title, and amending provisions set out as a note under section 154 of this title] may be cited as the 'Federal Communications Commission Authorization Act of 1990'.''

SHORT TITLE OF 1988 AMENDMENTS

Pub. L. 100–626, §1, Nov. 7, 1988, 102 Stat. 3207, provided that: ''This Act [amending sections 391, 396, 398, 399, and 605 of this title and enacting provisions set out as notes under sections 391 and 396 of this title] may be cited as the 'Public Telecommunications Act of 1988'.''

Pub. L. 100–594, §1, Nov. 3, 1988, 102 Stat. 3021, provided that: ''This Act [amending sections 154 to 156, 158, 204, 208, and 405 of this title and enacting provisions set out as notes under sections 154 and 156 of this title]

may be cited as the 'Federal Communications Commission Authorization Act of 1988'.''

Pub. L. 100–394, §1, Aug. 16, 1988, 102 Stat. 976, provided: ''That this Act [amending section 610 of this title and enacting provisions set out as a note under section 610 of this title] may be cited as the 'Hearing Aid Compatibility Act of 1988'.''

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98–549, §1(a), Oct. 30, 1984, 98 Stat. 2779, provided that: ''This Act [enacting subchapter V–A of this chapter and section 611 of this title, amending sections 152, 224, 309, and 605 of this title, section 2511 of Title 18, Crimes and Criminal Procedure, and section 1805 of Title 50, War and National Defense, and enacting provisions set out as notes under sections 521, 543, and 605 of this title] may be cited as the 'Cable Communications Policy Act of 1984'.''

SHORT TITLE OF 1983 AMENDMENTS

Pub. L. 98–214, §1, Dec. 8, 1983, 97 Stat. 1467, provided that: ''This Act [enacting section 157 of this title, amending sections 154, 156, 223, 310, 316, 396, and 503 of this title, and enacting provisions set out as notes under sections 156, 223, and 303 of this title] may be cited as the 'Federal Communications Commission Authorization Act of 1983'.''

Pub. L. 97–410, §1, Jan. 3, 1983, 96 Stat. 2043, provided: ''That this Act [enacting section 610 of this title, amending section 734 of this title, enacting provisions set out as a note under section 610 of this title, and amending provisions set out as a note under section 396 of this title] may be cited as the 'Telecommunications for the Disabled Act of 1982'.''

SHORT TITLE OF 1982 AMENDMENT

Pub. L. 97–259, title I, §101, Sept. 13, 1982, 96 Stat. 1087, provided that: ''This title [enacting sections 332 and 510 of this title, amending sections 153, 154, 155, 224, 301, 302a, 303, 304, 307, 309, 311, 312, 319, 402, 405, 408, 503, and 605 of this title and section 1114 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as a note under section 302a of this title] may be cited as the 'Communications Amendments Act of 1982'.''

SHORT TITLE OF 1981 AMENDMENTS

Pub. L. 97–130, §1, Dec 29, 1981, 95 Stat. 1687, provided that: ''This Act [amending section 222 of this title and section 1017 of Title 45, Railroads, and enacting provisions set out as notes under section 222 of this title and section 1017 of Title 45] may be referred to as the 'Record Carrier Competition Act of 1981'.''

Pub. L. 97–35, title XII, §1221, Aug. 13, 1981, 95 Stat. 725, provided that: ''This chapter [chapter 1 (§§1221–1234) of subtitle B of title XII of Pub. L. 97–35, enacting sections 399a and 399b of this title, amending sections 391, 392, 396, 397, and 399 of this title, and enacting provisions set out as notes under section 396 of this title] may be cited as the 'Public Broadcasting Amendments Act of 1981'.''

SHORT TITLE OF 1978 AMENDMENTS

Pub. L. 95–567, §1, Nov. 2, 1978, 92 Stat. 2405, provided: ''That this Act [enacting section 395 of this title, amending sections 390 to 392, 393, 394, and 396 to 398 of this title, repealing sections 392a and 395 of this title, and enacting provisions set out as notes under sections 390, 392, and 396 of this title and section 5316 of Title 5, Government Organization and Employees] may be cited as the 'Public Telecommunications Financing Act of 1978'.''

Pub. L. 95–234, §1, Feb. 21, 1978, 92 Stat. 33, provided: ''That this Act [enacting section 224 of this title, amending sections 152, 503, and 504 of this title, repealing section 510 of this title, and enacting provisions set out as a note under section 152 of this title] may be cited as the 'Communications Act Amendments of 1978'.''

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94–309, §1, June 5, 1976, 90 Stat. 683, provided: ''That this Act [enacting section 392a of this title and amending sections 390, 391, 392, 395, 397, and 399 of this title] may be cited as the 'Educational Broadcasting Facilities and Telecommunications Demonstration Act of 1976'.''

SHORT TITLE OF 1975 AMENDMENT

Pub. L. 94–192, §1, Dec. 31, 1975, 89 Stat. 1099, provided: ''That this Act [amending sections 396 and 397 of this title] may be cited as the 'Public Broadcasting Financing Act of 1975'.''

SHORT TITLE OF 1971 AMENDMENT

Pub. L. 92–131, §1, Sept. 30, 1971, 85 Stat. 363, provided that: ''This Act [amending section 410 of this title] may be cited as the 'Federal-State Communications Joint Board Act'.''

SHORT TITLE OF 1970 AMENDMENT

Pub. L. 91–437, §1, Oct. 7, 1970, 84 Stat. 888, provided: ''That this Act [amending section 396 of this title] may be cited as the 'Public Broadcasting Financing Act of 1970'.''

SHORT TITLE OF 1969 AMENDMENT

Pub. L. 91–97, §1, Oct. 27, 1969, 83 Stat. 146, provided: ''That this Act [amending sections 391 and 396 of this title] may be cited as the 'Educational Television and Radio Amendments of 1969'.''

SHORT TITLE OF 1967 AMENDMENT

Pub. L. 90–129, §1, Nov. 7, 1967, 81 Stat. 365, provided: ''That this Act [enacting sections 396, 398, and 399 of this title, amending sections 390 to 395 and 397 of this title, and enacting provisions set out as notes under sections 390 and 392 of this title] may be cited as the 'Public Broadcasting Act of 1967'.''

SHORT TITLE OF 1960 AMENDMENT

Pub. L. 86–752, §1, Sept. 13, 1960, 74 Stat. 889, provided that: ''This Act [enacting sections 508 and 509 of this title, amending sections 154, 307, 309, 311, 312, 313, 317, 319, 405, 503, and 504 of this title, and enacting provisions set out as notes under sections 309 and 405 of this title] may be cited as the 'Communications Act Amendments, 1960'.''

SHORT TITLE OF 1952 AMENDMENT

Act July 16, 1952, ch. 879, §1, 66 Stat. 711, provided that: ''This Act [enacting section 1343 of Title 18, Crimes and Criminal Procedure, amending sections 153 to 155, 307 to 312, 315, 316, 319, 402, 405, 409, and 410 of this title, and enacting provisions set out as notes under section 153 of this title] may be cited as the 'Communications Act Amendments, 1952'.''

§610. Telephone service for disabled

(a) Establishment of regulations

The Commission shall establish such regulations as are necessary to ensure reasonable access to telephone service by persons with impaired hearing.

(b) Hearing aid compatibility requirements

(1) Except as provided in paragraphs (2) and (3), the Commission shall require that—

(A) all essential telephones, and

(B) all telephones manufactured in the United States (other than for export) more than one year after August 16, 1988, or imported for use in the United States more than one year after August 16, 1988,

provide internal means for effective use with hearing aids that are designed to be compatible

with telephones which meet established technical standards for hearing aid compatibility.

(2)(A) The initial regulations prescribed by the Commission under paragraph (1) of this subsection after August 16, 1988, shall exempt from the requirements established pursuant to paragraph (1)(B) of this subsection only—

(i) telephones used with public mobile services;

(ii) telephones used with private radio services;

(iii) cordless telephones; and

(iv) secure telephones.

(B) The exemption provided by such regulations for cordless telephones shall not apply with respect to cordless telephones manufactured or imported more than three years after August 16, 1988.

(C) The Commission shall periodically assess the appropriateness of continuing in effect the exemptions provided by such regulations for telephones used with public mobile services and telephones used with private radio services. The Commission shall revoke or otherwise limit any such exemption if the Commission determines that—

(i) such revocation or limitation is in the public interest;

(ii) continuation of the exemption without such revocation or limitation would have an adverse effect on hearing-impaired individuals;

(iii) compliance with the requirements of paragraph (1)(B) is technologically feasible for the telephones to which the exemption applies; and

(iv) compliance with the requirements of paragraph (1)(B) would not increase costs to such an extent that the telephones to which the exemption applies could not be successfully marketed.

(3) The Commission may, upon the application of any interested person, initiate a proceeding to waive the requirements of paragraph (1)(B) of this subsection with respect to new telephones, or telephones associated with a new technology or service. The Commission shall not grant such a waiver unless the Commission determines, on the basis of evidence in the record of such proceeding, that such telephones, or such technology or service, are in the public interest, and that (A) compliance with the requirements of paragraph (1)(B) is technologically infeasible, or (B) compliance with such requirements would increase the costs of the telephones, or of the technology or service, to such an extent that such telephones, technology, or service could not be successfully marketed. In any proceeding under this paragraph to grant a waiver from the requirements of paragraph (1)(B), the Commission shall consider the effect on hearing-impaired individuals of granting the waiver. The Commission shall periodically review and determine the continuing need for any waiver granted pursuant to this paragraph.

(4) For purposes of this subsection—

(A) the term ''essential telephones'' means only coin-operated telephones, telephones provided for emergency use, and other telephones frequently needed for use by persons using such hearing aids;

(B) the term ''public mobile services'' means air-to-ground radiotelephone services, cellular radio telecommunications services, offshore radio, rural radio service, public land mobile telephone service, and other common carrier radio communication services covered by part 22 of title 47 of the Code of Federal Regulations;

(C) the term ''private radio services'' means private land mobile radio services and other communications services characterized by the Commission in its rules as private radio services; and

(D) the term ''secure telephones'' means telephones that are approved by the United States Government for the transmission of classified or sensitive voice communications.

(c) Technical standards

The Commission shall establish or approve such technical standards as are required to enforce this section.

(d) Labeling of packaging materials for equipment

The Commission shall establish such requirements for the labeling of packaging materials for equipment as are needed to provide adequate information to consumers on the compatibility between telephones and hearing aids.

(e) Costs and benefits; encouragement of use of currently available technology

In any rulemaking to implement the provisions of this section, the Commission shall specifically consider the costs and benefits to all telephone users, including persons with and without hearing impairments. The Commission shall ensure that regulations adopted to implement this section encourage the use of currently available technology and do not discourage or impair the development of improved technology.

(f) Periodic review of regulations; retrofitting

The Commission shall periodically review the regulations established pursuant to this section. Except for coin-operated telephones and telephones provided for emergency use, the Commission may not require the retrofitting of equipment to achieve the purposes of this section.

(g) Recovery of reasonable and prudent costs

Any common carrier or connecting carrier may provide specialized terminal equipment needed by persons whose hearing, speech, vision, or mobility is impaired. The State commission may allow the carrier to recover in its tariffs for regulated service reasonable and prudent costs not charged directly to users of such equipment.

(h) State enforcement

The Commission shall delegate to each State commission the authority to enforce within such State compliance with the specific regulations that the Commission issues under subsections (a) and (b) of this section, conditioned upon the adoption and enforcement of such regulations by the State commission.

(June 19, 1934, ch. 652, title VII, § 710, formerly title VI, § 610, as added Pub. L. 97–410, § 3, Jan. 3, 1983, 96 Stat. 2043; renumbered title VII, § 710, Pub. L. 98–549, § 6(a), Oct. 30, 1984, 98 Stat. 2804; amended Pub. L. 100–394, § 3, Aug. 16, 1988, 102

Stat. 976; Pub. L. 103–414, title III, §304(a)(16), Oct. 25, 1994, 108 Stat. 4297.)

AMENDMENTS

1994—Subsec. (f). Pub. L. 103–414 substituted ''The Commission'' for ''The Commission shall complete rulemaking actions required by this section and issue specific and detailed rules and regulations resulting therefrom within one year after January 3, 1983. The Commission shall complete rulemaking actions required to implement the amendments made by the Hearing Aid Compatibility Act of 1988 within nine months after August 16, 1988. Thereafter, the Commission''.

1988—Subsec. (b). Pub. L. 100–394, §3(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''The Commission shall require that essential telephones provide internal means for effective use with hearing aids that are specially designed for telephone use. For purposes of this subsection, the term 'essential telephones' means only coin-operated telephones, telephones provided for emergency use, and other telephones frequently needed for use by persons using such hearing aids.''

Subsec. (f). Pub. L. 100–394, §3(b), substituted ''The Commission shall complete rulemaking actions required to implement the amendments made by the Hearing Aid Compatibility Act of 1988 within nine months after August 16, 1988. Thereafter, the Commission shall periodically review the regulations established pursuant to this section.'' for ''Thereafter the Commission shall periodically review such rules and regulations.''

CONGRESSIONAL FINDINGS FOR 1988 AMENDMENT

Section 2 of Pub. L. 100–394 provided that: ''The Congress finds that—

''(1) to the fullest extent made possible by technology and medical science, hearing-impaired persons should have equal access to the national telecommunications network;

''(2) present technology provides effective coupling of telephones to hearing aids used by some severely hearing-impaired persons for communicating by voice telephone;

''(3) anticipated improvements in both telephone and hearing aid technologies promise greater access in the future; and

''(4) universal telephone service for hearing-impaired persons will lead to greater employment opportunities and increased productivity.''

CONGRESSIONAL FINDINGS

Section 2 of Pub. L. 97–410 provided that: ''The Congress finds that—

''(1) all persons should have available the best telephone service which is technologically and economically feasible;

''(2) currently available technology is capable of providing telephone service to some individuals who, because of hearing impairments, require telephone reception by means of hearing aids with induction coils, or other inductive receptors;

''(3) the lack of technical standards ensuring compatibility between hearing aids and telephones has prevented receipt of the best telephone service which is technologically and economically feasible; and

''(4) adoption of technical standards is required in order to ensure compatibility between telephones and hearing aids, thereby accommodating the needs of individuals with hearing impairments.''

§611. Closed-captioning of public service announcements

Any television public service announcement that is produced or funded in whole or in part by any agency or instrumentality of Federal Government shall include closed captioning of the verbal content of such announcement. A television broadcast station licensee—

(1) shall not be required to supply closed captioning for any such announcement that fails to include it; and

(2) shall not be liable for broadcasting any such announcement without transmitting a closed caption unless the licensee intentionally fails to transmit the closed caption that was included with the announcement.

(June 19, 1934, ch. 652, title VII, §711, as added Pub. L. 98–549, §8, Oct. 30, 1984, 98 Stat. 2804; amended Pub. L. 101–336, title IV, §402, July 26, 1990, 104 Stat. 369.)

AMENDMENTS

1990—Pub. L. 101–336 amended section generally, substituting provisions relating to closed-captioning of public service announcements for provisions relating to establishment, functions, composition, etc., of Telecommunications Policy Study Commission.

EFFECTIVE DATE

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

§612. Syndicated exclusivity

(a) The Federal Communications Commission shall initiate a combined inquiry and rulemaking proceeding for the purpose of—

(1) determining the feasibility of imposing syndicated exclusivity rules with respect to the delivery of syndicated programming (as defined by the Commission) for private home viewing of secondary transmissions by satellite of broadcast station signals similar to the rules issued by the Commission with respect to syndicated exclusivity and cable television; and

(2) adopting such rules if the Commission considers the imposition of such rules to be feasible.

(b) In the event that the Commission adopts such rules, any willful and repeated secondary transmission made by a satellite carrier to the public of a primary transmission embodying the performance or display of a work which violates such Commission rules shall be subject to the remedies, sanctions, and penalties provided by subchapter V of this chapter and section 605 of this title.

(June 19, 1934, ch. 652, title VII, §712, as added Pub. L. 100–667, title II, §203, Nov. 16, 1988, 102 Stat. 3958; amended Pub. L. 103–414, title III, §304(a)(17), Oct. 25, 1994, 108 Stat. 4297.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–414 struck out '', within 120 days after January 1, 1989,'' after ''The Federal Communications Commission shall''.

EFFECTIVE DATE

Section effective Jan. 1, 1989, see section 206 of Pub. L. 100–667, set out as a note under section 119 of Title 17, Copyrights.

§613. Video programming accessibility

(a) Commission inquiry

Within 180 days after February 8, 1996, the Federal Communications Commission shall

complete an inquiry to ascertain the level at which video programming is closed captioned. Such inquiry shall examine the extent to which existing or previously published programming is closed captioned, the size of the video programming provider or programming owner providing closed captioning, the size of the market served, the relative audience shares achieved, or any other related factors. The Commission shall submit to the Congress a report on the results of such inquiry.

(b) Accountability criteria

Within 18 months after February 8, 1996, the Commission shall prescribe such regulations as are necessary to implement this section. Such regulations shall ensure that—

(1) video programming first published or exhibited after the effective date of such regulations is fully accessible through the provision of closed captions, except as provided in subsection (d) of this section; and

(2) video programming providers or owners maximize the accessibility of video programming first published or exhibited prior to the effective date of such regulations through the provision of closed captions, except as provided in subsection (d) of this section.

(c) Deadlines for captioning

Such regulations shall include an appropriate schedule of deadlines for the provision of closed captioning of video programming.

(d) Exemptions

Notwithstanding subsection (b) of this section—

(1) the Commission may exempt by regulation programs, classes of programs, or services for which the Commission has determined that the provision of closed captioning would be economically burdensome to the provider or owner of such programming;

(2) 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 contracts in effect on February 8, 1996, except that nothing in this section shall be construed to relieve a video programming provider of its obligations to provide services required by Federal law; and

(3) a provider of video programming or program owner may petition the Commission for an exemption from the requirements of this section, and the Commission may grant such petition upon a showing that the requirements contained in this section would result in an undue burden.

(e) Undue burden

The term ''undue burden'' means significant difficulty or expense. In determining whether the closed captions necessary to comply with the requirements of this paragraph would result in an undue economic burden, the factors to be considered include—

(1) the nature and cost of the closed captions for the programming;

(2) the impact on the operation of the provider or program owner;

(3) the financial resources of the provider or program owner; and

(4) the type of operations of the provider or program owner.

(f) Video descriptions inquiry

Within 6 months after February 8, 1996, the Commission shall commence an inquiry to examine the use of video descriptions on video programming in order to ensure the accessibility of video programming to persons with visual impairments, and report to Congress on its findings. The Commission's report shall assess appropriate methods and schedules for phasing video descriptions into the marketplace, technical and quality standards for video descriptions, a definition of programming for which video descriptions would apply, and other technical and legal issues that the Commission deems appropriate.

(g) Video description

For purposes of this section, ''video description'' means the insertion of audio narrated descriptions of a television program's key visual elements into natural pauses between the program's dialogue.

(h) Private rights of actions prohibited

Nothing in this section shall be construed to authorize any private right of action to enforce any requirement of this section or any regulation thereunder. The Commission shall have exclusive jurisdiction with respect to any complaint under this section.

(June 19, 1934, ch. 652, title VII, § 713, as added Pub. L. 104–104, title III, § 305, Feb. 8, 1996, 110 Stat. 126.)

PRIOR PROVISIONS

A prior section 613, act June 19, 1934, ch. 652, title VII, § 713, as added Nov. 16, 1988, Pub. L. 100–667, title II, § 203, 102 Stat. 3958, related to report to Congress on discrimination, prior to repeal by Pub. L. 103–414, title III, § 304(a)(18), Oct. 25, 1994, 108 Stat. 4297.

§ 614. Telecommunications Development Fund

(a) Purpose of section

It is the purpose of this section—

(1) to promote access to capital for small businesses in order to enhance competition in the telecommunications industry;

(2) to stimulate new technology development, and promote employment and training; and

(3) to support universal service and promote delivery of telecommunications services to underserved rural and urban areas.

(b) Establishment of Fund

There is hereby established a body corporate to be known as the Telecommunications Development Fund, which shall have succession until dissolved. The Fund shall maintain its principal office in the District of Columbia and shall be deemed, for purposes of venue and jurisdiction in civil actions, to be a resident and citizen thereof.

(c) Board of Directors

(1) Composition of Board; Chairman

The Fund shall have a Board of Directors which shall consist of 7 persons appointed by the Chairman of the Commission. Four of such

directors shall be representative of the private sector and three of such directors shall be representative of the Commission, the Small Business Administration, and the Department of the Treasury, respectively. The Chairman of the Commission shall appoint one of the representatives of the private sector to serve as chairman of the Fund within 30 days after February 8, 1996, in order to facilitate rapid creation and implementation of the Fund. The directors shall include members with experience in a number of the following areas: finance, investment banking, government banking, communications law and administrative practice, and public policy.

(2) Terms of appointed and elected members

The directors shall be eligible to serve for terms of 5 years, except of the initial members, as designated at the time of their appointment—

(A) 1 shall be eligible to service for a term of 1 year;

(B) 1 shall be eligible to service for a term of 2 years;

(C) 1 shall be eligible to service for a term of 3 years;

(D) 2 shall be eligible to service for a term of 4 years; and

(E) 2 shall be eligible to service for a term of 5 years (1 of whom shall be the Chairman).

Directors may continue to serve until their successors have been appointed and have qualified.

(3) Meetings and functions of the Board

The Board of Directors shall meet at the call of its Chairman, but at least quarterly. The Board shall determine the general policies which shall govern the operations of the Fund. The Chairman of the Board shall, with the approval of the Board, select, appoint, and compensate qualified persons to fill the offices as may be provided for in the bylaws, with such functions, powers, and duties as may be prescribed by the bylaws or by the Board of Directors, and such persons shall be the officers of the Fund and shall discharge all such functions, powers, and duties.

(d) Accounts of Fund

The Fund shall maintain its accounts at a financial institution designated for purposes of this section by the Chairman of the Board (after consultation with the Commission and the Secretary of the Treasury). The accounts of the Fund shall consist of—

(1) interest transferred pursuant to section 309(j)(8)(C) of this title;

(2) such sums as may be appropriated to the Commission for advances to the Fund;

(3) any contributions or donations to the Fund that are accepted by the Fund; and

(4) any repayment of, or other payment made with respect to, loans, equity, or other extensions of credit made from the Fund.

(e) Use of Fund

All moneys deposited into the accounts of the Fund shall be used solely for—

(1) the making of loans, investments, or other extensions of credits to eligible small businesses in accordance with subsection (f) of this section;

(2) the provision of financial advice to eligible small businesses;

(3) expenses for the administration and management of the Fund (including salaries, expenses, and the rental or purchase of office space for the fund);[1]

(4) preparation of research, studies, or financial analyses; and

(5) other services consistent with the purposes of this section.

(f) Lending and credit operations

Loans or other extensions of credit from the Fund shall be made available to an eligible small business on the basis of—

(1) the analysis of the business plan of the eligible small business;

(2) the reasonable availability of collateral to secure the loan or credit extension;

(3) the extent to which the loan or credit extension promotes the purposes of this section; and

(4) other lending policies as defined by the Board.

(g) Return of advances

Any advances appropriated pursuant to subsection (d)(2) of this section shall be disbursed upon such terms and conditions (including conditions relating to the time or times of repayment) as are specified in any appropriations Act providing such advances.

(h) General corporate powers

The Fund shall have power—

(1) to sue and be sued, complain and defend, in its corporate name and through its own counsel;

(2) to adopt, alter, and use the corporate seal, which shall be judicially noticed;

(3) to adopt, amend, and repeal by its Board of Directors, bylaws, rules, and regulations as may be necessary for the conduct of its business;

(4) to conduct its business, carry on its operations, and have officers and exercise the power granted by this section in any State without regard to any qualification or similar statute in any State;

(5) to lease, purchase, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with any property, real, personal, or mixed, or any interest therein, wherever situated, for the purposes of the Fund;

(6) to accept gifts or donations of services, or of property, real, personal, or mixed, tangible or intangible, in aid of any of the purposes of the Fund;

(7) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of its property and assets;

(8) to appoint such officers, attorneys, employees, and agents as may be required, to determine their qualifications, to define their duties, to fix their salaries, require bonds for them, and fix the penalty thereof; and

(9) to enter into contracts, to execute instruments, to incur liabilities, to make loans and

[1] So in original. Probably should be ''Fund);''.

equity investment, and to do all things as are necessary or incidental to the proper management of its affairs and the proper conduct of its business.

(i) Accounting, auditing, and reporting

The accounts of the Fund shall be audited annually. Such audits shall be conducted in accordance with generally accepted auditing standards by independent certified public accountants. A report of each such audit shall be furnished to the Secretary of the Treasury and the Commission. The representatives of the Secretary and the Commission shall have access to all books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Fund and necessary to facilitate the audit.

(j) Report on audits by Treasury

A report of each such audit for a fiscal year shall be made by the Secretary of the Treasury to the President and to the Congress not later than 6 months following the close of such fiscal year. The report shall set forth the scope of the audit and shall include a statement of assets and liabilities, capital and surplus or deficit; a statement of surplus or deficit analysis; a statement of income and expense; a statement of sources and application of funds; and such comments and information as may be deemed necessary to keep the President and the Congress informed of the operations and financial condition of the Fund, together with such recommendations with respect thereto as the Secretary may deem advisable.

(k) Definitions

As used in this section:

(1) Eligible small business

The term ''eligible small business'' means business enterprises engaged in the telecommunications industry that have $50,000,000 or less in annual revenues, on average over the past 3 years prior to submitting the application under this section.

(2) Fund

The term ''Fund'' means the Telecommunications Development Fund established pursuant to this section.

(3) Telecommunications industry

The term ''telecommunications industry'' means communications businesses using regulated or unregulated facilities or services and includes broadcasting, telecommunications, cable, computer, data transmission, software, programming, advanced messaging, and electronics businesses.

(June 19, 1934, ch. 652, title VII, § 714, as added Pub. L. 104–104, title VII, § 707(b), Feb. 8, 1996, 110 Stat. 154; amended Pub. L. 108–494, title II, § 205, Dec. 23, 2004, 118 Stat. 3996.)

AMENDMENTS

2004—Subsec. (f). Pub. L. 108–494 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Loans or other extensions of credit from the Fund shall be made available in accordance with the requirements of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.) and any other applicable law to an eligible small business on the basis of—

''(1) the analysis of the business plan of the eligible small business;

''(2) the reasonable availability of collateral to secure the loan or credit extension;

''(3) the extent to which the loan or credit extension promotes the purposes of this section; and

''(4) other lending policies as defined by the Board.''

§ 615. Support for universal emergency telephone number

The Federal Communications Commission shall encourage and support efforts by States to deploy comprehensive end-to-end emergency communications infrastructure and programs, based on coordinated statewide plans, including seamless, ubiquitous, reliable wireless telecommunications networks and enhanced wireless 9–1–1 service. In encouraging and supporting that deployment, the Commission shall consult and cooperate with State and local officials responsible for emergency services and public safety, the telecommunications industry (specifically including the cellular and other wireless telecommunications service providers), the motor vehicle manufacturing industry, emergency medical service providers and emergency dispatch providers, transportation officials, special 9–1–1 districts, public safety, fire service and law enforcement officials, consumer groups, and hospital emergency and trauma care personnel (including emergency physicians, trauma surgeons, and nurses). The Commission shall encourage each State to develop and implement coordinated statewide deployment plans, through an entity designated by the governor, and to include representatives of the foregoing organizations and entities in development and implementation of such plans. Nothing in this section shall be construed to authorize or require the Commission to impose obligations or costs on any person.

(Pub. L. 106–81, § 3(b), Oct. 26, 1999, 113 Stat. 1287.)

CODIFICATION

Section was enacted as part of the Wireless Communications and Public Safety Act of 1999, and not as part of the Communications Act of 1934 which comprises this chapter.

FINDINGS AND PURPOSE

Pub. L. 106–81, § 2, Oct. 26, 1999, 113 Stat. 1286, provided that:

''(a) FINDINGS.—The Congress finds that—

''(1) the establishment and maintenance of an end-to-end communications infrastructure among members of the public, emergency safety, fire service and law enforcement officials, emergency dispatch providers, transportation officials, and hospital emergency and trauma care facilities will reduce response times for the delivery of emergency care, assist in delivering appropriate care, and thereby prevent fatalities, substantially reduce the severity and extent of injuries, reduce time lost from work, and save thousands of lives and billions of dollars in health care costs;

''(2) the rapid, efficient deployment of emergency telecommunications service requires statewide coordination of the efforts of local public safety, fire service and law enforcement officials, emergency dispatch providers, and transportation officials; the establishment of sources of adequate funding for carrier and public safety, fire service and law enforcement

agency technology development and deployment; the coordination and integration of emergency communications with traffic control and management systems and the designation of 9–1–1 as the number to call in emergencies throughout the Nation;

''(3) emerging technologies can be a critical component of the end-to-end communications infrastructure connecting the public with emergency medical service providers and emergency dispatch providers, public safety, fire service and law enforcement officials, and hospital emergency and trauma care facilities, to reduce emergency response times and provide appropriate care;

''(4) improved public safety remains an important public health objective of Federal, State, and local governments and substantially facilitates interstate and foreign commerce;

''(5) emergency care systems, particularly in rural areas of the Nation, will improve with the enabling of prompt notification of emergency services when motor vehicle crashes occur; and

''(6) the construction and operation of seamless, ubiquitous, and reliable wireless telecommunications systems promote public safety and provide immediate and critical communications links among members of the public; emergency medical service providers and emergency dispatch providers; public safety, fire service and law enforcement officials; transportation officials, and hospital emergency and trauma care facilities.

''(b) PURPOSE.—The purpose of this Act [see Short Title of 1999 Amendments note set out under section 609 of this title] is to encourage and facilitate the prompt deployment throughout the United States of a seamless, ubiquitous, and reliable end-to-end infrastructure for communications, including wireless communications, to meet the Nation's public safety and other communications needs.''

§ 615a. Parity of protection for provision or use of wireless service

(a) Provider parity

A wireless carrier, and its officers, directors, employees, vendors, and agents, shall have immunity or other protection from liability in a State of a scope and extent that is not less than the scope and extent of immunity or other protection from liability that any local exchange company, and its officers, directors, employees, vendors, or agents, have under Federal and State law (whether through statute, judicial decision, tariffs filed by such local exchange company, or otherwise) applicable in such State, including in connection with an act or omission involving the release to a PSAP, emergency medical service provider or emergency dispatch provider, public safety, fire service or law enforcement official, or hospital emergency or trauma care facility of subscriber information related to emergency calls or emergency services.

(b) User parity

A person using wireless 9–1–1 service shall have immunity or other protection from liability of a scope and extent that is not less than the scope and extent of immunity or other protection from liability under applicable law in similar circumstances of a person using 9–1–1 service that is not wireless.

(c) PSAP parity

In matters related to wireless 9–1–1 communications, a PSAP, and its employees, vendors, agents, and authorizing government entity (if any) shall have immunity or other protection from liability of a scope and extent that is not less than the scope and extent of immunity or other protection from liability under applicable law accorded to such PSAP, employees, vendors, agents, and authorizing government entity, respectively, in matters related to 9–1–1 communications that are not wireless.

(d) Basis for enactment

This section is enacted as an exercise of the enforcement power of the Congress under section 5 of the Fourteenth Amendment to the Constitution and the power of the Congress to regulate commerce with foreign nations, among the several States, and with Indian tribes.

(Pub. L. 106–81, § 4, Oct. 26, 1999, 113 Stat. 1288.)

CODIFICATION

Section was enacted as part of the Wireless Communications and Public Safety Act of 1999, and not as part of the Communications Act of 1934 which comprises this chapter.

§ 615b. Definitions

As used in this Act:

(1) Secretary

The term ''Secretary'' means the Secretary of Transportation.

(2) State

The term ''State'' means any of the several States, the District of Columbia, or any territory or possession of the United States.

(3) Public safety answering point; PSAP

The term ''public safety answering point'' or ''PSAP'' means a facility that has been designated to receive 9–1–1 calls and route them to emergency service personnel.

(4) Wireless carrier

The term ''wireless carrier'' means a provider of commercial mobile services or any other radio communications service that the Federal Communications Commission requires to provide wireless 9–1–1 service.

(5) Enhanced wireless 9–1–1 service

The term ''enhanced wireless 9–1–1 service'' means any enhanced 9–1–1 service so designated by the Federal Communications Commission in the proceeding entitled ''Revision of the Commission's Rules to Ensure Compatibility with Enhanced 9–1–1 Emergency Calling Systems'' (CC Docket No. 94–102; RM–8143), or any successor proceeding.

(6) Wireless 9–1–1 service

The term ''wireless 9–1–1 service'' means any 9–1–1 service provided by a wireless carrier, including enhanced wireless 9–1–1 service.

(7) Emergency dispatch providers

The term ''emergency dispatch providers'' shall include governmental and nongovernmental providers of emergency dispatch services.

(Pub. L. 106–81, § 6, Oct. 26, 1999, 113 Stat. 1289.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 106–81, Oct. 26, 1999, 113 Stat. 1286, known as the Wireless Communica-

tions and Public Safety Act of 1999, which enacted sections 615 to 615b of this title, amended sections 222 and 251 of this title, and enacted provisions set out as notes under sections 609 and 615 of this title. For complete classification of this Act to the Code, see Short Title of 1999 Amendments note set out under section 609 of this title and Tables.

CODIFICATION

Section was enacted as part of the Wireless Communications and Public Safety Act of 1999, and not as part of the Communications Act of 1934 which comprises this chapter.

CHAPTER 6—COMMUNICATIONS SATELLITE SYSTEM

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CODIFICATION

Section, Pub. L. 87–624, title I, § 102, Aug. 31, 1962, 76 Stat. 419, which related to Congressional declaration of policy and purpose, ceased to be effective Apr. 15, 2005, pursuant to section 765d(4) of this title.

SHORT TITLE OF 2003 AMENDMENT

Pub. L. 108–39, § 1, June 30, 2003, 117 Stat. 835, provided that: ''This Act [amending section 763 of this title] may be cited as the 'ORBIT Technical Corrections Act of 2003'.''

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–180, § 1, Mar. 17, 2000, 114 Stat. 48, provided that: ''This Act [enacting subchapter VI of this chapter] may be cited as the 'Open-market Reorganization for the Betterment of International Telecommunications Act' or the 'ORBIT Act'.''

SHORT TITLE

Pub. L. 87–624, title I, § 101, Aug. 31, 1962, 76 Stat. 419, provided that: ''This Act [enacting this chapter] may be cited as the 'Communications Satellite Act of 1962'.''

Pub. L. 87–624, title V, § 501, as added by Pub. L. 95–564, Nov. 1, 1978, 92 Stat. 2392, provided that: ''This title [enacting subchapter V of this chapter] may be cited as the 'International Maritime Satellite Telecommunications Act'.''

STYLISTIC CONSISTENCY

Pub. L. 103–414, title III, § 303(f), Oct. 25, 1994, 108 Stat. 4296, provided that: ''The Communications Act of 1934 [47 U.S.C. 151 et seq.] and the Communications Satellite Act of 1962 [47 U.S.C. 701 et seq.] are amended so that the section designation and section heading of each section of such Acts shall be in the form and typeface of the section designation and heading of this section [108 Stat. 4294].''

INTERNATIONAL TELECOMMUNICATIONS SATELLITE ORGANIZATION

Pub. L. 99–93, title I, § 146, Aug. 16, 1985, 99 Stat. 425, provided that:

''(a) POLICY.—The Congress declares that it is the policy of the United States—

''(1) as a party to the International Telecommunications Satellite Organization (hereafter in this section referred to as 'Intelsat'), to foster and support the global commercial communications satellite system owned and operated by Intelsat;

''(2) to make available to consumers a variety of communications satellite services utilizing the space segment facilities of Intelsat and any additional such facilities which are found to be in the national interest and which—

''(A) are technically compatible with the use of the radio frequency spectrum and orbital space by the existing or planned Intelsat space segment, and

''(B) avoid significant economic harm to the global system of Intelsat; and

''(3) to authorize use and operation of any additional space segment facilities only if the obligations of the United States under article XIV(d) of the Intelsat Agreement have been met.

''(b) PRECONDITIONS FOR INTELSAT CONSULTATION.—Before consulting with Intelsat for purposes of coordination of any separate international telecommunications satellite system under article XIV(d) of the Intelsat Agreement, the Secretary of State shall—

''(1) in coordination with the Secretary of Commerce, ensure that any proposed separate international satellite telecommunications system comply with the Executive Branch conditions established pursuant to the Presidential Determination No. 85–2 [49 F.R. 46987]; and

''(2) ensure that one or more foreign authorities have authorized the use of such system consistent with such conditions.

''(c) AMENDMENT OF INTELSAT AGREEMENT.—(1) The Secretary of State shall consult with the United States signatory to Intelsat and the Secretary of Commerce regarding the appropriate scope and character of a

modification to article V(d) of the Intelsat Agreement which would permit Intelsat to establish cost-based rates for individual traffic routes, as exceptional circumstances warrant, paying particular attention to the need for avoiding significant economic harm to the global system of Intelsat as well as United States national and foreign policy interests.

''(2)(A) To ensure that rates established by Intelsat for such routes are cost-based, the Secretary of State, in consultation with the Secretary of Commerce and the Chairman of the Federal Communications Commission, shall instruct the United States signatory to Intelsat to ensure that sufficient documentation, including documentation regarding revenues and costs, is provided by Intelsat so as to verify that such rates are in fact cost-based.

''(B) To the maximum extent possible, such documenation [documentation] will be made available to interested parties on a timely basis.

''(3) Pursuant to the consultation under paragraph (1) and taking the steps prescribed in paragraph (2) to provide documentation, the United States shall support an appropriate modification to article V(d) of the Intelsat Agreement to accomplish the purpose described in paragraph (1).

''(d) CONGRESSIONAL CONSULTATION.—In the event that, after United States consultation with Intelsat for the purposes of coordination under article XIV(d) of the Intelsat Agreement for the establishment of a separate international telecommunications satellite system, the Assembly of Parties of Intelsat fails to recommend such a separate system, and the President determines to pursue the establishment of a separate system notwithstanding the Assembly's failure to approve such system, the Secretary of State, after consultation with the Secretary of Commerce, shall submit to the Congress a detailed report which shall set forth—

''(1) the foreign policy reasons for the President's determination, and

''(2) a plan for minimizing any negative effects of the President's action on Intelsat and on United States foreign policy interests.

''(e) NOTIFICATION TO FEDERAL COMMUNICATIONS COMMISSION.—In the event the Secretary of State submits a report under subsection (d), the Secretary, 60 calendar days after the receipt by the Congress of such report, shall notify the Federal Communications Commission as to whether the United States obligations under article XIV(d) of the Intelsat Agreement have been met.

''(f) IMPLEMENTATION.—In implementing the provisions of this section, the Secretary of State shall act in accordance with Executive order 12046 [set out under section 305 of this title].

''(g) DEFINITION.—For the purposes of this section, the term 'separate international telecommunications satellite system' or 'separate system' means a system of one or more telecommunications satellites separate from the Intelsat space segment which is established to provide international telecommunications services between points within the United States and points outside the United States, except that such term shall not include any satellite or system of satellites established—

''(1) primarily for domestic telecommunications purposes and which incidentally provides services on an ancillary basis to points outside the jurisdiction of the United States but within the western hemisphere, or

''(2) solely for unique governmental purposes.''

§ 702. Definitions

As used in this chapter, and unless the context otherwise requires—

(1) the term ''communications satellite system'' refers to a system of communications satellites in space whose purpose is to relay telecommunication information between satellite terminal stations, together with such associated equipment and facilities for tracking, guidance, control, and command functions as are not part of the generalized launching, tracking, control, and command facilities for all space purposes;

(2) the term ''satellite terminal station'' refers to a complex of communication equipment located on the earth's surface, operationally connected with one or more terrestrial communication systems, and capable of transmitting telecommunications to or receiving telecommunications from a communications satellite system.

(3) the term ''communications satellite'' means an earth satellite which is intentionally used to relay telecommunication information;

(4) the term ''associated equipment and facilities'' refers to facilities other than satellite terminal stations and communications satellites, to be constructed and operated for the primary purpose of a communications satellite system, whether for administration and management, for research and development, or for direct support of space operations;

(5) the term ''research and development'' refers to the conception, design, and first creation of experimental or prototype operational devices for the operation of a communications satellite system, including the assembly of separate components into a working whole, as distinguished from the term ''production,'' which relates to the construction of such devices to fixed specifications compatible with repetitive duplication for operational applications; and

(6) the term ''telecommunication'' means any transmission, emission or reception of signs, signals, writings, images, and sounds or intelligence of any nature by wire, radio, optical, or other electromagnetic systems.

(7) omitted;

(8) the term ''corporation'' means the corporation authorized by subchapter III of this chapter.

(9) the term ''Administration'' means the National Aeronautics and Space Administration; and

(10) the term ''Commission'' means the Federal Communications Commission.

(Pub. L. 87–624, title I, § 103, Aug. 31, 1962, 76 Stat. 419.)

CODIFICATION

Par. (7) of this section, which defined the term ''communications common carrier'', ceased to be effective Apr. 15, 2005, pursuant to section 765d(4) of this title.

§ 703. Satellite service report

(a) Annual report

The Federal Communications Commission shall review competitive market conditions with respect to domestic and international satellite communications services and shall include in an annual report an analysis of those conditions. The Commission shall transmit a copy of the report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce.

(b) Content

The Commission shall include in the report—

(1) an identification of the number and market share of competitors in domestic and international satellite markets;

(2) an analysis of whether there is effective competition in the market for domestic and international satellite services; and

(3) a list of any foreign nations in which legal or regulatory practices restrict access to the market for satellite services in such nation in a manner that undermines competition or favors a particular competitor or set of competitors.

(Pub. L. 109–34, § 4, July 12, 2005, 119 Stat. 377.)

CODIFICATION

Section was not enacted as part of the Communications Satellite Act of 1962 which comprises this chapter.

SUBCHAPTER II—FEDERAL COORDINATION, PLANNING, AND REGULATION

§ 721. Implementation of policy

In order to achieve the objectives and to carry out the purposes of this chapter—

(a) the President shall—

(1) to (7) omitted.

(b) omitted.

(c) the Federal Communications Commission, in its administration of the provisions of the Communications Act of 1934, as amended [47 U.S.C. 151 et seq.], and as supplemented by this chapter, shall—

(1) to (10) omitted;

(11) make rules and regulations to carry out the provisions of this chapter.

(Pub. L. 87–624, title II, § 201, Aug. 31, 1962, 76 Stat. 421; Pub. L. 103–414, title III, § 304(b)(1), Oct. 25, 1994, 108 Stat. 4297.)

REFERENCES IN TEXT

The Communications Act of 1934, as amended, referred to in subsec. (c), is act June 19, 1934, ch. 652, 48 Stat. 1064, as amended, which is classified principally to chapter 5 (§ 151 et seq.) of this title. For complete classification of this Act to the Code, see section 609 of this title and Tables.

CODIFICATION

Subsecs. (a)(1), (5), (6), (b), and (c)(1), (3) to (5), (8) to (10) of this section ceased to be effective Mar. 17, 2000, pursuant to section 765d(1) of this title. Prior to being omitted, subsec. (a)(1), (5) and (6) directed the President to aid in a national program to establish and operate a commercial communications satellite system, to insure arrangements were made for foreign participation in the establishment and use of the system, and to insure availability and utilization of the system for general governmental purposes, subsec. (b) directed the National Aeronautics and Space Administration to give technical advice to the Commission and to cooperate with, assist, and provide services to the corporation, and subsec. (c)(1), (3) to (5), (8) to (10) directed the Federal Communications Commission to insure effective competition in procurement of services, to require establishment of communication to a particular foreign point when advised by the Secretary of State, to insure technical compatibility of the system with satellite terminal stations, to insure system economies are reflected in rates, to authorize the corporation to issue stock, borrow moneys, and assume securities obligations, to insure that substantial additions to the system or stations are made only when necessary, and to require necessary additions to be made with respect to the system or stations.

Subsecs. (a)(2) to (4), (7) and (c)(2), (6), (7) of this section ceased to be effective Apr. 15, 2005, pursuant to section 765d(4) of this title. Prior to being omitted, subsec. (a)(2) to (4) and (7) directed the President to review the development and operation of the communications satellite system, to coordinate activities of governmental agencies with telecommunication responsibilities, to supervise foreign relationships of the corporation, and to coordinate efficient use of the electromagnetic spectrum and subsec. (c)(2), (6), and (7) directed the Federal Communications Commission to ensure nondiscriminatory use of the communications satellite system under just and reasonable charges, to approve technical characteristics of the operational communications satellite system, and to grant appropriate authorizations for the construction and operation of each satellite terminal station.

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103–414 struck out ''as expeditiously as possible,'' after ''establishment and operation,''.

EXECUTIVE ORDER NO. 11191

Ex. Ord. No. 11191, Jan. 4, 1965, 30 F.R. 29, as amended by Ex. Ord. No. 11556, Sept. 4, 1970, 35 F.R. 14193, which related to the administration of the Communications Satellite Act of 1962 [this chapter], was revoked by Ex. Ord. No. 12046, Mar. 27, 1978, 43 F.R. 13349, set out as a note under section 305 of this title.

SUBCHAPTER III—COMMUNICATIONS SATELLITE CORPORATION

§§ 731 to 735. Omitted

CODIFICATION

Sections 731 and 732 ceased to be effective Apr. 15, 2005, pursuant to section 765d(4) of this title.

Section 731, Pub. L. 87–624, title III, § 301, as added Pub. L. 103–414, title III, § 304(b)(2), Oct. 25, 1994, 108 Stat. 4297, related to the creation of a communications satellite corporation.

A prior section 731, Pub. L. 87–624, title III, § 301, Aug. 31, 1962, 76 Stat. 423, authorized creation of a for-profit communications satellite corporation not to be a Government agency, subject to this chapter and the District of Columbia Business Corporation Act, prior to repeal by Pub. L. 103–414, § 304(b)(2).

Section 732, Pub. L. 87–624, title III, § 302, as added Pub. L. 103–414, title III, § 304(b)(2), Oct. 25, 1994, 108 Stat. 4297, related to laws applicable to the corporation.

A prior section 732, Pub. L. 87–624, title III, § 302, Aug. 31, 1962, 76 Stat. 423, related to process of organization of the communications satellite corporation, prior to repeal by Pub. L. 103–414, § 304(b)(2).

Sections 733 and 734 ceased to be effective Mar. 17, 2000, pursuant to section 765d(1) of this title.

Section 733, Pub. L. 87–624, title III, § 303, Aug. 31, 1962, 76 Stat. 423; Pub. L. 91–3, § 1, Mar. 12, 1969, 83 Stat. 4; Pub. L. 103–414, title III, § 303(b)(1), Oct. 25, 1994, 108 Stat. 4296, related to the board of directors and officers of the corporation.

Section 734, Pub. L. 87–624, title III, § 304, Aug. 31, 1962, 76 Stat. 424; Pub. L. 97–410, § 5, Jan. 3, 1983, 96 Stat. 2045; Pub. L. 103–414, title III, §§ 303(b)(2), (3), 304(b)(3), Oct. 25, 1994, 108 Stat. 4296, 4297, related to financing of the corporation.

Section 735, Pub. L. 87–624, title III, § 305, Aug. 31, 1962, 76 Stat. 425, which related to powers of the corporation, ceased to be effective July 18, 2001, pursuant to section 765d(2) of this title.

SUBCHAPTER IV—MISCELLANEOUS PROVISIONS

§§ 741 to 744. Omitted

CODIFICATION

Sections 741 to 744 ceased to be effective Apr. 15, 2005, pursuant to section 765d(4) of this title.

Section 741, Pub. L. 87–624, title IV, § 401, Aug. 31, 1962, 76 Stat. 426, related to the common carrier status of and laws applicable to the corporation.

Section 742, Pub. L. 87–624, title IV, § 402, Aug. 31, 1962, 76 Stat. 426, related to foreign business negotiations of the corporation and required notice to the Department of State.

Section 743, Pub. L. 87–624, title IV, § 403, Aug. 31, 1962, 76 Stat. 426, related to sanctions imposed upon the corporation for violations of provisions of this chapter.

Section 744, Pub. L. 87–624, title IV, § 404, Aug. 31, 1962, 76 Stat. 426; Pub. L. 103–414, title III, § 304(b)(4), Oct. 25, 1994, 108 Stat. 4297; Pub. L. 104–66, title II, § 2051(a), Dec. 21, 1995, 109 Stat. 729, related to annual reports to the President and Congress by the corporation.

SUBCHAPTER V—INTERNATIONAL MARITIME SATELLITE TELECOMMUNICATIONS

§§ 751, 752. Omitted

CODIFICATION

Sections ceased to be effective Mar. 17, 2000, pursuant to section 765d(1) of this title.

Section 751, Pub. L. 87–624, title V, § 502, as added Pub. L. 95–564, Nov. 1, 1978, 92 Stat. 2392; amended Pub. L. 103–414, title III, § 303(b)(4), Oct. 25, 1994, 108 Stat. 4296, related to congressional declaration of policy and purpose of this subchapter.

Section 752, Pub. L. 87–624, title V, § 503, as added Pub. L. 95–564, Nov. 1, 1978, 92 Stat. 2392; amended Pub. L. 103–414, title III, §§ 303(b)(4), 304(b)(5), Oct. 25, 1994, 108 Stat. 4296, 4297, related to the corporation's status as the sole designated operating entity of the United States.

§ 753. Implementation of policy

(a) The Secretary of Commerce shall—

(1) coordinate the activities of Federal agencies with responsibilities in the field of telecommunications (other than the Commission), so as to ensure that there is full and effective compliance with the provisions of this subchapter;

(2) omitted;

(3) exercise his authority in a manner which seeks to obtain coordinated and efficient use of the electromagnetic spectrum and orbital space, and to ensure the technical compatibility of the space segment with existing communications facilities in the United States and in foreign countries; and

(4) omitted.

(b) to (d) Omitted.

(Pub. L. 87–624, title V, § 504, as added Pub. L. 95–564, Nov. 1, 1978, 92 Stat. 2394.)

CODIFICATION

Subsecs. (a)(2), (4) and (c) of this section ceased to be effective Mar. 17, 2000, pursuant to section 765d(1) of this title. Subsec. (a)(2), (4) directed the Secretary of Commerce to ensure availability and utilization of the maritime satellite telecommunications services provided by INMARSAT for general governmental purposes and to determine the needs of users of the maritime satellite telecommunications system and to communicate that information to INMARSAT. Subsec. (c) assigned functions to the Commission.

Subsecs. (b) and (d) of this section ceased to be effective June 14, 2005, pursuant to section 765d(3) of this title. Subsec. (b) directed the President to supervise and issue instructions to the communications satellite corporation regarding activities with foreign governments, international entities, and INMARSAT. Subsec. (d) authorized the Federal Communications Commission to issue instructions to the corporation with respect to regulatory matters within the Commission's jurisdiction.

§§ 754 to 756. Repealed. Pub. L. 103–414, title III, § 304(b)(5), Oct. 25, 1994, 108 Stat. 4298

Section 754, Pub. L. 87–624, title V, § 505, as added Pub. L. 95–564, Nov. 1, 1978, 92 Stat. 2395, related to study of structure and activities of corporation.

Section 755, Pub. L. 87–624, title V, § 506, as added Pub. L. 95–564, Nov. 1, 1978, 92 Stat. 2395, related to study of public maritime coast station services.

Section 756, Pub. L. 87–624, title V, § 507, as added Pub. L. 95–564, Nov. 1, 1978, 92 Stat. 2396, related to study of radio navigation systems.

§ 757. Definitions

For purposes of this subchapter—

(1) the term ''person'' includes an individual, partnership, association, joint stock company, trust, or corporation;

(2) the term ''satellite earth terminal station'' means a complex of communications equipment located on land, operationally interconnected with one or more terrestrial communications systems, and capable of transmitting telecommunications to, or receiving telecommunications from, the space segment;

(3) the term ''space segment'' means any satellite (or capacity on a satellite) maintained under the authority of INMARSAT, for the purpose of providing international maritime telecommunications services, and the tracking, telemetry, command, control, monitoring, and related facilities and equipment required to support the operation of such satellite; and

(4) the term ''State'' means the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(Pub. L. 87–624, title V, § 505, formerly § 508, as added Pub. L. 95–564, Nov. 1, 1978, 92 Stat. 2396; renumbered § 505, Pub. L. 103–414, title III, § 304(b)(6), Oct. 25, 1994, 108 Stat. 4298.)

PRIOR PROVISIONS

A prior section 505 of Pub. L. 87–624 was classified to section 754 of this title prior to repeal by Pub. L. 103–414, § 304(b)(5).

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SUBCHAPTER VI—COMMUNICATIONS COMPETITION AND PRIVATIZATION

PART A—ACTIONS TO ENSURE PRO-COMPETITIVE PRIVATIZATION

§ 761. Federal Communications Commission licensing

(a) Licensing for separated entities

(1) Competition test

The Commission may not issue a license or construction permit to any separated entity, or renew or permit the assignment or use of any such license or permit, or authorize the use by any entity subject to United States jurisdiction of any space segment owned, leased, or operated by any separated entity, unless the Commission determines that such issuance, renewal, assignment, or use will not harm competition in the telecommunications market of the United States. If the Commission does not make such a determination, it shall deny or revoke authority to use space segment owned, leased, or operated by the separated entity to provide services to, from, or within the United States.

(2) Criteria for competition test

In making the determination required by paragraph (1), the Commission shall use the licensing criteria in sections 763 and 763b[1] of this title, and shall not make such a determination unless the Commission determines that the privatization of any separated entity is consistent with such criteria.

(b) Licensing for INTELSAT, Inmarsat, and successor entities

(1) Competition test

(A) In general

In considering the application of INTELSAT, Inmarsat, or their successor entities for a license or construction permit, or for the renewal or assignment or use of any such license or permit, or in considering the request of any entity subject to United States jurisdiction for authorization to use any space segment owned, leased, or operated by INTELSAT, Inmarsat, or their successor entities, to provide non-core services to, from, or within the United States, the Commission shall determine whether—

(i) after April 1, 2001, in the case of INTELSAT and its successor entities, INTELSAT and any successor entities have been privatized in a manner that will harm competition in the telecommunications markets of the United States; or

(ii) after April 1, 2000, in the case of Inmarsat and its successor entities, Inmarsat and any successor entities have been privatized in a manner that will harm competition in the telecommunications markets of the United States.

(B) Consequences of determination

If the Commission determines that such competition will be harmed or that grant of such application or request for authority is not otherwise in the public interest, the Commission shall limit through conditions or deny such application or request, and limit or revoke previous authorizations to provide non-core services to, from, or within the United States. After due notice and opportunity for comment, the Commission shall apply the same limitations, restrictions, and conditions to all entities subject to United States jurisdiction using space segment owned, leased, or operated by INTELSAT, Inmarsat, or their successor entities.

(C) National security, law enforcement, and public safety

The Commission shall not impose any limitation, condition, or restriction under subparagraph (B) in a manner that will, or is reasonably likely to, result in limitation, denial, or revocation of authority for non-core services that are used by and required for a national security agency or law enforcement department or agency of the United States, or used by and required for, and otherwise in the public interest, any other Department or Agency of the United States to protect the health and safety of the public. Such services may be obtained by the United States directly from INTELSAT, Inmarsat, or a successor entity, or indirectly through COMSAT, or authorized carriers or distributors of the successor entity.

(D) Rule of construction

Nothing in this subsection is intended to preclude the Commission from acting upon applications of INTELSAT, Inmarsat, or their successor entities prior to the latest date set out in section 763(5)(A) of this title, including such actions as may be necessary for the United States to become the licensing jurisdiction for INTELSAT, but the Commission shall condition a grant of authority pursuant to this subsection upon compliance with sections 763 and 763a of this title.

(2) Criteria for competition test

In making the determination required by paragraph (1), the Commission shall use the licensing criteria in sections 763, 763a, and 763c[1] of this title, and shall determine that competition in the telecommunications markets of the United States will be harmed unless the Commission finds that the privatization referred to in paragraph (1) is consistent with such criteria.

(3) Clarification: competitive safeguards

In making its licensing decisions under this subsection, the Commission shall consider whether users of non-core services provided by INTELSAT or Inmarsat or successor or separated entities are able to obtain non-core services from providers offering services other than through INTELSAT or Inmarsat or successor or separated entities, at competitive rates, terms, or conditions. Such consideration shall also include whether such licensing decisions would require users to replace equip-

[1] See References in Text note below.

ment at substantial costs prior to the termination of its design life. In making its licensing decisions, the Commission shall also consider whether competitive alternatives in individual markets do not exist because they have been foreclosed due to anticompetitive actions undertaken by or resulting from the INTELSAT or Inmarsat systems. Such licensing decisions shall be made in a manner which facilitates achieving the purposes and goals in this subchapter and shall be subject to notice and comment.

(c) Additional considerations in determinations

In making its determinations and licensing decisions under subsections (a) and (b) of this section, the Commission shall construe such subsections in a manner consistent with the United States obligations and commitments for satellite services under the Fourth Protocol to the General Agreement on Trade in Services.

(d) Independent facilities competition

Nothing in this section shall be construed as precluding COMSAT from investing in or owning satellites or other facilities independent from INTELSAT and Inmarsat, and successor or separated entities, or from providing services through reselling capacity over the facilities of satellite systems independent from INTELSAT and Inmarsat, and successor or separated entities. This subsection shall not be construed as restricting the types of contracts which can be executed or services which may be provided by COMSAT over the independent satellites or facilities described in this subsection.

(Pub. L. 87–624, title VI, § 601, as added Pub. L. 106–180, § 3, Mar. 17, 2000, 114 Stat. 48.)

REFERENCES IN TEXT

Section 763b of this title, referred to in subsec. (a)(2), was repealed by Pub. L. 109–34, § 2, July 12, 2005, 119 Stat. 377.

Section 763c of this title, referred to in subsec. (b)(2), was amended generally by Pub. L. 109–34, § 3, July 12, 2005, 119 Stat. 377, and no longer relates to specific criteria for Inmarsat privatization.

PURPOSE

Pub. L. 106–180, § 2, Mar. 17, 2000, 114 Stat. 48, provided that: ''It is the purpose of this Act [see Short Title of 2000 Amendment note set out under section 701 of this title] to promote a fully competitive global market for satellite communication services for the benefit of consumers and providers of satellite services and equipment by fully privatizing the intergovernmental satellite organizations, INTELSAT and Inmarsat.''

§ 761a. Incentives; limitation on expansion pending privatization

(a) Limitation

Until INTELSAT, Inmarsat, and their successor or separate entities are privatized in accordance with the requirements of this subchapter, INTELSAT, Inmarsat, and their successor or separate entities, respectively, shall not be permitted to provide additional services. The Commission shall take all necessary measures to implement this requirement, including denial by the Commission of licensing for such services.

(b) Orbital location incentives

Until such privatization is achieved, the United States shall oppose and decline to facilitate applications by such entities for new orbital locations to provide such services.

(Pub. L. 87–624, title VI, § 602, as added Pub. L. 106–180, § 3, Mar. 17, 2000, 114 Stat. 50.)

PART B—FEDERAL COMMUNICATIONS COMMISSION LICENSING CRITERIA: PRIVATIZATION CRITERIA

§ 763. General criteria to ensure a pro-competitive privatization of INTELSAT and Inmarsat

The President and the Commission shall secure a pro-competitive privatization of INTELSAT and Inmarsat that meets the criteria set forth in this section and sections 763a through 763c[1] of this title. In securing such privatizations, the following criteria shall be applied as licensing criteria for purposes of part A of this subchapter:

(1) Dates for privatization

Privatization shall be obtained in accordance with the criteria of this subchapter of—

(A) INTELSAT as soon as practicable, but no later than April 1, 2001; and

(B) Inmarsat as soon as practicable, but no later than July 1, 2000.

(2) Independence

The privatized successor entities and separated entities of INTELSAT and Inmarsat shall operate as independent commercial entities, and have a pro-competitive ownership structure. The successor entities and separated entities of INTELSAT and Inmarsat shall conduct an initial public offering in accordance with paragraph (5) to achieve such independence. Such offering shall substantially dilute the aggregate ownership of such entities by such signatories or former signatories. In determining whether a public offering attains such substantial dilution, the Commission shall take into account the purposes and intent, privatization criteria, and other provisions of this subchapter, as well as market conditions. No intergovernmental organization, including INTELSAT or Inmarsat, shall have—

(A) an ownership interest in INTELSAT or the successor or separated entities of INTELSAT; or

(B) more than minimal ownership interest in Inmarsat or the successor or separated entities of Inmarsat.

(3) Termination of privileges and immunities

The preferential treatment of INTELSAT and Inmarsat shall not be extended to any successor entity or separated entity of INTELSAT or Inmarsat. Such preferential treatment includes—

(A) privileged or immune treatment by national governments;

(B) privileges or immunities or other competitive advantages of the type accorded INTELSAT and Inmarsat and their signatories through the terms and operation of the INTELSAT Agreement and the associated Headquarters Agreement and the Inmarsat Convention; and

[1] See References in Text note below.

(C) preferential access to orbital locations.

Access to new, or renewal of access to, orbital locations shall be subject to the legal or regulatory processes of a national government that applies due diligence requirements intended to prevent the warehousing of orbital locations.

(4) Prevention of expansion during transition

During the transition period prior to privatization under this subchapter, INTELSAT and Inmarsat shall be precluded from expanding into additional services.

(5) Conversion to stock corporations

Any successor entity or separated entity created out of INTELSAT or Inmarsat shall be a national corporation or similar accepted commercial structure, subject to the laws of the nation in which incorporated, as follows:

(A) An initial public offering of securities of any successor entity or separated entity—

(i) shall be conducted, for the successor entities of INTELSAT, on or about June 30, 2005, except that the Commission may extend this deadline in consideration of market conditions and relevant business factors relating to the timing of an initial public offering, but such extensions shall not permit such offering to be conducted later than December 31, 2005; and

(ii) shall be conducted, for the successor entities of Inmarsat, not later than June 30, 2005, except that the Commission may extend this deadline to not later than December 31, 2004.

(B) The shares of any successor entities and separated entities shall be listed for trading on one or more major stock exchanges with transparent and effective securities regulation.

(C) A majority of the members of the board of directors of any successor entity or separated entity shall not be directors, employees, officers, or managers or otherwise serve as representatives of any signatory or former signatory. No member of the board of directors of any successor or separated entity shall be a director, employee, officer or manager of any intergovernmental organization remaining after the privatization.

(D) Any successor entity or separated entity shall—

(i) have a board of directors with a fiduciary obligation;

(ii) have no officers or managers who are officers or managers of any signatories or former signatories; and

(iii) have no directors, officers, or managers who hold such positions in any intergovernmental organization.

(E) Any transactions or other relationships between or among any successor entity, separated entity, INTELSAT, or Inmarsat shall be conducted on an arm's length basis.

(F) Notwithstanding subparagraphs (A) and (B), a successor entity may be deemed a national corporation and may forgo an initial public offering and public securities listing and still achieve the purposes of this section if—

(i) the successor entity certifies to the Commission that—

(I) the successor entity has achieved substantial dilution of the aggregate amount of signatory or former signatory financial interest in such entity;

(II) any signatories and former signatories that retain a financial interest in such successor entity do not possess, together or individually, effective control of such successor entity; and

(III) no intergovernmental organization has any ownership interest in a successor entity of INTELSAT or more than a minimal ownership interest in a successor entity of Inmarsat;

(ii) the successor entity provides such financial and other information to the Commission as the Commission may require to verify such certification; and

(iii) the Commission determines, after notice and comment, that the successor entity is in compliance with such certification.

(G) For purposes of subparagraph (F), the term ''substantial dilution'' means that a majority of the financial interests in the successor entity is no longer held or controlled, directly or indirectly, by signatories or former signatories.

(6) Regulatory treatment

Any successor entity or separated entity created after March 17, 2000, shall apply through the appropriate national licensing authorities for international frequency assignments and associated orbital registrations for all satellites.

(7) Competition policies in domiciliary country

Any successor entity or separated entity shall be subject to the jurisdiction of a nation or nations that—

(A) have effective laws and regulations that secure competition in telecommunications services;

(B) are signatories of the World Trade Organization Basic Telecommunications Services Agreement; and

(C) have a schedule of commitments in such Agreement that includes non-discriminatory market access to their satellite markets.

(Pub. L. 87–624, title VI, § 621, as added Pub. L. 106–180, § 3, Mar. 17, 2000, 114 Stat. 51; amended Pub. L. 107–77, title VI, § 628, Nov. 28, 2001, 115 Stat. 804; Pub. L. 107–233, § 1, Oct. 1, 2002, 116 Stat. 1480; Pub. L. 108–39, § 2, June 30, 2003, 117 Stat. 835; Pub. L. 108–228, § 1, May 18, 2004, 118 Stat. 644; Pub. L. 108–371, § 1, Oct. 25, 2004, 118 Stat. 1752; Pub. L. 109–34, § 1, July 12, 2005, 119 Stat. 377.)

REFERENCES IN TEXT

Section 763b of this title, referred to in text, was repealed by Pub. L. 109–34, § 2, July 12, 2005, 119 Stat. 377.

Section 763c of this title, referred to in text, was amended generally by Pub. L. 109–34, § 3, July 12, 2005, 119 Stat. 377, and no longer relates to specific criteria for Inmarsat privatization.

AMENDMENTS

2005—Par. (5)(D)(ii). Pub. L. 109–34, §1(1), (2), struck out subcl. (I) designation after ''managers who'' and substituted ''signatories; and'' for ''signatories, or (II) have any direct financial interest in or financial relationship to any signatories or former signatories, except that such interest may be managed through a blind trust or similar mechanism;''.

Par. (5)(D)(iii). Pub. L. 109–34, §1(3), substituted ''organization.'' for ''organization; and''.

Par. (5)(D)(iv). Pub. L. 109–34, §1(4), struck out cl. (iv) which read as follows: ''in the case of a separated entity, have no officers or directors, who (I) are officers or managers of any intergovernmental organization, or (II) have any direct financial interest in or financial relationship to any international organization, except that such interest may be managed through a blind trust or similar mechanism.''

2004—Par. (5)(A)(i). Pub. L. 108–228 substituted ''June 30, 2005'' for ''December 31, 2003'' and ''December 31, 2005'' for ''June 30, 2004''.

Par. (5)(A)(ii). Pub. L. 108–371, §1(1), substituted ''June 30, 2005'' for ''June 30, 2004''.

Par. (5)(F), (G). Pub. L. 108–371, §1(2), added subpars. (F) and (G).

2003—Par. (5)(A)(ii). Pub. L. 108–39 substituted ''June 30, 2004'' for ''December 31, 2002'' and ''December 31, 2004'' for ''June 30, 2003''.

2002—Par. (5)(A)(i). Pub. L. 107–233 substituted ''December 31, 2003,'' for ''October 1, 2001,'' and ''June 30, 2004;'' for ''December 31, 2002;''.

2001—Par. (5)(A)(ii). Pub. L. 107–77 substituted ''not later than December 31, 2002, except that the Commission may extend this deadline to not later than June 30, 2003'' for ''on or about October 1, 2000, except that the Commission may extend this deadline in consideration of market conditions and relevant business factors relating to the timing of an initial public offering, but to no later than December 31, 2001''.

IMMIGRATION STATUS OF ALIEN EMPLOYEES OF INTELSAT AFTER PRIVATIZATION

Title III of Pub. L. 106–396, Oct. 30, 2000, 114 Stat. 1645, provided for maintenance of nonimmigrant and special immigrant status of alien employees of INTELSAT and their immediate family members after privatization, and for treatment of employment for purposes of obtaining immigrant status as a multinational executive or manager.

§ 763a. Specific criteria for INTELSAT

In securing the privatizations required by section 763 of this title, the following additional criteria with respect to INTELSAT privatization shall be applied as licensing criteria for purposes of part A of this subchapter:

(1)[1] TECHNICAL COORDINATION UNDER INTELSAT AGREEMENTS.—Technical coordination shall not be used to impair competition or competitors, and shall be conducted under International Telecommunication Union procedures and not under Article XIV(d) of the INTELSAT Agreement.

(Pub. L. 87–624, title VI, §622, as added Pub. L. 106–180, §3, Mar. 17, 2000, 114 Stat. 53.)

§ 763b. Repealed. Pub. L. 109–34, § 2, July 12, 2005, 119 Stat. 377

Section, Pub. L. 87–624, title VI, §623, as added Pub. L. 106–180, §3, Mar. 17, 2000, 114 Stat. 53, related to specific criteria for INTELSAT separated entities.

§ 763c. Space segment capacity of the GMDSS

The United States shall preserve the space segment capacity of the GMDSS. This section is not intended to alter the status that the GMDSS would otherwise have under United States laws and regulations of the International Telecommunication Union with respect to spectrum, orbital locations, or other operational parameters, or to be a barrier to competition for the provision of GMDSS services.

(Pub. L. 87–624, title VI, §624, as added Pub. L. 106–180, §3, Mar. 17, 2000, 114 Stat. 54; amended Pub. L. 109–34, §3, July 12, 2005, 119 Stat. 377.)

AMENDMENTS

2005—Pub. L. 109–34 amended section catchline and text generally, substituting provisions relating to space segment capacity of the GMDSS for provisions relating to specific criteria for Inmarsat privatization.

§ 763d. Encouraging market access and privatization

(a) NTIA determination

(1) Determination required

Within 180 days after March 17, 2000, the Secretary of Commerce shall, through the Assistant Secretary for Communications and Information, transmit to the Commission—

(A) a list of Member countries of INTELSAT and Inmarsat that are not Members of the World Trade Organization and that impose barriers to market access for private satellite systems; and

(B) a list of Member countries of INTELSAT and Inmarsat that are not Members of the World Trade Organization and that are not supporting pro-competitive privatization of INTELSAT and Inmarsat.

(2) Consultation

The Secretary's determinations under paragraph (1) shall be made in consultation with the Federal Communications Commission, the Secretary of State, and the United States Trade Representative, and shall take into account the totality of a country's actions in all relevant fora, including the Assemblies of Parties of INTELSAT and Inmarsat.

(b) Imposition of cost-based settlement rate

Notwithstanding—

(1) any higher settlement rate that an overseas carrier charges any United States carrier to originate or terminate international message telephone services; and

(2) any transition period that would otherwise apply,

the Commission may by rule prohibit United States carriers from paying an amount in excess of a cost-based settlement rate to overseas carriers in countries listed by the Commission pursuant to subsection (a) of this section.

(c) Settlements policy

The Commission shall, in exercising its authority to establish settlements rates for United States international common carriers, seek to advance United States policy in favor of cost-based settlements in all relevant fora on international telecommunications policy, including in meetings with parties and signatories of INTELSAT and Inmarsat.

(Pub. L. 87–624, title VI, §625, as added Pub. L. 106–180, §3, Mar. 17, 2000, 114 Stat. 54.)

[1] So in original. No par. (2) has been enacted.

PART C—DEREGULATION AND OTHER STATUTORY CHANGES

§ 765. Access to INTELSAT

(a) Access permitted

Beginning on March 17, 2000, users or providers of telecommunications services shall be permitted to obtain direct access to INTELSAT telecommunications services and space segment capacity through purchases of such capacity or services from INTELSAT. Such direct access shall be at the level commonly referred to by INTELSAT, on March 17, 2000, as ''Level III''.

(b) Rulemaking

Within 180 days after March 17, 2000, the Commission shall complete a rulemaking, with notice and opportunity for submission of comment by interested persons, to determine if users or providers of telecommunications services have sufficient opportunity to access INTELSAT space segment capacity directly from INTELSAT to meet their service or capacity requirements. If the Commission determines that such opportunity to access does not exist, the Commission shall take appropriate action to facilitate such direct access pursuant to its authority under this chapter and the Communications Act of 1934 [47 U.S.C. 151 et seq.]. The Commission shall take such steps as may be necessary to prevent the circumvention of the intent of this section.

(c) Contract preservation

Nothing in this section shall be construed to permit the abrogation or modification of any contract.

(Pub. L. 87–624, title VI, § 641, as added Pub. L. 106–180, § 3, Mar. 17, 2000, 114 Stat. 55.)

REFERENCES IN TEXT

The Communications Act of 1934, referred to in subsec. (b), is act June 19, 1934, ch. 652, 48 Stat. 1064, as amended, which is classified principally to chapter 5 (§ 151 et seq.) of this title. For complete classification of this Act to the Code, see section 609 of this title and Tables.

§ 765a. Signatory role

(a) Limitations on signatories

(1) National security limitations

The Federal Communications Commission, after a public interest determination, in consultation with the executive branch, may restrict foreign ownership of a United States signatory if the Commission determines that not to do so would constitute a threat to national security.

(2) No signatories required

The United States Government shall not require signatories to represent the United States in INTELSAT or Inmarsat or in any successor entities after a pro-competitive privatization is achieved consistent with sections 763, 763a, and 763c[1] of this title.

[1] See References in Text note below.

(b) Clarification of privileges and immunities of COMSAT

(1) Generally not immunized

Notwithstanding any other law or executive agreement, COMSAT shall not be entitled to any privileges or immunities under the laws of the United States or any State on the basis of its status as a signatory of INTELSAT or Inmarsat.

(2) Limited immunity

COMSAT or any successor in interest shall not be liable for action taken by it in carrying out the specific, written instruction of the United States issued in connection with its relationships and activities with foreign governments, international entities, and the intergovernmental satellite organizations.

(3) No joint or several liability

If COMSAT is found liable for any action taken in its status as a signatory or a representative of the party to INTELSAT, any such liability shall be limited to the portion of the judgment that corresponds to COMSAT's percentage of the ownership of INTELSAT at the time the activity began which lead to the liability.

(4) Provisions prospective

Paragraph (1) shall not apply with respect to liability for any action taken by COMSAT before March 17, 2000.

(c) Parity of treatment

Notwithstanding any other law or executive agreement, the Commission shall have the authority to impose similar regulatory fees on the United States signatory which it imposes on other entities providing similar services.

(Pub. L. 87–624, title VI, § 642, as added Pub. L. 106–180, § 3, Mar. 17, 2000, 114 Stat. 55.)

REFERENCES IN TEXT

Section 763c of this title, referred to in subsec. (a)(2), was amended generally by Pub. L. 109–34, § 3, July 12, 2005, 119 Stat. 377, and no longer relates to specific criteria for Inmarsat privatization.

§ 765b. Elimination of procurement preferences

Nothing in this subchapter or the Communications Act of 1934 [47 U.S.C. 151 et seq.] shall be construed to authorize or require any preference, in Federal Government procurement of telecommunications services, for the satellite space segment provided by INTELSAT, Inmarsat, or any successor entity or separated entity.

(Pub. L. 87–624, title VI, § 643, as added Pub. L. 106–180, § 3, Mar. 17, 2000, 114 Stat. 56.)

REFERENCES IN TEXT

The Communications Act of 1934, referred to in text, is act June 19, 1934, ch. 652, 48 Stat. 1064, as amended, which is classified principally to chapter 5 (§ 151 et seq.) of this title. For complete classification of this Act to the Code, see section 609 of this title and Tables.

§ 765c. ITU functions

(a) Technical coordination

The Commission and United States satellite companies shall utilize the International Tele-

communication Union procedures for technical coordination with INTELSAT and its successor entities and separated entities, rather than INTELSAT procedures.

(b) ITU notifying administration

The President and the Commission shall take the action necessary to ensure that the United States remains the ITU notifying administration for the privatized INTELSAT's existing and future orbital slot registrations.

(Pub. L. 87–624, title VI, § 644, as added Pub. L. 106–180, § 3, Mar. 17, 2000, 114 Stat. 56.)

§ 765d. Termination of provisions of this chapter

Effective on the dates specified, the following provisions of this chapter shall cease to be effective:

(1) March 17, 2000: Paragraphs (1), (5) and (6) of section 721(a) of this title; section 721(b) of this title; paragraphs (1), (3) through (5), and (8) through (10) of section 721(c) of this title; section 733 of this title; section 734 of this title; section 751 of this title; section 752 of this title; paragraphs (2) and (4) of section 753(a) of this title; and section 753(c) of this title.

(2) Upon the transfer of assets to a successor entity and receipt by signatories or former signatories (including COMSAT) of ownership shares in the successor entity of INTELSAT in accordance with appropriate arrangements determined by INTELSAT to implement privatization: Section 735 of this title.

(3) On the effective date of a Commission order determining under section 761(b)(2) of this title that Inmarsat privatization is consistent with criteria in sections 763 and 763c[1] of this title: Sections 753(b) and 753(d) of this title.

(4) On the effective date of a Commission order determining under section 761(b)(2) of this title that INTELSAT privatization is consistent with criteria in sections 763 and 763a of this title: Section 701 of this title; section 702(7) of this title; paragraphs (2) through (4) and (7) of section 721(a) of this title; paragraphs (2), (6), and (7) of section 721(c) of this title; section 731 of this title; section 732 of this title; section 741 of this title; section 742 of this title; section 743 of this title; and section 744 of this title.

(Pub. L. 87–624, title VI, § 645, as added Pub. L. 106–180, § 3, Mar. 17, 2000, 114 Stat. 56.)

REFERENCES IN TEXT

The transfer of assets and receipt by signatories of ownership shares in the successor entity of INTELSAT, referred to in par. (2), occurred on July 18, 2001. See *FCC Report to Congress as Required by the ORBIT Act*, FCC 02-170, 17 FCC Rcd. 11458 (released June 14, 2002).

The effective date of the Commission order relating to Inmarsat privatization, referred to in par. (3), is June 14, 2005. See *In the Matter of Inmarsat Group Holdings Limited Petition for Declaratory Ruling Pursuant to Section 621(5)(F) of the ORBIT Act*, Memorandum Opinion and Order, IB Docket 04-439, FCC 05-126 (released June 14, 2005).

Section 763c of this title, referred to in par. (3), was amended generally by Pub. L. 109–34, § 3, July 12, 2005, 119 Stat. 377, and no longer relates to specific criteria for Inmarsat privatization.

The effective date of the Commission order relating to INTELSAT privatization, referred to in par. (4), is Apr. 15, 2005. See *In the Matter of Intelsat, Ltd. Petition for Declaratory Ruling that Intelsat, Ltd. Complies With Section 621(5)(F) of the ORBIT Act*, Memorandum Opinion and Order, IB Docket 05-18, FCC 05-86 (released April 15, 2005).

[1] See References in Text note below.

§ 765e. Reports to Congress

(a) Annual reports

The President and the Commission shall report to the Committees on Commerce and International Relations of the House of Representatives and the Committees on Commerce, Science, and Transportation and Foreign Relations of the Senate within 90 calendar days of March 17, 2000, and not less than annually thereafter, on the progress made to achieve the objectives and carry out the purposes and provisions of this subchapter. Such reports shall be made available immediately to the public.

(b) Contents of reports

The reports submitted pursuant to subsection (a) of this section shall include the following:

(1) Progress with respect to each objective since the most recent preceding report.

(2) Views of the Parties with respect to privatization.

(3) Views of industry and consumers on privatization.

(4) Impact privatization has had on United States industry, United States jobs, and United States industry's access to the global marketplace.

(Pub. L. 87–624, title VI, § 646, as added Pub. L. 106–180, § 3, Mar. 17, 2000, 114 Stat. 57.)

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

DELEGATION OF RESPONSIBILITY

Memorandum of President of the United States, Aug. 21, 2000, 65 F.R. 52289, provided:

Memorandum for the Secretary of State

By the authority vested in me by the Constitution and the laws of the United States of America, including section 301 of title 3 of the United States Code, I hereby delegate to you the functions vested in me by section 646 of the ORBIT Act (Public Law 106–180) [probably means section 646 of Pub. L. 87–624, as added by Pub. L. 106–180, 47 U.S.C. 765e], relating to submission of annual reports to the appropriate congressional committees regarding the privatization of intergovernmental satellite organizations. The authority delegated by the memorandum may be further redelegated within the Department of State.

You are authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

§ 765f. Satellite auctions

Notwithstanding any other provision of law, the Commission shall not have the authority to assign by competitive bidding orbital locations

or spectrum used for the provision of international or global satellite communications services. The President shall oppose in the International Telecommunication Union and in other bilateral and multilateral fora any assignment by competitive bidding of orbital locations or spectrum used for the provision of such services.

(Pub. L. 87–624, title VI, § 647, as added Pub. L. 106–180, § 3, Mar. 17, 2000, 114 Stat. 57.)

§ 765g. Exclusivity arrangements

(a) In general

No satellite operator shall acquire or enjoy the exclusive right of handling telecommunications to or from the United States, its territories or possessions, and any other country or territory by reason of any concession, contract, understanding, or working arrangement to which the satellite operator or any persons or companies controlling or controlled by the operator are parties.

(b) Exception

In enforcing the provisions of this section, the Commission—

(1) shall not require the termination of existing satellite telecommunications services under contract with, or tariff commitment to, such satellite operator; but

(2) may require the termination of new services only to the country that has provided the exclusive right to handle telecommunications, if the Commission determines the public interest, convenience, and necessity so requires.

(Pub. L. 87–624, title VI, § 648, as added Pub. L. 106–180, § 3, Mar. 17, 2000, 114 Stat. 57.)

PART D—NEGOTIATIONS TO PURSUE PRIVATIZATION

§ 767. Methods to pursue privatization

The President shall secure the pro-competitive privatizations required by this subchapter in a manner that meets the criteria in part B of this subchapter.

(Pub. L. 87–624, title VI, § 661, as added Pub. L. 106–180, § 3, Mar. 17, 2000, 114 Stat. 58.)

PART E—DEFINITIONS

§ 769. Definitions

(a) In general

As used in this subchapter:

(1) INTELSAT

The term ''INTELSAT'' means the International Telecommunications Satellite Organization established pursuant to the Agreement Relating to the International Telecommunications Satellite Organization (INTELSAT).

(2) Inmarsat

The term ''Inmarsat'' means the International Mobile Satellite Organization established pursuant to the Convention on the International Maritime Organization.

(3) Signatories

The term ''signatories''—

(A) in the case of INTELSAT, or INTELSAT successors or separated entities, means a Party, or the telecommunications entity designated by a Party, that has signed the Operating Agreement and for which such Agreement has entered into force; and

(B) in the case of Inmarsat, or Inmarsat successors or separated entities, means either a Party to, or an entity that has been designated by a Party to sign, the Operating Agreement.

(4) Party

The term ''Party''—

(A) in the case of INTELSAT, means a nation for which the INTELSAT agreement has entered into force; and

(B) in the case of Inmarsat, means a nation for which the Inmarsat convention has entered into force.

(5) Commission

The term ''Commission'' means the Federal Communications Commission.

(6) International Telecommunication Union

The term ''International Telecommunication Union'' means the intergovernmental organization that is a specialized agency of the United Nations in which member countries cooperate for the development of telecommunications, including adoption of international regulations governing terrestrial and space uses of the frequency spectrum as well as use of the geostationary satellite orbit.

(7) Successor entity

The term ''successor entity''—

(A) means any privatized entity created from the privatization of INTELSAT or Inmarsat or from the assets of INTELSAT or Inmarsat; but

(B) does not include any entity that is a separated entity.

(8) Separated entity

The term ''separated entity'' means a privatized entity to whom a portion of the assets owned by INTELSAT or Inmarsat are transferred prior to full privatization of INTELSAT or Inmarsat, including in particular the entity whose structure was under discussion by INTELSAT as of March 25, 1998, but excluding ICO.

(9) Orbital location

The term ''orbital location'' means the location for placement of a satellite on the geostationary orbital arc as defined in the International Telecommunication Union Radio Regulations.

(10) Space segment

The term ''space segment'' means the satellites, and the tracking, telemetry, command, control, monitoring and related facilities and equipment used to support the operation of satellites owned or leased by INTELSAT, Inmarsat, or a separated entity or successor entity.

(11) Non-core services

The term ''non-core services'' means, with respect to INTELSAT provision, services other

than public-switched network voice telephony and occasional-use television, and with respect to Inmarsat provision, services other than global maritime distress and safety services or other existing maritime or aeronautical services for which there are not alternative providers.

(12) Additional services

The term ''additional services'' means—

(A) for Inmarsat, those non-maritime or non-aeronautical mobile services in the 1.5 and 1.6 Ghz band on planned satellites or the 2 Ghz band; and

(B) for INTELSAT, direct-to-home (DTH) or direct broadcast satellite (DBS) video services, or services in the Ka or V bands.

(13) INTELSAT Agreement

The term ''INTELSAT Agreement'' means the Agreement Relating to the International Telecommunications Satellite Organization (''INTELSAT''), including all its annexes (TIAS 7532, 23 UST 3813).

(14) Headquarters Agreement

The term ''Headquarters Agreement'' means the International Telecommunication[1] Satellite Organization Headquarters Agreement (November 24, 1976) (TIAS 8542, 28 UST 2248).

(15) Operating Agreement

The term ''Operating Agreement'' means—

(A) in the case of INTELSAT, the agreement, including its annex but excluding all titles of articles, opened for signature at Washington on August 20, 1971, by Governments or telecommunications entities designated by Governments in accordance with the provisions of the Agreement; and

(B) in the case of Inmarsat, the Operating Agreement on the International Maritime Satellite Organization, including its annexes.

(16) Inmarsat Convention

The term ''Inmarsat Convention'' means the Convention on the International Maritime Satellite Organization (Inmarsat) (TIAS 9605, 31 UST 1).

(17) National corporation

The term ''national corporation'' means a corporation the ownership of which is held through publicly traded securities, and that is incorporated under, and subject to, the laws of a national, state, or territorial government.

(18) COMSAT

The term ''COMSAT'' means the corporation established pursuant to subchapter III of this chapter, or the successor in interest to such corporation.

(19) ICO

The term ''ICO'' means the company known, as of March 17, 2000, as ICO Global Communications, Inc.

(20) Global maritime distress and safety services or GMDSS

The term ''global maritime distress and safety services'' or ''GMDSS'' means the automated ship-to-shore distress alerting system which uses satellite and advanced terrestrial systems for international distress communications and promoting maritime safety in general. The GMDSS permits the worldwide alerting of vessels, coordinated search and rescue operations, and dissemination of maritime safety information.

(21) National security agency

The term ''national security agency'' means the National Security Agency, the Director of Central Intelligence and the Central Intelligence Agency, the Department of Defense, and the Coast Guard.

(b) Common terminology

Except as otherwise provided in subsection (a) of this section, terms used in this subchapter that are defined in section 153 of this title have the meanings provided in such section.

(Pub. L. 87–624, title VI, § 681, as added Pub. L. 106–180, § 3, Mar. 17, 2000, 114 Stat. 58.)

CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108–458, set out as a note under section 401 of Title 50, War and National Defense.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

CHAPTER 7—CAMPAIGN COMMUNICATIONS

§§ 801 to 805. Repealed. Pub. L. 93–443, title II, § 205(b), Oct. 15, 1974, 88 Stat. 1278

Section 801, Pub. L. 92–225, title I, § 102, Feb. 7, 1972, 86 Stat. 3, related to definitions for purposes of this chapter.

Section 802, Pub. L. 92–225, title I, § 103(b), Feb. 7, 1972, 86 Stat. 4, related to nonbroadcast media rates.

Section 803, Pub. L. 92–225, title I, § 104(a), (b), Feb. 7, 1972, 86 Stat. 5, related to limitations of expenditures for use of communications media.

Section 804, Pub. L. 92–225, title I, § 105, Feb. 7, 1972, 86 Stat. 7, related to regulations prescribed under this chapter.

Section 805, Pub. L. 92–225, title I, § 106, Feb. 7, 1972, 86 Stat. 8, related to penalties imposed under this chapter.

EFFECTIVE DATE OF REPEAL

Sections 801 to 805 repealed effective Jan. 1, 1975, see section 410(a) of Pub. L. 93–443, set out as an Effective Date of 1974 Amendment note under section 431 of Title 2, The Congress.

[1] So in original. Probably should be ''Telecommunications''.

CHAPTER 8—NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

SUBCHAPTER I—ORGANIZATION AND FUNCTIONS

Sec.
901. Definitions; findings; policy.
902. Establishment; assigned functions.
903. Spectrum management activities.
904. General administrative provisions.
905. Omitted.

SUBCHAPTER II—TRANSFER OF AUCTIONABLE FREQUENCIES

921. Definitions.
922. National spectrum allocation planning.
923. Identification of reallocable frequencies.
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925. Distribution of frequencies by Commission.
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928. Spectrum Relocation Fund.

SUBCHAPTER III—MISCELLANEOUS

941. Child-friendly second-level Internet domain.
942. Coordination of E–911 implementation.

SUBCHAPTER I—ORGANIZATION AND FUNCTIONS

§ 901. Definitions; findings; policy

(a) Definitions

In this chapter, the following definitions apply:

(1) The term ''NTIA'' means the National Telecommunications and Information Administration.

(2) The term ''Assistant Secretary'' means the Assistant Secretary for Communications and Information.

(3) The term ''Secretary'' means the Secretary of Commerce.

(4) The term ''Commission'' means the Federal Communications Commission.

(5) The term ''Corporation'' means the Communications Satellite Corporation authorized in title III of the Communications Satellite Act of 1962 (47 U.S.C. 731 et seq.).

(b) Findings

The Congress finds the following:

(1) Telecommunications and information are vital to the public welfare, national security, and competitiveness of the United States.

(2) Rapid technological advances being made in the telecommunications and information fields make it imperative that the United States maintain effective national and international policies and programs capable of taking advantage of continued advancements.

(3) Telecommunications and information policies and recommendations advancing the strategic interests and the international competitiveness of the United States are essential aspects of the Nation's involvement in international commerce.

(4) There is a critical need for competent and effective telecommunications and information research and analysis and national and international policy development, advice, and advocacy by the executive branch of the Federal Government.

(5) As one of the largest users of the Nation's telecommunications facilities and resources, the Federal Government must manage its radio spectrum use and other internal communications operations in the most efficient and effective manner possible.

(6) It is in the national interest to codify the authority of the National Telecommunications and Information Administration, an agency in the Department of Commerce, as the executive branch agency principally responsible for advising the President on telecommunications and information policies, and for carrying out the related functions it currently performs, as reflected in Executive Order 12046.

(c) Policy

The NTIA shall seek to advance the following policies:

(1) Promoting the benefits of technological development in the United States for all users of telecommunications and information facilities.

(2) Fostering national safety and security, economic prosperity, and the delivery of critical social services through telecommunications.

(3) Facilitating and contributing to the full development of competition, efficiency, and the free flow of commerce in domestic and international telecommunications markets.

(4) Fostering full and efficient use of telecommunications resources, including effective use of the radio spectrum by the Federal Government, in a manner which encourages the most beneficial uses thereof in the public interest.

(5) Furthering scientific knowledge about telecommunications and information.

(Pub. L. 102–538, title I, § 102, Oct. 27, 1992, 106 Stat. 3533.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original, ''this title'', meaning title I of Pub. L. 102–538, Oct. 27, 1992, 106 Stat. 3533, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note below and Tables.

The Communications Satellite Act of 1962, referred to in subsec. (a)(5), is Pub. L. 87–624, Aug. 31, 1962, 76 Stat. 419, as amended. Title III of the Act is classified generally to subchapter III (§ 731 et seq.) of chapter 6 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 701 of this title and Tables.

Executive Order 12046, referred to in subsec. (b)(6), is set out as a note under section 305 of this title.

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–494, title I, § 101, Dec. 23, 2004, 118 Stat. 3986, provided that: ''This title [enacting section 942 of this title and provisions set out as notes under section 942 of this title] may be cited as the 'Ensuring Needed Help Arrives Near Callers Employing 911 Act of 2004' or the 'ENHANCE 911 Act of 2004'.''

Pub. L. 108–494, title II, § 201, Dec. 23, 2004, 118 Stat. 3991, provided that: ''This title [enacting section 928 of this title, amending sections 309, 614, and 923 of this title, and enacting provisions set out as notes under sections 921, 923, and 928 of this title] may be cited as the 'Commercial Spectrum Enhancement Act'.''

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107–317, §1, Dec. 4, 2002, 116 Stat. 2766, provided that: ''This Act [enacting subchapter III of this chapter, amending section 902 of this title, and enacting provisions set out as a note under section 941 of this title] may be cited as the 'Dot Kids Implementation and Efficiency Act of 2002'.''

SHORT TITLE

Section 101 of title I of Pub. L. 102–538 provided that: ''This title [enacting this chapter, amending section 394 of this title, and enacting provisions set out as a note under section 254r of Title 42, The Public Health and Welfare] may be cited as the 'National Telecommunications and Information Administration Organization Act'.''

EX. ORD. NO. 12382. PRESIDENT'S NATIONAL SECURITY TELECOMMUNICATIONS ADVISORY COMMITTEE

Ex. Ord. No. 12382, Sept. 13, 1982, 47 F.R. 40531, as amended by Ex. Ord. No. 13286, Feb. 28, 2003, 68 F.R. 10628, provided:

By the authority vested in me as President by the Constitution of the United States of America, and in order to establish, in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), an advisory committee on National Security Telecommunications, it is hereby ordered as follows:

SECTION 1. *Establishment*. (a) There is established the President's National Security Telecommunications Advisory Committee which shall be composed of no more than 30 members. These members shall have particular knowledge and expertise in the field of telecommunications and represent elements of the Nation's telecommunications industry. Members of the Committee shall be appointed by the President.

(b) The President shall annually designate a Chairman and a Vice Chairman from among the members of the Committee.

(c) To assist the Committee in carrying out its functions, the Committee may establish appropriate subcommittees or working groups composed, in whole or in part, of individuals who are not members of the Committee.

SEC. 2. *Functions*. (a) The Committee shall provide to the President, through the Secretary of Homeland Security, among other things, information and advice from the perspective of the telecommunications industry with respect to the implementation of Presidential Directive 53 (PD/NSC–53), National Security Telecommunications Policy.

(b) The Committee shall provide information and advice to the President, through the Secretary of Homeland Security, regarding the feasibility of implementing specific measures to improve the telecommunications aspects of our national security posture.

(c) The Committee shall provide technical information and advice in the identification and solution of problems which the Committee considers will affect national security telecommunications capability.

(d) In the performance of its advisory duties, the Committee shall conduct reviews and assessments of the effectiveness of the implementation of PD/NSC–53, National Security Telecommunications Policy.

(e) The Committee shall periodically report on matters in this Section to the President, through the Secretary of Homeland Security, in his capacity as Executive Agent for the National Communications System.

SEC. 3. *Administration*. (a) The heads of Executive agencies shall, to the extent permitted by law, provide the Committee such information with respect to national security telecommunications matters as it may require for the purpose of carrying out its functions. Information supplied to the Committee shall not, to the extent permitted by law, be available for public inspection.

(b) Members of the Committee shall serve without any compensation for their work on the Committee. However, to the extent permitted by law, they shall be entitled to travel expenses, including per diem in lieu of subsistence.

(c) Any expenses of the Committee shall, to the extent permitted by law, be paid from funds available to the Secretary of Homeland Security.

SEC. 4. *General*. (a) Notwithstanding any other Executive Order, the functions of the President under the Federal Advisory Committee Act, as amended (5 U.S.C. App.), except that of reporting annually to the Congress, which are applicable to the Committee, shall be performed by the Secretary of Homeland Security, in accord with guidelines and procedures established by the Administrator of General Services.

(b) In accordance with the Federal Advisory Committee Act, as amended, the Committee shall terminate on December 31, 1982, unless sooner extended.

[Amendment by Ex. Ord. 13286 directing insertion of ''through the Secretary of Homeland Security,'' after ''the President,'' in section 2(b) of Ex. Ord. 12382, was executed by inserting '', through the Secretary of Homeland Security,'' after ''the President''.]

EXTENSION OF TERM OF PRESIDENT'S NATIONAL SECURITY TELECOMMUNICATIONS ADVISORY COMMITTEE

Term of the President's National Security Telecommunications Advisory Committee extended until Dec. 31, 1983, by Ex. Ord. No. 12399, Dec. 31, 1982, 48 F.R. 379, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

Term of the President's National Security Telecommunications Advisory Committee extended until Sept. 30, 1985, by Ex. Ord. No. 12454, Dec. 29, 1983, 49 F.R. 343.

Term of the President's National Security Telecommunications Advisory Committee extended until Sept. 30, 1987, by Ex. Ord. No. 12534, Sept. 30, 1985, 50 F.R. 40319, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's National Security Telecommunications Advisory Committee extended until Sept. 30, 1989, by Ex. Ord. No. 12610, Sept. 30, 1987, 52 F.R. 36901, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's National Security Telecommunications Advisory Committee extended until Sept. 30, 1991, by Ex. Ord. No. 12692, Sept. 29, 1989, 54 F.R. 40627, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's National Security Telecommunications Advisory Committee extended until Sept. 30, 1993, by Ex. Ord. No. 12774, Sept. 27, 1991, 56 F.R. 49835, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's National Security Telecommunications Advisory Committee extended until Sept. 30, 1995, by Ex. Ord. No. 12869, Sept. 30, 1993, 58 F.R. 51751, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's National Security Telecommunications Advisory Committee extended until Sept. 30, 1997, by Ex. Ord. No. 12974, Sept. 29, 1995, 60 F.R. 51875, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's National Security Telecommunications Advisory Committee extended until Sept. 30, 1999, by Ex. Ord. No. 13062, Sept. 29, 1997, 62 F.R. 51755, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's National Security Telecommunications Advisory Committee extended until Sept. 30, 2001, by Ex. Ord. No. 13138, Sept. 30, 1999, 64

F.R. 53879, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's National Security Telecommunications Advisory Committee extended until Sept. 30, 2003, by Ex. Ord. No. 13225, Sept. 28, 2001, 66 F.R. 50291, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's National Security Telecommunications Advisory Committee extended until Sept. 30, 2005, by Ex. Ord. No. 13316, Sept. 17, 2003, 68 F.R. 55255, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's National Security Telecommunications Advisory Committee extended until Sept. 30, 2007, by Ex. Ord. No. 13385, Sept. 29, 2005, 70 F.R. 57989, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

§ 902. Establishment; assigned functions

(a) Establishment

(1) Administration

There shall be within the Department of Commerce an administration to be known as the National Telecommunications and Information Administration.

(2) Head of administration

The head of the NTIA shall be an Assistant Secretary of Commerce for Communications and Information, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) Assigned functions

(1) In general

Subject to section 904(d) of this title, the Secretary shall assign to the Assistant Secretary and the NTIA responsibility for the performance of the Secretary's communications and information functions.

(2) Communications and information functions

Subject to section 904(d) of this title, the functions to be assigned by the Secretary under paragraph (1) include (but are not limited to) the following functions transferred to the Secretary by Reorganization Plan Number 1 of 1977 and Executive Order 12046:

(A) The authority delegated by the President to the Secretary to assign frequencies to radio stations or classes of radio stations belonging to and operated by the United States, including the authority to amend, modify, or revoke such assignments, but not including the authority to make final disposition of appeals from frequency assignments.

(B) The authority to authorize a foreign government to construct and operate a radio station at the seat of Government of the United States, but only upon recommendation of the Secretary of State and after consultation with the Attorney General and the Chairman of the Commission.

(C) Functions relating to the communications satellite system, including authority vested in the President by section 201(a) of the Communications Satellite Act of 1962 (47 U.S.C. 721(a)) and delegated to the Secretary under Executive Order 12046, to—

(i) aid in the planning and development of the commercial communications satellite system and the execution of a national program for the operation of such a system;

(ii) conduct a continuous review of all phases of the development and operation of such system, including the activities of the Corporation;

(iii) coordinate, in consultation with the Secretary of State, the activities of governmental agencies with responsibilities in the field of telecommunications, so as to ensure that there is full and effective compliance at all times with the policies set forth in the Communications Satellite Act of 1962 [47 U.S.C. 701 et seq.];

(iv) make recommendations to the President and others as appropriate, with respect to steps necessary to ensure the availability and appropriate utilization of the communications satellite system for general governmental purposes in consonance with section 201(a)(6) of the Communications Satellite Act of 1962 (47 U.S.C. 721(a)(6));[1]

(v) help attain coordinated and efficient use of the electromagnetic spectrum and the technical compatibility of the communications satellite system with existing communications facilities both in the United States and abroad;

(vi) assist in the preparation of Presidential action documents for consideration by the President as may be appropriate under section 201(a) of the Communications Satellite Act of 1962 (47 U.S.C. 721(a)), make necessary recommendations to the President in connection therewith, and keep the President informed with respect to the carrying out of the Communications Satellite Act of 1962 [47 U.S.C. 701 et seq.]; and

(vii) serve as the chief point of liaison between the President and the Corporation.

(D) The authority to serve as the President's principal adviser on telecommunications policies pertaining to the Nation's economic and technological advancement and to the regulation of the telecommunications industry.

(E) The authority to advise the Director of the Office of Management and Budget on the development of policies relating to the procurement and management of Federal telecommunications systems.

(F) The authority to conduct studies and evaluations concerning telecommunications research and development and concerning the initiation, improvement, expansion, testing, operation, and use of Federal telecommunications systems and advising agencies of the results of such studies and evaluations.

(G) Functions which involve—

(i) developing and setting forth, in coordination with the Secretary of State and

[1] See References in Text note below.

other interested agencies, plans, policies, and programs which relate to international telecommunications issues, conferences, and negotiations;

(ii) coordinating economic, technical, operational, and related preparations for United States participation in international telecommunications conferences and negotiations; and

(iii) providing advice and assistance to the Secretary of State on international telecommunications policies to strengthen the position and serve the best interests of the United States in support of the Secretary of State's responsibility for the conduct of foreign affairs.

(H) The authority to provide for the coordination of the telecommunications activities of the executive branch and assist in the formulation of policies and standards for those activities, including (but not limited to) considerations of interoperability, privacy, security, spectrum use, and emergency readiness.

(I) The authority to develop and set forth telecommunications policies pertaining to the Nation's economic and technological advancement and to the regulation of the telecommunications industry.

(J) The responsibility to ensure that the views of the executive branch on telecommunications matters are effectively presented to the Commission and, in coordination with the Director of the Office of Management and Budget, to the Congress.

(K) The authority to establish policies concerning spectrum assignments and use by radio stations belonging to and operated by the United States.

(L) Functions which involve—

(i) developing, in cooperation with the Commission, a comprehensive long-range plan for improved management of all electromagnetic spectrum resources;

(ii) performing analysis, engineering, and administrative functions, including the maintenance of necessary files and data bases, as necessary for the performance of assigned functions for the management of electromagnetic spectrum resources;

(iii) conducting research and analysis of electromagnetic propagation, radio systems characteristics, and operating techniques affecting the utilization of the electromagnetic spectrum in coordination with specialized, related research and analysis performed by other Federal agencies in their areas of responsibility; and

(iv) conducting research and analysis in the general field of telecommunications sciences in support of assigned functions and in support of other Government agencies.

(M) The authority to conduct studies and make recommendations concerning the impact of the convergence of computer and communications technology.

(N) The authority to coordinate Federal telecommunications assistance to State and local governments.

(O) The authority to conduct and coordinate economic and technical analyses of telecommunications policies, activities, and opportunities in support of assigned functions.

(P) The authority to contract for studies and reports relating to any aspect of assigned functions.

(Q) The authority to participate, as appropriate, in evaluating the capability of telecommunications resources, in recommending remedial actions, and in developing policy options.

(R) The authority to participate with the National Security Council and the Director of the Office of Science and Technology Policy as they carry out their responsibilities under sections 4–1, 4–2, and 4–3 of Executive Order 12046, with respect to emergency functions, the national communication system, and telecommunications planning functions.

(S) The authority to establish coordinating committees pursuant to section 10 of Executive Order 11556.

(T) The authority to establish, as permitted by law, such interagency committees and working groups composed of representatives of interested agencies and consulting with such departments and agencies as may be necessary for the effective performance of assigned functions.

(3) Additional communications and information functions

In addition to the functions described in paragraph (2), the Secretary under paragraph (1)—

(A) may assign to the NTIA the performance of functions under section 504(a) of the Communications Satellite Act of 1962 (47 U.S.C. 753(a));

(B) shall assign to the NTIA the administration of the Public Telecommunications Facilities Program under sections 390 through 393 of this title, and the National Endowment for Children's Educational Television under section 394 of this title; and

(C) shall assign to the NTIA responsibility for providing for the establishment, and overseeing operation, of a second-level Internet domain within the United States country code domain in accordance with section 941 of this title.

(Pub. L. 102–538, title I, §103, Oct. 27, 1992, 106 Stat. 3534; Pub. L. 107–317, §3, Dec. 4, 2002, 116 Stat. 2767.)

REFERENCES IN TEXT

Reorganization Plan Number 1 of 1977, referred to in subsec. (b)(2), is set out in the Appendix to Title 5, Government Organization and Employees.

Executive Order 12046, referred to in subsec. (b)(2), is set out as a note under section 305 of this title.

The Communications Satellite Act of 1962, referred to in subsec. (b)(2)(C)(iii), (vi), is Pub. L. 87–624, Aug. 31, 1962, 76 Stat. 419, as amended, which is classified generally to chapter 6 (§701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 701 of this title and Tables.

Section 201(a)(6) of the Communications Satellite Act of 1962, referred to in subsec. (b)(2)(C)(iv), was classified

to section 721(a)(6) of this title and was omitted from the Code.

Executive Order 11556, referred to in subsec. (b)(2)(S), which was formerly set out as a note under section 305 of this title was revoked by Ex. Ord. No. 12046, set out as a note under section 305 of this title. Section 10 of Ex. Ord. No. 11556 related to advisory committees established by the Director of the former Office of Telecommunications Policy.

AMENDMENTS

2002—Subsec. (b)(3)(C). Pub. L. 107–317 added subpar. (C).

STUDY OF TECHNOLOGY PROTECTION MEASURES

Pub. L. 106–554, § 1(a)(4) [div. B, title XVII, § 1703], Dec. 21, 2000, 114 Stat. 2763, 2763A–336, provided that:

''(a) IN GENERAL.—Not later than 18 months after the date of the enactment of this Act [Dec. 21, 2000], the National Telecommunications and Information Administration shall initiate a notice and comment proceeding for purposes of—

''(1) evaluating whether or not currently available technology protection measures, including commercial Internet blocking and filtering software, adequately addresses the needs of educational institutions;

''(2) making recommendations on how to foster the development of measures that meet such needs; and

''(3) evaluating the development and effectiveness of local Internet safety policies that are currently in operation after community input.

''(b) DEFINITIONS.—In this section:

''(1) TECHNOLOGY PROTECTION MEASURE.—The term 'technology protection measure' means a specific technology that blocks or filters Internet access to visual depictions that are—

''(A) obscene, as that term is defined in section 1460 of title 18, United States Code;

''(B) child pornography, as that term is defined in section 2256 of title 18, United States Code; or

''(C) harmful to minors.

''(2) HARMFUL TO MINORS.—The term 'harmful to minors' means any picture, image, graphic image file, or other visual depiction that—

''(A) taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion;

''(B) depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and

''(C) taken as a whole, lacks serious literary, artistic, political, or scientific value as to minors.

''(3) SEXUAL ACT; SEXUAL CONTACT.—The terms 'sexual act' and 'sexual contact' have the meanings given such terms in section 2246 of title 18, United States Code.''

§ 903. Spectrum management activities

(a) Revision of regulations

Within 180 days after October 27, 1992, the Secretary of Commerce and the NTIA shall amend the Department of Commerce spectrum management document entitled ''Manual of Regulations and Procedures for Federal Radio Frequency Management'' to improve Federal spectrum management activities and shall publish in the Federal Register any changes in the regulations in such document.

(b) Requirements for revisions

The amendments required by subsection (a) of this section shall—

(1) provide for a period at the beginning of each meeting of the Interdepartmental Radio Advisory Committee to be open to the public to make presentations and receive advice, and provide the public with other meaningful opportunities to make presentations and receive advice;

(2) include provisions that will require (A) publication in the Federal Register of major policy proposals that are not classified and that involve spectrum management, and (B) adequate opportunity for public review and comment on those proposals;

(3) include provisions that will require publication in the Federal Register of major policy decisions that are not classified and that involve spectrum management;

(4) include provisions that will require that nonclassified spectrum management information be made available to the public, including access to electronic databases; and

(5) establish procedures that provide for the prompt and impartial consideration of requests for access to Government spectrum by the public, which procedures shall include provisions that will require the disclosure of the status and ultimate disposition of any such request.

(c) Certification to Congress

Not later than 180 days after October 27, 1992, the Secretary of Commerce shall certify to Congress that the Secretary has complied with this section.

(d) Radio services

(1) Assignments for radio services

In assigning frequencies for mobile radio services and other radio services, the Secretary of Commerce shall promote efficient and cost-effective use of the spectrum to the maximum extent feasible.

(2) Authority to withhold assignments

The Secretary of Commerce shall have the authority to withhold or refuse to assign frequencies for mobile radio service or other radio service in order to further the goal of making efficient and cost-effective use of the spectrum.

(3) Spectrum plan

By October 1, 1993, the Secretary of Commerce shall adopt and commence implementation of a plan for Federal agencies with existing mobile radio systems to use more spectrum-efficient technologies that are at least as spectrum-efficient and cost-effective as readily available commercial mobile radio systems. The plan shall include a time schedule for implementation.

(4) Report to Congress

By October 1, 1993, the Secretary of Commerce shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report summarizing the plan adopted under paragraph (3), including the implementation schedule for the plan.

(e) Proof of compliance with FCC licensing requirements

(1) Amendment to manual required

Within 90 days after August 10, 1993, the Secretary and the NTIA shall amend the spectrum

management document described in subsection (a) of this section to require that—

(A) no person or entity (other than an agency or instrumentality of the United States) shall be permitted, after 1 year after August 10, 1993, to operate a radio station utilizing a frequency that is authorized for the use of government stations pursuant to section 902(b)(2)(A) of this title for any nongovernment application unless such person or entity has submitted to the NTIA proof, in a form prescribed by such manual, that such person or entity has obtained a license from the Commission; and

(B) no person or entity (other than an agency or instrumentality of the United States) shall be permitted, after 1 year after August 10, 1993, to utilize a radio station belonging to the United States for any nongovernment application unless such person or entity has submitted to the NTIA proof, in a form prescribed by such manual, that such person or entity has obtained a license from the Commission.

(2) Retention of forms

The NTIA shall maintain on file the proofs submitted under paragraph (1), or facsimiles thereof.

(3) Certification

Within 1 year after August 10, 1993, the Secretary and the NTIA shall certify to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate that—

(A) the amendments required by paragraph (1) have been accomplished; and

(B) the requirements of subparagraphs (A) and (B) of such paragraph are being enforced.

(Pub. L. 102–538, title I, §104, Oct. 27, 1992, 106 Stat. 3537; Pub. L. 103–66, title VI, §6001(b), Aug. 10, 1993, 107 Stat. 387.)

AMENDMENTS

1993—Subsec. (e). Pub. L. 103–66 added subsec. (e).

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

AUTHORIZATION OF USE OF SPECTRUM BY, AND PROVISION OF SPECTRUM FUNCTIONS TO, FEDERAL ENTITY; REIMBURSEMENT

Pub. L. 108–7, div. B, title II, Feb. 20, 2003, 117 Stat. 71, provided in part: ''That hereafter, notwithstanding any other provision of law, NTIA [National Telecommunications and Information Administration] shall not authorize spectrum use or provide any spectrum functions pursuant to the National Telecommunications and Information Administration Organization Act, 47 U.S.C. 902–903 [47 U.S.C. 901 et seq.], to any Federal entity without reimbursement as required by NTIA for such spectrum management costs, and Federal entities withholding payment of such cost shall not use spectrum''.

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 107–77, title II, Nov. 28, 2001, 115 Stat. 772.

Pub. L. 106–553, §1(a)(2) [title II], Dec. 21, 2000, 114 Stat. 2762, 2762A–72.

Pub. L. 106–113, div. B, §1000(a)(1) [title II], Nov. 29, 1999, 113 Stat. 1535, 1501A–26.

Pub. L. 105–277, div. A, §101(b) [title II], Oct. 21, 1998, 112 Stat. 2681–50, 2681–80.

Pub. L. 105–119, title II, Nov. 26, 1997, 111 Stat. 2474.

Pub. L. 104–208, div. A, title I, §101(a) [title II], Sept. 30, 1996, 110 Stat. 3009, 3009–35.

§904. General administrative provisions

(a) Interagency functions

(1) Agency consultation

Federal agencies shall consult with the Assistant Secretary and the NTIA to ensure that the conduct of telecommunications activities by such agencies is consistent with the policies developed under section 902(b)(2)(K) of this title.

(2) Report to President

The Secretary shall timely submit to the President each year the report (including evaluations and recommendations) provided for in section 744(a)[1] of this title.

(3) Coordination with Secretary of State

The Secretary shall coordinate with the Secretary of State the performance of the functions described in section 902(b)(2)(C) of this title. The Corporation and concerned executive agencies shall provide the Secretary with such assistance, documents, and other cooperation as will enable the Secretary to carry out those functions.

(b) Advisory committees and informal consultations with industry

To the extent the Assistant Secretary deems it necessary to continue the Interdepartmental Radio Advisory Committee, such Committee shall serve as an advisory committee to the Assistant Secretary and the NTIA. As permitted by law, the Assistant Secretary may establish one or more telecommunications or information advisory committees (or both) composed of experts in the telecommunications and/or information areas outside the Government. The NTIA may also informally consult with industry as appropriate to carry out the most effective performance of its functions.

(c) General provisions

(1) Regulations

The Secretary and NTIA shall issue such regulations as may be necessary to carry out the functions assigned under this chapter.

(2) Support and assistance from other agencies

All executive agencies are authorized and directed to cooperate with the NTIA and to furnish it with such information, support, and assistance, not inconsistent with law, as it may require in the performance of its functions.

(3) Effect on vested functions

Nothing in this chapter reassigns any function that is, on October 27, 1992, vested by law

[1] See References in Text note below.

or executive order in the Commission, or the Department of State, or any officer thereof.

(d) Reorganization

(1) Authority to reorganize

Subject to paragraph (2), the Secretary may reassign to another unit of the Department of Commerce a function (or portion thereof) required to be assigned to the NTIA by section 902(b) of this title.

(2) Limitation on authority

The Secretary may not make any reassignment of a function (or portion thereof) required to be assigned to the NTIA by section 902(b) of this title unless the Secretary submits to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a statement describing the proposed reassignment and containing an explanation of the reasons for the reassignment. No reassignment of any such function (or portion thereof) shall be effective until 90 legislative days after the Secretary submits that statement to such Committees. For purposes of this paragraph, the term ''legislative days'' includes only days on which both Houses of Congress are in session.

(e) Limitation on solicitations

Notwithstanding section 1522 of title 15, neither the Secretary, the Assistant Secretary, nor any officer or employee of the NTIA shall solicit any gift or bequest of property, both real and personal, from any entity for the purpose of furthering the authorized functions of the NTIA if such solicitation would create a conflict of interest or an appearance of a conflict of interest.

(Pub. L. 102–538, title I, § 105, Oct. 27, 1992, 106 Stat. 3538.)

REFERENCES IN TEXT

Section 744(a) of this title, referred to in subsec. (a)(2), was repealed by Pub. L. 103–414, title III, § 304(b)(4)(A), Oct. 25, 1994, 108 Stat. 4297.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 905. Omitted

CODIFICATION

Section, Pub. L. 95–567, title IV, § 402, Nov. 2, 1978, 92 Stat. 2424, which required the National Telecommunications and Information Administration to submit an annual report to Congress on activities of the Administration with respect to domestic communications, international communications, Federal Government communications, spectrum plans and policies, and other matters, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, 1st item on page 55 of House Document No. 103–7.

SUBCHAPTER II—TRANSFER OF AUCTIONABLE FREQUENCIES

§ 921. Definitions

As used in this subchapter:

(1) The term ''allocation'' means an entry in the National Table of Frequency Allocations of a given frequency band for the purpose of its use by one or more radiocommunication services.

(2) The term ''assignment'' means an authorization given to a station licensee to use specific frequencies or channels.

(3) The term ''the 1934 Act'' means the Communications Act of 1934 (47 U.S.C. 151 et seq.).

(Pub. L. 102–538, title I, § 111, as added Pub. L. 103–66, title VI, § 6001(a)(3), Aug. 10, 1993, 107 Stat. 379.)

REFERENCES IN TEXT

The Communications Act of 1934, referred to in par. (3), is act June 19, 1934, ch. 652, 48 Stat. 1064, as amended, which is classified principally to chapter 5 (§ 151 et seq.) of this title. For complete classification of this Act to the Code, see section 609 of this title and Tables.

STUDY AND REPORT ON CURRENT AND FUTURE SPECTRUM USE

Pub. L. 106–553, § 1(a)(2) [title II], Dec. 21, 2000, 114 Stat. 2762, 2762A–73, provided in part: ''That the Administrator shall, after consultation with other federal departments and agencies responsible for regulating the core operations of entities engaged in the provision of energy, water and railroad services, complete and submit to Congress, not later than twelve months after date of enactment of this subsection, a study of the current and future use of spectrum by these entities to protect and maintain the nation's critical infrastructure: *Provided further*, That within six months after the release of this study, the Chairman of the Federal Communications Commission shall submit a report to Congress on the actions that could be taken by the Commission to address any needs identified in the Administrator's study.''

REPORT ON PROGRESS ON SPECTRUM SHARING

Pub. L. 106–398, § 1 [[div. A], title XVII, § 1705], Oct. 30, 2000, 114 Stat. 1654, 1654A–366, provided that:

''(a) STUDY REQUIRED.—The Secretary of Defense, in consultation with the Attorney General and the Secretary of Commerce, shall provide for the conduct of an engineering study to identify—

''(1) any portion of the 138–144 megahertz band that the Department of Defense can share in various geographic regions with public safety radio services;

''(2) any measures required to prevent harmful interference between Department of Defense systems and the public safety systems proposed for operation on those frequencies; and

''(3) a reasonable schedule for implementation of such sharing of frequencies.

''(b) SUBMISSION OF INTERIM REPORT.—Within one year after the date of the enactment of this Act [Oct. 30, 2000], the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives an interim report on the progress of the study conducted pursuant to subsection (a).

''(c) REPORT.—Not later than January 1, 2002, the Secretary of Commerce and the Chairman of the Federal Communications Commission shall jointly submit a report to Congress on alternative frequencies available for use by public safety systems.''

SURRENDER OF DEPARTMENT OF DEFENSE SPECTRUM

Pub. L. 106–65, div. A, title X, §1062(b), Oct. 5, 1999, 113 Stat. 768, provided that:

''(1) IN GENERAL.—If, in order to make available for other use a band of frequencies of which it is a primary user, the Department of Defense is required to surrender use of such band of frequencies, the Department shall not surrender use of such band of frequencies until—

''(A) the National Telecommunications and Information Administration, in consultation with the Federal Communications Commission, identifies and makes available to the Department for its primary use, if necessary, an alternative band or bands of frequencies as a replacement for the band to be so surrendered; and

''(B) the Secretary of Commerce, the Secretary of Defense, and the Chairman of the Joint Chiefs of Staff jointly certify to the Committee on Armed Services and the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Armed Services and the Committee on Commerce [now Committee on Energy and Commerce] of the House of Representatives, that such alternative band or bands provides comparable technical characteristics to restore essential military capability that will be lost as a result of the band of frequencies to be so surrendered.

''(2) EXCEPTION.—Paragraph (1) shall not apply to a band of frequencies that has been identified for reallocation in accordance with title VI of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103–66; 107 Stat. 379) [enacting sections 159 and 921 to 927 of this title and amending sections 152, 153, 156, 158, 309, 332, and 903 of this title] and title III of the Balanced Budget Act of 1997 (Public Law 105–33, 111 Stat. 258) [enacting section 337 of this title, amending sections 153, 303, 309, and 923 to 925 of this title, and repealing provisions set out as a note under section 309 of this title], other than a band of frequencies that is reclaimed pursuant to subsection (c) [amending section 923 of this title and enacting provisions set out as a note below].''

[Pub. L. 108–494, title II, §206, Dec. 23, 2004, 118 Stat. 3996, provided that: ''Nothing in this title [see Short Title of 2004 Amendment note set out under section 901 of this title] is intended to modify section 1062(b) of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65) [set out above].'']

REASSIGNMENT TO FEDERAL GOVERNMENT FOR USE BY DEPARTMENT OF DEFENSE OF CERTAIN FREQUENCY SPECTRUM RECOMMENDED FOR REALLOCATION

Pub. L. 106–65, div. A, title X, §1062(c)(1), Oct. 5, 1999, 113 Stat. 768, provided that: ''Notwithstanding any provision of the National Telecommunications and Information Administration Organization Act [47 U.S.C. 901 et seq.] or the Balanced Budget Act of 1997 [Pub. L. 105–33, see Tables for classification], the President shall reclaim for exclusive Federal Government use on a primary basis by the Department of Defense—

''(A) the bands of frequencies aggregating 3 megahertz located between 138 and 144 megahertz that were recommended for reallocation in the second reallocation report under section 113(a) of that Act [probably means 47 U.S.C. 923(a)]; and

''(B) the band of frequency aggregating 5 megahertz located between 1385 megahertz and 1390 megahertz, inclusive, that was so recommended for reallocation.''

ASSESSMENT OF ELECTROMAGNETIC SPECTRUM REALLOCATION

Pub. L. 102–538, title I, §156, as added by Pub. L. 106–65, div. A, title X, §1062(a), Oct. 5, 1999, 113 Stat. 767, provided that:

''(a) REVIEW AND ASSESSMENT OF ELECTROMAGNETIC SPECTRUM REALLOCATION.—

''(1) REVIEW AND ASSESSMENT REQUIRED.—The Secretary of Commerce, acting through the Assistant Secretary and in coordination with the Chairman of the Federal Communications Commission, shall convene an interagency review and assessment of—

''(A) the progress made in implementation of national spectrum planning;

''(B) the reallocation of Federal Government spectrum to non-Federal use, in accordance with the amendments made by title VI of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103–66; 107 Stat. 379) [enacting sections 159 and 921 to 927 of this title and amending sections 152, 153, 156, 158, 309, 332, and 903 of this title] and title III of the Balanced Budget Act of 1997 (Public Law 105–33; 111 Stat. 258) [enacting section 337 of this title, amending sections 153, 303, 309, and 923 to 925 of this title, and repealing provisions set out as a note under section 309 of this title]; and

''(C) the implications for such reallocations to the affected Federal executive agencies.

''(2) COORDINATION.—The assessment shall be conducted in coordination with affected Federal executive agencies through the Interdepartmental Radio Advisory Committee.

''(3) COOPERATION AND ASSISTANCE.—Affected Federal executive agencies shall cooperate with the Assistant Secretary in the conduct of the review and assessment and furnish the Assistant Secretary with such information, support, and assistance, not inconsistent with law, as the Assistant Secretary may consider necessary in the performance of the review and assessment.

''(4) ATTENTION TO PARTICULAR SUBJECTS REQUIRED.—In the conduct of the review and assessment, particular attention shall be given to—

''(A) the effect on critical military and intelligence capabilities, civil space programs, and other Federal Government systems used to protect public safety of the reallocated spectrum described in paragraph (1)(B) of this subsection;

''(B) the anticipated impact on critical military and intelligence capabilities, future military and intelligence operational requirements, national defense modernization programs, and civil space programs, and other Federal Government systems used to protect public safety, of future potential reallocations to non-Federal use of bands of the electromagnetic spectrum that are currently allocated for use by the Federal Government; and

''(C) future spectrum requirements of agencies in the Federal Government.

''(b) SUBMISSION OF REPORT.—The Secretary of Commerce, in coordination with the heads of the affected Federal executive agencies, and the Chairman of the Federal Communications Commission shall submit to the President, the Committee on Armed Services and the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Armed Services, the Committee on Commerce [now Committee on Energy and Commerce], and the Committee on Science of the House of Representatives, not later than October 1, 2000, a report providing the results of the assessment required by subsection (a).''

§922. National spectrum allocation planning

The Assistant Secretary and the Chairman of the Commission shall meet, at least biannually, to conduct joint spectrum planning with respect to the following issues:

(1) the extent to which licenses for spectrum use can be issued pursuant to section 309(j) of this title to increase Federal revenues;

(2) the future spectrum requirements for public and private uses, including State and local government public safety agencies;

(3) the spectrum allocation actions necessary to accommodate those uses; and

(4) actions necessary to promote the efficient use of the spectrum, including spectrum management techniques to promote increased shared use of the spectrum that does not cause harmful interference as a means of increasing commercial access.

(Pub. L. 102–538, title I, § 112, as added Pub. L. 103–66, title VI, § 6001(a)(3), Aug. 10, 1993, 107 Stat. 380.)

§ 923. Identification of reallocable frequencies

(a) Identification required

The Secretary shall, within 18 months after August 10, 1993, and within 6 months after August 5, 1997, prepare and submit to the President and the Congress a report identifying and recommending for reallocation bands of frequencies—

(1) that are allocated on a primary basis for Federal Government use;

(2) that are not required for the present or identifiable future needs of the Federal Government;

(3) that can feasibly be made available, as of the date of submission of the report or at any time during the next 15 years, for use under the 1934 Act [47 U.S.C. 151 et seq.] (other than for Federal Government stations under section 305 of the 1934 Act [47 U.S.C. 305]);

(4) the transfer of which (from Federal Government use) will not result in costs to the Federal Government, or losses of services or benefits to the public, that are excessive in relation to the benefits to the public that may be provided by non-Federal licensees; and

(5) that are most likely to have the greatest potential for productive uses and public benefits under the 1934 Act [47 U.S.C. 151 et seq.] if allocated for non-Federal use.

(b) Minimum amount of spectrum recommended

(1) Initial reallocation report

In accordance with the provisions of this section, the Secretary shall recommend for reallocation in the initial report required by subsection (a) of this section, for use other than by Federal Government stations under section 305 of the 1934 Act (47 U.S.C. 305), bands of frequencies that in the aggregate span not less than 200 megahertz, that are located below 5 gigahertz, and that meet the criteria specified in paragraphs (1) through (5) of subsection (a) of this section. Such bands of frequencies shall include bands of frequencies, located below 3 gigahertz, that span in the aggregate not less than 100 megahertz.

(2) Mixed uses permitted to be counted

Bands of frequencies which a report of the Secretary under subsection (a) or (d)(1) of this section recommends be partially retained for use by Federal Government stations, but which are also recommended to be reallocated to be made available under the 1934 Act [47 U.S.C. 151 et seq.] for use by non-Federal stations, may be counted toward the minimum spectrum required by paragraph (1) or (3) of this subsection, except that—

(A) the bands of frequencies counted under this paragraph may not count toward more than one-half of the minimums required by paragraph (1) or (3) of this subsection;

(B) a band of frequencies may not be counted under this paragraph unless the assignments of the band to Federal Government stations under section 305 of the 1934 Act (47 U.S.C. 305) are limited by geographic area, by time, or by other means so as to guarantee that the potential use to be made by such Federal Government stations is substantially less (as measured by geographic area, time, or otherwise) than the potential use to be made by non-Federal stations; and

(C) the operational sharing permitted under this paragraph shall be subject to the interference regulations prescribed by the Commission pursuant to section 305(a) of the 1934 Act [47 U.S.C. 305(a)] and to coordination procedures that the Commission and the Secretary shall jointly establish and implement to ensure against harmful interference.

(3) Second reallocation report

In accordance with the provisions of this section, the Secretary shall recommend for reallocation in the second report required by subsection (a) of this section, for use other than by Federal Government stations under section 305 of the 1934 Act (47 U.S.C. 305), a band or bands of frequencies that—

(A) in the aggregate span not less than 12 megahertz;

(B) are located below 3 gigahertz; and

(C) meet the criteria specified in paragraphs (1) through (5) of subsection (a) of this section.

(c) Criteria for identification

(1) Needs of the Federal Government

In determining whether a band of frequencies meets the criteria specified in subsection (a)(2) of this section, the Secretary shall—

(A) consider whether the band of frequencies is used to provide a communications service that is or could be available from a commercial provider or other vendor;

(B) seek to promote—

(i) the maximum practicable reliance on commercially available substitutes;

(ii) the sharing of frequencies (as permitted under subsection (b)(2) of this section);

(iii) the development and use of new communications technologies; and

(iv) the use of nonradiating communications systems where practicable; and

(C) seek to avoid—

(i) serious degradation of Federal Government services and operations;

(ii) excessive costs to the Federal Government and users of Federal Government services; and

(iii) excessive disruption of existing use of Federal Government frequencies by amateur radio licensees.

(2) Feasibility of use

In determining whether a frequency band meets the criteria specified in subsection (a)(3) of this section, the Secretary shall—

(A) assume that the frequency will be assigned by the Commission under section 303 of the 1934 Act (47 U.S.C. 303) within 15 years;

(B) assume reasonable rates of scientific progress and growth of demand for telecommunications services;

(C) seek to include frequencies which can be used to stimulate the development of new technologies; and

(D) consider the immediate and recurring costs to reestablish services displaced by the reallocation of spectrum.

(3) Analysis of benefits

In determining whether a band of frequencies meets the criteria specified in subsection (a)(5) of this section, the Secretary shall consider—

(A) the extent to which equipment is or will be available that is capable of utilizing the band;

(B) the proximity of frequencies that are already assigned for commercial or other non-Federal use;

(C) the extent to which, in general, commercial users could share the frequency with amateur radio licensees; and

(D) the activities of foreign governments in making frequencies available for experimentation or commercial assignments in order to support their domestic manufacturers of equipment.

(4) Power agency frequencies

(A) Applicability of criteria

The criteria specified by subsection (a) of this section shall be deemed not to be met for any purpose under this subchapter with regard to any frequency assignment to, or any frequency assignment used by, a Federal power agency for the purpose of withdrawing that assignment.

(B) Mixed use eligibility

The frequencies assigned to any Federal power agency may only be eligible for mixed use under subsection (b)(2) of this section in geographically separate areas, but in those cases where a frequency is to be shared by an affected Federal power agency and a non-Federal user, such use by the non-Federal user shall not cause harmful interference to the affected Federal power agency or adversely affect the reliability of its power system.

(C) "Federal power agency" defined

As used in this paragraph, the term ''Federal power agency'' means the Tennessee Valley Authority, the Bonneville Power Administration, the Western Area Power Administration, the Southwestern Power Administration, the Southeastern Power Administration, or the Alaska Power Administration.

(5) Limitation on reallocation

None of the frequencies recommended for reallocation in the reports required by this subsection shall have been recommended, prior to August 10, 1993, for reallocation to non-Federal use by international agreement.

(d) Procedure for identification of reallocable bands of frequencies

(1) Submission of preliminary identification to Congress

Within 6 months after August 10, 1993, the Secretary shall prepare, make publicly available, and submit to the President, the Congress, and the Commission a report which makes a preliminary identification of reallocable bands of frequencies which meet the criteria established by this section.

(2) Public comment

The Secretary shall provide interested persons with the opportunity to submit, within 90 days after the date of its publication, written comment on the preliminary report required by paragraph (1). The Secretary shall immediately transmit a copy of any such comment to the Commission.

(3) Comment and recommendations from Commission

The Commission shall, within 90 days after the conclusion of the period for comment provided pursuant to paragraph (2), submit to the Secretary the Commission's analysis of such comments and the Commission's recommendations for responses to such comments, together with such other comments and recommendations as the Commission deems appropriate.

(4) Direct discussions

The Secretary shall encourage and provide opportunity for direct discussions among commercial representatives and Federal Government users of the spectrum to aid the Secretary in determining which frequencies to recommend for reallocation. The Secretary shall provide notice to the public and the Commission of any such discussions, including the name or names of any businesses or other persons represented in such discussions. A representative of the Commission (and of the Secretary at the election of the Secretary) shall be permitted to attend any such discussions. The Secretary shall provide the public and the Commission with an opportunity to comment on the results of any such discussions prior to the submission of the initial report required by subsection (a) of this section.

(e) Timetable for reallocation and limitation

(1) Timetable required

The Secretary shall, as part of the reports required by subsections (a) and (d)(1) of this section, include a timetable that recommends effective dates by which the President shall withdraw or limit assignments of the frequencies specified in such reports.

(2) Expedited reallocation

(A) Required reallocation

The Secretary shall, as part of the report required by subsection (d)(1) of this section,

specifically identify and recommend for immediate reallocation bands of frequencies that in the aggregate span not less than 50 megahertz, that meet the criteria described in subsection (a) of this section, and that can be made available for reallocation immediately upon issuance of the report required by subsection (d)(1) of this section. Such bands of frequencies shall include bands of frequencies, located below 3 gigahertz, that in the aggregate span not less than 25 megahertz.

(B) Permitted reallocation

The Secretary may, as part of such report, identify and recommend bands of frequencies for immediate reallocation for a mixed use pursuant to subsection (b)(2) of this section, but such bands of frequencies may not count toward the minimums required by subparagraph (A).

(3) Delayed effective dates

In setting the recommended delayed effective dates, the Secretary shall—

(A) consider the need to reallocate bands of frequencies as early as possible, taking into account the requirements of paragraphs (1) and (2) of section 925(b) of this title;

(B) be based on the useful remaining life of equipment that has been purchased or contracted for to operate on identified frequencies;

(C) consider the need to coordinate frequency use with other nations; and

(D) take into account the relationship between the costs to the Federal Government of changing to different frequencies and the benefits that may be obtained from commercial and other non-Federal uses of the reassigned frequencies.

(f) Additional reallocation report

If the Secretary receives a notice from the Commission pursuant to section 3002(c)(5) of the Balanced Budget Act of 1997, the Secretary shall prepare and submit to the President, the Commission, and the Congress a report recommending for reallocation for use other than by Federal Government stations under section 305 of the 1934 Act (47 U.S.C. 305), bands of frequencies that are suitable for the licensees identified in the Commission's notice. The Commission shall, not later than one year after receipt of such report, prepare, submit to the President and the Congress, and implement, a plan for the immediate allocation and assignment of such frequencies under the 1934 Act [47 U.S.C. 151 et seq.] to incumbent licensees described in the Commission's notice.

(g) Relocation of Federal Government stations

(1) Eligible Federal entities

Any Federal entity that operates a Federal Government station assigned to a band of frequencies specified in paragraph (2) and that incurs relocation costs because of the reallocation of frequencies from Federal use to non-Federal use shall receive payment for such costs from the Spectrum Relocation Fund, in accordance with section 928 of this title. For purposes of this paragraph, Federal power agencies exempted under subsection (c)(4) of this section that choose to relocate from the frequencies identified for reallocation pursuant to subsection (a) of this section, are eligible to receive payment under this paragraph.

(2) Eligible frequencies

The bands of eligible frequencies for purposes of this section are as follows:

(A) the 216–220 megahertz band, the 1432–1435 megahertz band, the 1710–1755 megahertz band, and the 2385–2390 megahertz band of frequencies; and

(B) any other band of frequencies reallocated from Federal use to non-Federal use after January 1, 2003, that is assigned by competitive bidding pursuant to section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)), except for bands of frequencies previously identified by the National Telecommunications and Information Administration in the Spectrum Reallocation Final Report, NTIA Special Publication 95–32 (1995).

(3) Definition of relocation costs

For purposes of this subsection, the term ''relocation costs'' means the costs incurred by a Federal entity to achieve comparable capability of systems, regardless of whether that capability is achieved by relocating to a new frequency assignment or by utilizing an alternative technology. Such costs include—

(A) the costs of any modification or replacement of equipment, software, facilities, operating manuals, training costs, or regulations that are attributable to relocation;

(B) the costs of all engineering, equipment, software, site acquisition and construction costs, as well as any legitimate and prudent transaction expense, including outside consultants, and reasonable additional costs incurred by the Federal entity that are attributable to relocation, including increased recurring costs associated with the replacement facilities;

(C) the costs of engineering studies, economic analyses, or other expenses reasonably incurred in calculating the estimated relocation costs that are provided to the Commission pursuant to paragraph (4) of this subsection;

(D) the one-time costs of any modification of equipment reasonably necessary to accommodate commercial use of such frequencies prior to the termination of the Federal entity's primary allocation or protected status, when the eligible frequencies as defined in paragraph (2) of this subsection are made available for private sector uses by competitive bidding and a Federal entity retains primary allocation or protected status in those frequencies for a period of time after the completion of the competitive bidding process; and

(E) the costs associated with the accelerated replacement of systems and equipment if such acceleration is necessary to ensure the timely relocation of systems to a new frequency assignment.

(4) Notice to Commission of estimated relocation costs

(A) The Commission shall notify the NTIA at least 18 months prior to the commencement of any auction of eligible frequencies defined in paragraph (2). At least 6 months prior to the commencement of any such auction, the NTIA, on behalf of the Federal entities and after review by the Office of Management and Budget, shall notify the Commission of estimated relocation costs and timelines for such relocation.

(B) Upon timely request of a Federal entity, the NTIA shall provide such entity with information regarding an alternative frequency assignment or assignments to which their radiocommunications operations could be relocated for purposes of calculating the estimated relocation costs and timelines to be submitted to the Commission pursuant to subparagraph (A).

(C) To the extent practicable and consistent with national security considerations, the NTIA shall provide the information required by subparagraphs (A) and (B) by the geographic location of the Federal entities' facilities or systems and the frequency bands used by such facilities or systems.

(5) Notice to congressional committees and GAO

The NTIA shall, at the time of providing an initial estimate of relocation costs to the Commission under paragraph (4)(A), submit to[1] Committees on Appropriations and Energy and Commerce of the House of Representatives for approval, to the Committees on Appropriations and Commerce, Science, and Transportation of the Senate for approval, and to the Comptroller General a copy of such estimate and the timelines for relocation. Unless disapproved within 30 days, the estimate shall be approved. If disapproved, the NTIA may resubmit a revised initial estimate.

(6) Implementation of procedures

The NTIA shall take such actions as necessary to ensure the timely relocation of Federal entities' spectrum-related operations from frequencies defined in paragraph (2) to frequencies or facilities of comparable capability. Upon a finding by the NTIA that a Federal entity has achieved comparable capability of systems by relocating to a new frequency assignment or by utilizing an alternative technology, the NTIA shall terminate the entity's authorization and notify the Commission that the entity's relocation has been completed. The NTIA shall also terminate such entity's authorization if the NTIA determines that the entity has unreasonably failed to comply with the timeline for relocation submitted by the Director of the Office of Management and Budget under section 928(d)(2)(B) of this title.

(h) Federal action to expedite spectrum transfer

Any Federal Government station which operates on electromagnetic spectrum that has been identified in any reallocation report under this section shall, to the maximum extent practicable through the use of the authority granted under subsection (g) of this section and any other applicable provision of law, take action to relocate its spectrum use to other frequencies that are reserved for Federal use or to consolidate its spectrum use with other Federal Government stations in a manner that maximizes the spectrum available for non-Federal use.

(i) "Federal entity" defined

For purposes of this section, the term ''Federal entity'' means any department, agency, or other instrumentality of the Federal Government that utilizes a Government station license obtained under section 305 of the 1934 Act (47 U.S.C. 305).

(Pub. L. 102–538, title I, §113, as added Pub. L. 103–66, title VI, §6001(a)(3), Aug. 10, 1993, 107 Stat. 380; amended Pub. L. 105–33, title III, §3002(d)(1), (e)(1)–(3), Aug. 5, 1997, 111 Stat. 262, 264, 265; Pub. L. 105–261, div. A, title X, §1064(c), Oct. 17, 1998, 112 Stat. 2132; Pub. L. 106–65, div. A, title X, §1062(c)(2), Oct. 5, 1999, 113 Stat. 768; Pub. L. 108–494, title II, §202, Dec. 23, 2004, 118 Stat. 3991.)

REFERENCES IN TEXT

For definition of the 1934 Act, referred to in subsecs. (a)(3), (5), (b)(2), and (f), see section 921(3) of this title.

Section 3002(c)(5) of the Balanced Budget Act of 1997, referred to in subsec. (f), is section 3002(c)(5) of Pub. L. 105–33, which is set out as a note under section 925 of this title.

AMENDMENTS

2004—Subsec. (g). Pub. L. 108–494 added pars. (1) to (6) and struck out former pars. (1) to (3) which related to relocation of Federal Government stations in general, process for relocation, and right to reclaim.

1999—Subsec. (b)(3)(A). Pub. L. 106–65 substituted ''12 megahertz'' for ''20 megahertz''.

1998—Subsec. (g)(1). Pub. L. 105–261 designated existing provisions as subpar. (A), inserted subpar. heading, substituted ''Any such Federal entity which proposes to so relocate shall notify the NTIA, which in turn shall notify the Commission, before the auction concerned of the marginal costs anticipated to be associated with such relocation or with modifications necessary to accommodate prospective licensees. The Commission in turn shall notify potential bidders of the estimated relocation or modification costs based on the geographic area covered by the proposed licenses before the auction.'' for ''Such payments may be in advance of relocation and may be in cash or in kind. Any such payment in cash shall be deposited in the account of such Federal entity in the Treasury of the United States or in a separate account authorized by law. Funds deposited according to this paragraph shall be available, without appropriation or fiscal year limitation, only for such expenses of the Federal entity for which such funds were deposited under this paragraph.'', and added subpars. (B) to (F).

1997—Subsec. (a). Pub. L. 105–33, §3002(e)(1), inserted ''and within 6 months after August 5, 1997'' after ''August 10, 1993,'' in introductory provisions.

Subsec. (b)(1). Pub. L. 105–33, §3002(e)(2)(A), (B), substituted ''Initial reallocation report'' for ''In general'' in heading and inserted ''in the initial report required by subsection (a) of this section'' after ''recommend for reallocation'' in text.

Subsec. (b)(2). Pub. L. 105–33, §3002(e)(2)(C), inserted ''or (3)'' after ''paragraph (1)'' in two places.

Subsec. (b)(3). Pub. L. 105–33, §3002(e)(2)(D), added par. (3).

Subsec. (d)(4). Pub. L. 105–33, §3002(e)(3), substituted ''initial report'' for ''final report''.

Subsecs. (f) to (i). Pub. L. 105–33, §3002(d)(1), added subsecs. (f) to (i).

[1] So in original. Probably should be followed by ''the''.

SPECTRUM MANAGEMENT AUTHORITY RETAINED

Pub. L. 108–494, title II, § 208(a), Dec. 23, 2004, 118 Stat. 3996, provided that: ''Except as provided with respect to the bands of frequencies identified in section 113(g)(2)(A) of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 923(g)(2)(A)) as amended by this title, nothing in this title [see Short Title of 2004 Amendment note set out under section 901 of this title] or the amendments made by this title shall be construed as limiting the Federal Communications Commission's authority to allocate bands of frequencies that are reallocated from Federal use to non-Federal use for unlicensed, public safety, shared, or non-commercial use.''

REPORTS ON COSTS OF RELOCATIONS

Pub. L. 105–261, div. A, title X, § 1064(d), Oct. 17, 1998, 112 Stat. 2133, provided that: ''The head of each department or agency of the Federal Government shall include in the annual budget submission of such department or agency to the Director of the Office of Management and Budget a report assessing the costs to be incurred by such department or agency as a result of any frequency relocations of such department or agency that are anticipated under section 113 of the National Telecommunications [and] Information Administration Organization Act (47 U.S.C. 923) as of the date of such report.''

§ 924. Withdrawal or limitation of assignment to Federal Government stations

(a) In general

The President shall—

(1) within 6 months after receipt of a report by the Secretary under subsection (a), (d)(1), or (f) of section 923 of this title, withdraw the assignment to a Federal Government station of any frequency which the report recommends for immediate reallocation;

(2) within any such 6-month period, limit the assignment to a Federal Government station of any frequency which the report recommends be made immediately available for mixed use under section 923(b)(2) of this title;

(3) by the delayed effective date recommended by the Secretary under section 923(e) of this title (except as provided in subsection (b)(4) of this section), withdraw or limit the assignment to a Federal Government station of any frequency which the report recommends be reallocated or made available for mixed use on such delayed effective date;

(4) assign or reassign other frequencies to Federal Government stations as necessary to adjust to such withdrawal or limitation of assignments; and

(5) transmit a notice and description to the Commission and each House of Congress of the actions taken under this subsection.

(b) Exceptions

(1) Authority to substitute

If the President determines that a circumstance described in paragraph (2) exists, the President—

(A) may substitute an alternative frequency or frequencies for the frequency that is subject to such determination and withdraw (or limit) the assignment of that alternative frequency in the manner required by subsection (a) of this section; and

(B) shall submit a statement of the reasons for taking the action described in subparagraph (A) to the Commission, Committee on Energy and Commerce of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate.

(2) Grounds for substitution

For purposes of paragraph (1), the following circumstances are described in this paragraph:

(A) the reassignment would seriously jeopardize the national defense interests of the United States;

(B) the frequency proposed for reassignment is uniquely suited to meeting important governmental needs;

(C) the reassignment would seriously jeopardize public health or safety;

(D) the reassignment will result in costs to the Federal Government that are excessive in relation to the benefits that may be obtained from commercial or other non-Federal uses of the reassigned frequency; or

(E) the reassignment will disrupt the existing use of a Federal Government band of frequencies by amateur radio licensees.

(3) Criteria for substituted frequencies

For purposes of paragraph (1), a frequency may not be substituted for a frequency identified and recommended by the report of the Secretary under section 923(a) of this title unless the substituted frequency also meets each of the criteria specified by section 923(a) of this title.

(4) Delays in implementation

If the President determines that any action cannot be completed by the delayed effective date recommended by the Secretary pursuant to section 923(e) of this title, or that such an action by such date would result in a frequency being unused as a consequence of the Commission's plan under section 925 of this title, the President may—

(A) withdraw or limit the assignment to Federal Government stations on a later date that is consistent with such plan, except that the President shall notify each committee specified in paragraph (1)(B) and the Commission of the reason that withdrawal or limitation at a later date is required; or

(B) substitute alternative frequencies pursuant to the provisions of this subsection.

(Pub. L. 102–538, title I, § 114, as added Pub. L. 103–66, title VI, § 6001(a)(3), Aug. 10, 1993, 107 Stat. 384; amended Pub. L. 105–33, title III, § 3002(d)(2), Aug. 5, 1997, 111 Stat. 264.)

AMENDMENTS

1997—Subsec. (a)(1). Pub. L. 105–33, § 3002(d)(2)(A), substituted ''subsection (a), (d)(1), or (f)'' for ''subsection (a) or (d)(1)''.

Subsec. (a)(2). Pub. L. 105–33, § 3002(d)(2)(B), substituted ''any such 6-month period'' for ''either such 6-month period''.

§ 925. Distribution of frequencies by Commission

(a) Allocation and assignment of immediately available frequencies

With respect to the frequencies made available for immediate reallocation pursuant to section 923(e)(2) of this title, the Commission, not later

than 18 months after August 10, 1993, shall issue regulations to allocate such frequencies and shall propose regulations to assign such frequencies.

(b) Allocation and assignment of remaining available frequencies

With respect to the frequencies made available for reallocation pursuant to section 923(e)(3) of this title, the Commission shall, not later than 1 year after receipt of the initial reallocation report required by section 923(a) of this title, prepare, submit to the President and the Congress, and implement, a plan for the allocation and assignment under the 1934 Act [47 U.S.C. 151 et seq.] of such frequencies. Such plan shall—

(1) not propose the immediate allocation and assignment of all such frequencies but, taking into account the timetable recommended by the Secretary pursuant to section 923(e) of this title, shall propose—

(A) gradually to allocate and assign the frequencies remaining, after making the reservation required by subparagraph (B), over the course of 10 years beginning on the date of submission of such plan; and

(B) to reserve a significant portion of such frequencies for allocation and assignment beginning after the end of such 10-year period;

(2) contain appropriate provisions to ensure—

(A) the availability of frequencies for new technologies and services in accordance with the policies of section 7 of the 1934 Act (47 U.S.C. 157);

(B) the availability of frequencies to stimulate the development of such technologies; and

(C) the safety of life and property in accordance with the policies of section 1 of the 1934 Act (47 U.S.C. 151);

(3) address (A) the feasibility of reallocating portions of the spectrum from current commercial and other non-Federal uses to provide for more efficient use of the spectrum, and (B) innovation and marketplace developments that may affect the relative efficiencies of different spectrum allocations;

(4) not prevent the Commission from allocating frequencies, and assigning licenses to use frequencies, not included in the plan; and

(5) not preclude the Commission from making changes to the plan in future proceedings.

(c) Allocation and assignment of frequencies identified in second reallocation report

(1) Plan and implementation

With respect to the frequencies made available for reallocation pursuant to section 923(b)(3) of this title, the Commission shall, not later than one year after receipt of the second reallocation report required by section 923(a) of this title, prepare, submit to the President and the Congress, and implement, a plan for the immediate allocation and assignment under the 1934 Act [47 U.S.C. §151 et seq.] of all such frequencies in accordance with section 309(j) of such Act [47 U.S.C. 309(j)].

(2) Contents

The plan prepared by the Commission under paragraph (1) shall consist of a schedule of allocation and assignment of those frequencies in accordance with section 309(j) of the 1934 Act in time for the assignment of those licenses or permits by September 30, 2002.

(Pub. L. 102–538, title I, §115, as added Pub. L. 103–66, title VI, §6001(a)(3), Aug. 10, 1993, 107 Stat. 385; amended Pub. L. 105–33, title III, §3002(e)(4), Aug. 5, 1997, 111 Stat. 265.)

REFERENCES IN TEXT

For definition of the 1934 Act, referred to in subsecs. (b) and (c)(1), see section 921(3) of this title.

AMENDMENTS

1997—Subsec. (b). Pub. L. 105–33, §3002(e)(4)(A), substituted ''the initial reallocation report required'' for ''the report required'' in introductory provisions.

Subsec. (c). Pub. L. 105–33, §3002(e)(4)(B), added subsec. (c).

ACCELERATED AVAILABILITY FOR AUCTION OF 1,710–1,755 MEGAHERTZ FROM INITIAL REALLOCATION REPORT

Section 3002(b) of Pub. L. 105–33 provided that: ''The band of frequencies located at 1,710–1,755 megahertz identified in the initial reallocation report under section 113(a) of the National Telecommunications and Information Administration Act (47 U.S.C. 923(a)) shall, notwithstanding the timetable recommended under section 113(e) of such Act and section 115(b)(1) of such Act [47 U.S.C. 925(b)(1)], be available in accordance with this subsection for assignment for commercial use. The Commission shall assign licenses for such use by competitive bidding commenced after January 1, 2001, pursuant to section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)).''

COMMISSION OBLIGATION TO MAKE ADDITIONAL SPECTRUM AVAILABLE BY AUCTION

Section 3002(c) of Pub. L. 105–33 provided that:

''(1) IN GENERAL.—The Commission shall complete all actions necessary to permit the assignment by September 30, 2002, by competitive bidding pursuant to section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)), of licenses for the use of bands of frequencies that—

''(A) in the aggregate span not less than 55 megahertz;

''(B) are located below 3 gigahertz;

''(C) have not, as of the date of enactment of this Act [Aug. 5, 1997]—

''(i) been designated by Commission regulation for assignment pursuant to such section;

''(ii) been identified by the Secretary of Commerce pursuant to section 113 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 923);

''(iii) been allocated for Federal Government use pursuant to section 305 of the Communications Act of 1934 (47 U.S.C. 305);

''(iv) been designated for reallocation under section 337 of the Communications Act of 1934 [47 U.S.C. 337] (as added by this Act); or

''(v) been allocated or authorized for unlicensed use pursuant to part 15 of the Commission's regulations (47 C.F.R. Part 15), if the operation of services licensed pursuant to competitive bidding would interfere with operation of end-user products permitted under such regulations;

''(D) include frequencies at 2,110–2,150 megahertz; and

''(E) include 15 megahertz from within the bands of frequencies at 1,990–2,110 megahertz.

''(2) CRITERIA FOR REASSIGNMENT.—In making available bands of frequencies for competitive bidding pursuant to paragraph (1), the Commission shall—

''(A) seek to promote the most efficient use of the electromagnetic spectrum;

''(B) consider the cost of relocating existing uses to other bands of frequencies or other means of communication;

''(C) consider the needs of existing public safety radio services (as such services are described in section 309(j)(2)(A) of the Communications Act of 1934, as amended by this Act);

''(D) comply with the requirements of international agreements concerning spectrum allocations; and

''(E) coordinate with the Secretary of Commerce when there is any impact on Federal Government spectrum use.

''(3) USE OF BANDS AT 2,110–2,150 MEGAHERTZ.—The Commission shall reallocate spectrum located at 2,110–2,150 megahertz for assignment by competitive bidding unless the Commission determines that auction of other spectrum (A) better serves the public interest, convenience, and necessity, and (B) can reasonably be expected to produce greater receipts. If the Commission makes such a determination, then the Commission shall, within 2 years after the date of enactment of this Act [Aug. 5, 1997], identify an alternative 40 megahertz, and report to the Congress an identification of such alternative 40 megahertz for assignment by competitive bidding.

''(4) USE OF 15 MEGAHERTZ FROM BANDS AT 1,990–2,110 MEGAHERTZ.—The Commission shall reallocate 15 megahertz from spectrum located at 1,990–2,110 megahertz for assignment by competitive bidding unless the President determines such spectrum cannot be reallocated due to the need to protect incumbent Federal systems from interference, and that allocation of other spectrum (A) better serves the public interest, convenience, and necessity, and (B) can reasonably be expected to produce comparable receipts. If the President makes such a determination, then the President shall, within 2 years after the date of enactment of this Act, identify alternative bands of frequencies totalling 15 megahertz, and report to the Congress an identification of such alternative bands for assignment by competitive bidding.

''(5) NOTIFICATION TO THE SECRETARY OF COMMERCE.—The Commission shall attempt to accommodate incumbent licensees displaced under this section by relocating them to other frequencies available for allocation by the Commission. The Commission shall notify the Secretary of Commerce whenever the Commission is not able to provide for the effective relocation of an incumbent licensee to a band of frequencies available to the Commission for assignment. The notification shall include—

''(A) specific information on the incumbent licensee;

''(B) the bands the Commission considered for relocation of the licensee;

''(C) the reasons the licensee cannot be accommodated in such bands; and

''(D) the bands of frequencies identified by the Commission that are—

''(i) suitable for the relocation of such licensee; and

''(ii) allocated for Federal Government use, but that could be reallocated pursuant to part B of the National Telecommunications and Information Administration Organization Act (as amended by this Act) [part B (§§ 131–135) of title I of Pub. L. 102–538, see Tables for classification].''

§ 926. Authority to recover reassigned frequencies

(a) Authority of President

Subsequent to the withdrawal of assignment to Federal Government stations pursuant to section 924 of this title, the President may reclaim reassigned frequencies for reassignment to Federal Government stations in accordance with this section.

(b) Procedure for reclaiming frequencies

(1) Unallocated frequencies

If the frequencies to be reclaimed have not been allocated or assigned by the Commission pursuant to the 1934 Act [47 U.S.C. 151 et seq.], the President shall follow the procedures for substitution of frequencies established by section 924(b) of this title.

(2) Allocated frequencies

If the frequencies to be reclaimed have been allocated or assigned by the Commission, the President shall follow the procedures for substitution of frequencies established by section 924(b) of this title, except that the statement required by section 924(b)(1)(B) of this title shall include—

(A) a timetable to accommodate an orderly transition for licensees to obtain new frequencies and equipment necessary for its utilization; and

(B) an estimate of the cost of displacing spectrum users licensed by the Commission.

(c) Costs of reclaiming frequencies

The Federal Government shall bear all costs of reclaiming frequencies pursuant to this section, including the cost of equipment which is rendered unusable, the cost of relocating operations to a different frequency, and any other costs that are directly attributable to the reclaiming of the frequency pursuant to this section, and there are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

(d) Effective date of reclaimed frequencies

The Commission shall not withdraw licenses for any reclaimed frequencies until the end of the fiscal year following the fiscal year in which a statement under section 924(b)(1)(B) of this title pertaining to such frequencies is received by the Commission.

(e) Effect on other law

Nothing in this section shall be construed to limit or otherwise affect the authority of the President under section 706 of the 1934 Act (47 U.S.C. 606).

(Pub. L. 102–538, title I, § 116, as added Pub. L. 103–66, title VI, § 6001(a)(3), Aug. 10, 1993, 107 Stat. 386.)

REFERENCES IN TEXT

For definition of the 1934 Act, referred to in subsec. (b)(1), see section 921(3) of this title.

§ 927. Existing allocation and transfer authority retained

(a) Additional reallocation

Nothing in this subchapter prevents or limits additional reallocation of spectrum from the Federal Government to other users.

(b) Implementation of new technologies and services

Notwithstanding any other provision of this subchapter—

(1) the Secretary may, consistent with section 903(e) of this title, at any time allow frequencies allocated on a primary basis for Fed-

eral Government use to be used by non-Federal licensees on a mixed-use basis for the purpose of facilitating the prompt implementation of new technologies or services and for other purposes; and

(2) the Commission shall make any allocation and licensing decisions with respect to such frequencies in a timely manner and in no event later than the date required by section 157 of this title.

(Pub. L. 102–538, title I, § 117, as added Pub. L. 103–66, title VI, § 6001(a)(3), Aug. 10, 1993, 107 Stat. 386.)

§ 928. Spectrum Relocation Fund

(a) Establishment of Spectrum Relocation Fund

There is established on the books of the Treasury a separate fund to be known as the ''Spectrum Relocation Fund'' (in this section referred to as the ''Fund''), which shall be administered by the Office of Management and Budget (in this section referred to as ''OMB''), in consultation with the NTIA.

(b) Crediting of receipts

The Fund shall be credited with the amounts specified in section 309(j)(8)(D) of this title.

(c) Used to pay relocation costs

The amounts in the Fund from auctions of eligible frequencies are authorized to be used to pay relocation costs, as defined in section 923(g)(3) of this title, of an eligible Federal entity incurring such costs with respect to relocation from those frequencies.

(d) Fund availability

(1) Appropriation

There are hereby appropriated from the Fund such sums as are required to pay the relocation costs specified in subsection (c) of this section.

(2) Transfer conditions

None of the funds provided under this subsection may be transferred to any eligible Federal entity—

(A) unless the Director of OMB has determined, in consultation with the NTIA, the appropriateness of such costs and the timeline for relocation; and

(B) until 30 days after the Director of OMB has submitted to the Committees on Appropriations and Energy and Commerce of the House of Representatives for approval, to the Committees on Appropriations and Commerce, Science, and Transportation of the Senate for approval, and to the Comptroller General a detailed plan describing specifically how the sums transferred from the Fund will be used to pay relocation costs in accordance with such subsection and the timeline for such relocation.

Unless disapproved within 30 days, the amounts in the Fund shall be available immediately. If the plan is disapproved, the Director may resubmit a revised plan.

(3) Reversion of unused funds

Any auction proceeds in the Fund that are remaining after the payment of the relocation costs that are payable from the Fund shall revert to and be deposited in the general fund of the Treasury not later than 8 years after the date of the deposit of such proceeds to the Fund.

(e) Transfer to eligible Federal entities

(1) Transfer

(A) Amounts made available pursuant to subsection (d) of this section shall be transferred to eligible Federal entities, as defined in section 923(g)(1) of this title.

(B) An eligible Federal entity may receive more than one such transfer, but if the sum of the subsequent transfer or transfers exceeds 10 percent of the original transfer—

(i) such subsequent transfers are subject to prior approval by the Director of OMB as required by subsection (d)(2)(A) of this section;

(ii) the notice to the committees containing the plan required by subsection (d)(2)(B) of this section shall be not less than 45 days prior to the date of the transfer that causes such excess above 10 percent;

(iii) such notice shall include, in addition to such plan, an explanation of need for such subsequent transfer or transfers; and

(iv) the Comptroller General shall, within 30 days after receiving such plan, review such plan and submit to such committees an assessment of the explanation for the subsequent transfer or transfers.

(C) Such transferred amounts shall be credited to the appropriations account of the eligible Federal entity which has incurred, or will incur, such costs, and shall, subject to paragraph (2), remain available until expended.

(2) Retransfer to fund

An eligible Federal entity that has received such amounts shall report its expenditures to OMB and shall transfer any amounts in excess of actual relocation costs back to the Fund immediately after the NTIA has notified the Commission that the entity's relocation is complete, or has determined that such entity has unreasonably failed to complete such relocation in accordance with the timeline required by subsection (d)(2)(A) of this section.

(Pub. L. 102–538, title I, § 118, as added Pub. L. 108–494, title II, § 204, Dec. 23, 2004, 118 Stat. 3994.)

ANNUAL REPORT

Pub. L. 108–494, title II, § 207, Dec. 23, 2004, 118 Stat. 3996, provided that: ''The National Telecommunications and Information Administration shall submit an annual report to the Committees on Appropriations and Energy and Commerce of the House of Representatives, the Committees on Appropriations and Commerce, Science, and Transportation of the Senate, and the Comptroller General on—

''(1) the progress made in adhering to the timelines applicable to relocation from eligible frequencies required under section 118(d)(2)(A) of the National Telecommunications and Information Administration Organization Act [47 U.S.C. 928(d)(2)(A)], separately stated on a communication system-by-system basis and on an auction-by-auction basis; and

''(2) with respect to each relocated communication system and auction, a statement of the estimate of relocation costs required under section 113(g)(4) of such Act [47 U.S.C. 923(g)(4)], the actual relocations costs incurred, and the amount of such costs paid from the Spectrum Relocation Fund.''

SUBCHAPTER III—MISCELLANEOUS

§ 941. Child-friendly second-level Internet domain

(a) Responsibilities

The NTIA shall require the registry selected to operate and maintain the United States country code Internet domain to establish, operate, and maintain a second-level domain within the United States country code domain that provides access only to material that is suitable for minors and not harmful to minors (in this section referred to as the ''new domain'').

(b) Conditions of contracts

(1) Initial registry

The NTIA shall not exercise any option periods under any contract between the NTIA and the initial registry to operate and maintain the United States country code Internet domain unless the initial registry agrees, during the 90-day period beginning upon December 4, 2002, to carry out, and to operate the new domain in accordance with, the requirements under subsection (c) of this section. Nothing in this subsection shall be construed to prevent the initial registry of the United States country code Internet domain from participating in the NTIA's process for selecting a successor registry or to prevent the NTIA from awarding, to the initial registry, the contract to be successor registry subject to the requirements of paragraph (2).

(2) Successor registries

The NTIA shall not enter into any contract for operating and maintaining the United States country code Internet domain with any successor registry unless such registry enters into an agreement with the NTIA, during the 90-day period after selection of such registry, that provides for the registry to carry out, and the new domain to operate in accordance with, the requirements under subsection (c) of this section.

(c) Requirements of new domain

The registry and new domain shall be subject to the following requirements:

(1) Written content standards for the new domain, except that the NTIA shall not have any authority to establish such standards.

(2) Written agreements with each registrar for the new domain that require that use of the new domain is in accordance with the standards and requirements of the registry.

(3) Written agreements with registrars, which shall require registrars to enter into written agreements with registrants, to use the new domain in accordance with the standards and requirements of the registry.

(4) Rules and procedures for enforcement and oversight that minimize the possibility that the new domain provides access to content that is not in accordance with the standards and requirements of the registry.

(5) A process for removing from the new domain any content that is not in accordance with the standards and requirements of the registry.

(6) A process to provide registrants to the new domain with an opportunity for a prompt, expeditious, and impartial dispute resolution process regarding any material of the registrant excluded from the new domain.

(7) Continuous and uninterrupted service for the new domain during any transition to a new registry selected to operate and maintain new domain or the United States country code domain.

(8) Procedures and mechanisms to promote the accuracy of contact information submitted by registrants and retained by registrars in the new domain.

(9) Operationality of the new domain not later than one year after December 4, 2002.

(10) Written agreements with registrars, which shall require registrars to enter into written agreements with registrants, to prohibit two-way and multiuser interactive services in the new domain, unless the registrant certifies to the registrar that such service will be offered in compliance with the content standards established pursuant to paragraph (1) and is designed to reduce the risk of exploitation of minors using such two-way and multiuser interactive services.

(11) Written agreements with registrars, which shall require registrars to enter into written agreements with registrants, to prohibit hyperlinks in the new domain that take new domain users outside of the new domain.

(12) Any other action that the NTIA considers necessary to establish, operate, or maintain the new domain in accordance with the purposes of this section.

(d) Option periods for initial registry

The NTIA shall grant the initial registry the option periods available under the contract between the NTIA and the initial registry to operate and maintain the United States country code Internet domain if, and may not grant such option periods unless, the NTIA finds that the initial registry has satisfactorily performed its obligations under this Act and under the contract. Nothing in this section shall preempt or alter the NTIA's authority to terminate such contract for the operation of the United States country code Internet domain for cause or for convenience.

(e) Treatment of registry and other entities

(1) In general

Only to the extent that such entities carry out functions under this section, the following entities are deemed to be interactive computer services for purposes of section 230(c) of the Communications Act of 1934 (47 U.S.C. 230(c)):

(A) The registry that operates and maintains the new domain.

(B) Any entity that contracts with such registry to carry out functions to ensure that content accessed through the new domain complies with the limitations applicable to the new domain.

(C) Any registrar for the registry of the new domain that is operating in compliance with its agreement with the registry.

(2) Savings provision

Nothing in paragraph (1) shall be construed to affect the applicability of any other provision of title II of the Communications Act of

1934 [47 U.S.C. 201 et seq.] to the entities covered by subparagraph (A), (B), or (C) of paragraph (1).

(f) Education

The NTIA shall carry out a program to publicize the availability of the new domain and to educate the parents of minors regarding the process for utilizing the new domain in combination and coordination with hardware and software technologies that provide for filtering or blocking. The program under this subsection shall be commenced not later than 30 days after the date that the new domain first becomes operational and accessible by the public.

(g) Coordination with Federal Government

The registry selected to operate and maintain the new domain shall—

(1) consult with appropriate agencies of the Federal Government regarding procedures and actions to prevent minors and families who use the new domain from being targeted by adults and other children for predatory behavior, exploitation, or illegal actions; and

(2) based upon the consultations conducted pursuant to paragraph (1), establish such procedures and take such actions as the registry may deem necessary to prevent such targeting.

The consultations, procedures, and actions required under this subsection shall be commenced not later than 30 days after the date that the new domain first becomes operational and accessible by the public.

(h) Compliance report

The registry shall prepare, on an annual basis, a report on the registry's monitoring and enforcement procedures for the new domain. The registry shall submit each such report, setting forth the results of the review of its monitoring and enforcement procedures for the new domain, to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(i) Suspension of new domain

If the NTIA finds, pursuant to its own review or upon a good faith petition by the registry, that the new domain is not serving its intended purpose, the NTIA shall instruct the registry to suspend operation of the new domain until such time as the NTIA determines that the new domain can be operated as intended.

(j) Definitions

For purposes of this section, the following definitions shall apply:

(1) Harmful to minors

The term ''harmful to minors'' means, with respect to material, that—

(A) the average person, applying contemporary community standards, would find, taking the material as a whole and with respect to minors, that it is designed to appeal to, or is designed to pander to, the prurient interest;

(B) the material depicts, describes, or represents, in a manner patently offensive with respect to minors, an actual or simulated sexual act or sexual contact, an actual or simulated normal or perverted sexual act, or a lewd exhibition of the genitals or post-pubescent female breast; and

(C) taken as a whole, the material lacks serious, literary, artistic, political, or scientific value for minors.

(2) Minor

The term ''minor'' means any person under 13 years of age.

(3) Registry

The term ''registry'' means the registry selected to operate and maintain the United States country code Internet domain.

(4) Successor registry

The term ''successor registry'' means any entity that enters into a contract with the NTIA to operate and maintain the United States country code Internet domain that covers any period after the termination or expiration of the contract to operate and maintain the United States country code Internet domain, and any option periods under such contract, that was signed on October 26, 2001.

(5) Suitable for minors

The term ''suitable for minors'' means, with respect to material, that it—

(A) is not psychologically or intellectually inappropriate for minors; and

(B) serves—

(i) the educational, informational, intellectual, or cognitive needs of minors; or

(ii) the social, emotional, or entertainment needs of minors.

(Pub. L. 102–538, title I, §157, as added Pub. L. 107–317, §4, Dec. 4, 2002, 116 Stat. 2767.)

REFERENCES IN TEXT

This Act, referred to in subsec. (d), is Pub. L. 102–538, Oct. 27, 1992, 106 Stat. 3533, as amended, known as the Telecommunications Authorization Act of 1992. Title I of the Act, known as the National Telecommunications and Information Administration Organization Act, is classified principally to this chapter. For complete classification of this Act to the Code, see Tables.

The Communications Act of 1934, referred to in subsec. (e)(2), is act June 19, 1934, ch. 652, 48 Stat. 1064, as amended. Title II of the Act is classified generally to subchapter II (§201 et seq.) of chapter 5 of this title. For complete classification of this Act to the Code, see section 609 of this title and Tables.

FINDINGS AND PURPOSES

Pub. L. 107–317, §2, Dec. 4, 2002, 116 Stat. 2766, provided that:

''(a) FINDINGS.—The Congress finds that—

''(1) the World Wide Web presents a stimulating and entertaining opportunity for children to learn, grow, and develop educationally and intellectually;

''(2) Internet technology also makes available an extensive amount of information that is harmful to children, as studies indicate that a significant portion of all material available on the Internet is related to pornography;

''(3) young children, when trying to use the World Wide Web for positive purposes, are often presented—either mistakenly or intentionally—with material that is inappropriate for their age, which can be extremely frustrating for children, parents, and educators;

''(4) exposure of children to material that is inappropriate for them, including pornography, can dis-

tort the education and development of the Nation's youth and represents a serious harm to American families that can lead to a host of other problems for children, including inappropriate use of chat rooms, physical molestation, harassment, and legal and financial difficulties;

''(5) young boys and girls, older teens, troubled youth, frequent Internet users, chat room participants, online risk takers, and those who communicate online with strangers are at greater risk for receiving unwanted sexual solicitation on the Internet;

''(6) studies have shown that 19 percent of youth (ages 10 to 17) who used the Internet regularly were the targets of unwanted sexual solicitation, but less than 10 percent of the solicitations were reported to the police;

''(7) children who come across illegal content should report it to the congressionally authorized CyberTipline, an online mechanism developed by the National Center for Missing and Exploited Children, for citizens to report sexual crimes against children;

''(8) the CyberTipline has received more than 64,400 reports, including reports of child pornography, online enticement for sexual acts, child molestation (outside the family), and child prostitution;

''(9) although the computer software and hardware industries, and other related industries, have developed innovative ways to help parents and educators restrict material that is harmful to minors through parental control protections and self-regulation, to date such efforts have not provided a national solution to the problem of minors accessing harmful material on the World Wide Web;

''(10) the creation of a 'green-light' area within the United States country code Internet domain, that will contain only content that is appropriate for children under the age of 13, is analogous to the creation of a children's section within a library and will promote the positive experiences of children and families in the United States; and

''(11) while custody, care, and nurture of the child reside first with the parent, the protection of the physical and psychological well-being of minors by shielding them from material that is harmful to them is a compelling governmental interest.

''(b) PURPOSES.—The purposes of this Act [see Short Title of 2002 Amendment note set out under section 901 of this title] are—

''(1) to facilitate the creation of a second-level domain within the United States country code Internet domain for the location of material that is suitable for minors and not harmful to minors; and

''(2) to ensure that the National Telecommunications and Information Administration oversees the creation of such a second-level domain and ensures the effective and efficient establishment and operation of the new domain.''

§ 942. Coordination of E–911 implementation

(a) E–911 Implementation Coordination Office

(1) Establishment

The Assistant Secretary and the Administrator of the National Highway Traffic Safety Administration shall—

(A) establish a joint program to facilitate coordination and communication between Federal, State, and local emergency communications systems, emergency personnel, public safety organizations, telecommunications carriers, and telecommunications equipment manufacturers and vendors involved in the implementation of E–911 services; and

(B) create an E–911 Implementation Coordination Office to implement the provisions of this section.

(2) Management plan

The Assistant Secretary and the Administrator shall jointly develop a management plan for the program established under this section. Such plan shall include the organizational structure and funding profiles for the 5-year duration of the program. The Assistant Secretary and the Administrator shall, within 90 days after December 23, 2004, submit the management plan to the Committees on Energy and Commerce and Appropriations of the House of Representatives and the Committees on Commerce, Science, and Transportation and Appropriations of the Senate.

(3) Purpose of Office

The Office shall—

(A) take actions, in concert with coordinators designated in accordance with subsection (b)(3)(A)(ii) of this section, to improve such coordination and communication;

(B) develop, collect, and disseminate information concerning practices, procedures, and technology used in the implementation of E–911 services;

(C) advise and assist eligible entities in the preparation of implementation plans required under subsection (b)(3)(A)(iii) of this section;

(D) receive, review, and recommend the approval or disapproval of applications for grants under subsection (b) of this section; and

(E) oversee the use of funds provided by such grants in fulfilling such implementation plans.

(4) Reports

The Assistant Secretary and the Administrator shall provide a joint annual report to Congress by the first day of October of each year on the activities of the Office to improve coordination and communication with respect to the implementation of E–911 services.

(b) Phase II E–911 implementation grants

(1) Matching grants

The Assistant Secretary and the Administrator, after consultation with the Secretary of Homeland Security and the Chairman of the Federal Communications Commission, and acting through the Office, shall provide grants to eligible entities for the implementation and operation of Phase II E–911 services.

(2) Matching requirement

The Federal share of the cost of a project eligible for a grant under this section shall not exceed 50 percent. The non-Federal share of the cost shall be provided from non-Federal sources.

(3) Coordination required

In providing grants under paragraph (1), the Assistant Secretary and the Administrator shall require an eligible entity to certify in its application that—

(A) in the case of an eligible entity that is a State government, the entity—

(i) has coordinated its application with the public safety answering points (as such

term is defined in section 222(h)(4) of this title) located within the jurisdiction of such entity;

(ii) has designated a single officer or governmental body of the entity to serve as the coordinator of implementation of E–911 services, except that such designation need not vest such coordinator with direct legal authority to implement E–911 services or manage emergency communications operations;

(iii) has established a plan for the coordination and implementation of E–911 services; and

(iv) has integrated telecommunications services involved in the implementation and delivery of phase II E–911 services; or

(B) in the case of an eligible entity that is not a State, the entity has complied with clauses (i), (iii), and (iv) of subparagraph (A), and the State in which it is located has complied with clause (ii) of such subparagraph.

(4) Criteria

The Assistant Secretary and the Administrator shall jointly issue regulations within 180 days after December 23, 2004, after a public comment period of not less than 60 days, prescribing the criteria for selection for grants under this section, and shall update such regulations as necessary. The criteria shall include performance requirements and a timeline for completion of any project to be financed by a grant under this section.

(c) Diversion of E–911 charges

(1) Designated E–911 charges

For the purposes of this subsection, the term ''designated E–911 charges'' means any taxes, fees, or other charges imposed by a State or other taxing jurisdiction that are designated or presented as dedicated to deliver or improve E–911 services.

(2) Certification

Each applicant for a matching grant under this section shall certify to the Assistant Secretary and the Administrator at the time of application, and each applicant that receives such a grant shall certify to the Assistant Secretary and the Administrator annually thereafter during any period of time during which the funds from the grant are available to the applicant, that no portion of any designated E–911 charges imposed by a State or other taxing jurisdiction within which the applicant is located are being obligated or expended for any purpose other than the purposes for which such charges are designated or presented during the period beginning 180 days immediately preceding the date of the application and continuing through the period of time during which the funds from the grant are available to the applicant.

(3) Condition of grant

Each applicant for a grant under this section shall agree, as a condition of receipt of the grant, that if the State or other taxing jurisdiction within which the applicant is located, during any period of time during which the funds from the grant are available to the applicant, obligates or expends designated E–911 charges for any purpose other than the purposes for which such charges are designated or presented, all of the funds from such grant shall be returned to the Office.

(4) Penalty for providing false information

Any applicant that provides a certification under paragraph (1) knowing that the information provided in the certification was false shall—

(A) not be eligible to receive the grant under subsection (b) of this section;

(B) return any grant awarded under subsection (b) of this section during the time that the certification was not valid; and

(C) not be eligible to receive any subsequent grants under subsection (b) of this section.

(d) Authorization; termination

(1) Authorization

There are authorized to be appropriated to the Department of Transportation, for the purposes of grants under the joint program operated under this section with the Department of Commerce, not more than $250,000,000 for each of the fiscal years 2005 through 2009, not more than 5 percent of which for any fiscal year may be obligated or expended for administrative costs.

(2) Termination

The provisions of this section shall cease to be effective on October 1, 2009.

(e) Definitions

As used in this section:

(1) Office

The term ''Office'' means the E–911 Implementation Coordination Office.

(2) Administrator

The term ''Administrator'' means the Administrator of the National Highway Traffic Safety Administration.

(3) Eligible entity

(A) In general

The term ''eligible entity'' means a State or local government or a tribal organization (as defined in section 450b(*l*) of title 25).

(B) Instrumentalities

Such term includes public authorities, boards, commissions, and similar bodies created by one or more eligible entities described in subparagraph (A) to provide E–911 services.

(C) Exception

Such term does not include any entity that has failed to submit the most recently required certification under subsection (c) of this section within 30 days after the date on which such certification is due.

(4) E–911 services

The term ''E–911 services'' means both phase I and phase II enhanced 911 services, as described in section 20.18 of the Commission's regulations (47 C.F.R. 20.18), as in effect on December 23, 2004, or as subsequently revised by the Federal Communications Commission.

(5) Phase II E–911 services

The term ''phase II E–911 services'' means only phase II enhanced 911 services, as described in such section 20.18 (47 C.F.R. 20.18), as in effect on December 23, 2004, or as subsequently revised by the Federal Communications Commission.

(6) State

The term ''State'' means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(Pub. L. 102–538, title I, § 158, as added Pub. L. 108–494, title I, § 104, Dec. 23, 2004, 118 Stat. 3987.)

CODIFICATION

December 23, 2004, referred to in subsec. (a)(2), was in the original ''the date of enactment of this Act'', which was translated as meaning the date of enactment of Pub. L. 108–494, which enacted this section, to reflect the probable intent of Congress.

FINDINGS

Pub. L. 108–494, title I, § 102, Dec. 23, 2004, 118 Stat. 3986, provided that: ''The Congress finds that—

''(1) for the sake of our Nation's homeland security and public safety, a universal emergency telephone number (911) that is enhanced with the most modern and state-of-the-art telecommunications capabilities possible should be available to all citizens in all regions of the Nation;

''(2) enhanced emergency communications require Federal, State, and local government resources and coordination;

''(3) any funds that are collected from fees imposed on consumer bills for the purposes of funding 911 services or enhanced 911 should go only for the purposes for which the funds are collected; and

''(4) enhanced 911 is a high national priority and it requires Federal leadership, working in cooperation with State and local governments and with the numerous organizations dedicated to delivering emergency communications services.''

PURPOSES

Pub. L. 108–494, title I, § 103, Dec. 23, 2004, 118 Stat. 3986, provided that: ''The purposes of this title [see Short Title of 2004 Amendment note set out under section 901 of this title] are—

''(1) to coordinate 911 services and E–911 services, at the Federal, State, and local levels; and

''(2) to ensure that funds collected on telecommunications bills for enhancing emergency 911 services are used only for the purposes for which the funds are being collected.''

CHAPTER 9—INTERCEPTION OF DIGITAL AND OTHER COMMUNICATIONS

SUBCHAPTER I—INTERCEPTION OF DIGITAL AND OTHER COMMUNICATIONS

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SUBCHAPTER I—INTERCEPTION OF DIGITAL AND OTHER COMMUNICATIONS

§ 1001. Definitions

For purposes of this subchapter—

(1) The terms defined in section 2510 of title 18 have, respectively, the meanings stated in that section.

(2) The term ''call-identifying information'' means dialing or signaling information that identifies the origin, direction, destination, or termination of each communication generated or received by a subscriber by means of any equipment, facility, or service of a telecommunications carrier.

(3) The term ''Commission'' means the Federal Communications Commission.

(4) The term ''electronic messaging services'' means software-based services that enable the sharing of data, images, sound, writing, or other information among computing devices controlled by the senders or recipients of the messages.

(5) The term ''government'' means the government of the United States and any agency or instrumentality thereof, the District of Columbia, any commonwealth, territory, or possession of the United States, and any State or political subdivision thereof authorized by law to conduct electronic surveillance.

(6) The term ''information services''—

(A) means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications; and

(B) includes—

(i) a service that permits a customer to retrieve stored information from, or file information for storage in, information storage facilities;

(ii) electronic publishing; and

(iii) electronic messaging services; but

(C) does not include any capability for a telecommunications carrier's internal management, control, or operation of its telecommunications network.

(7) The term ''telecommunications support services'' means a product, software, or service used by a telecommunications carrier for the internal signaling or switching functions of its telecommunications network.

(8) The term ''telecommunications carrier''—

(A) means a person or entity engaged in the transmission or switching of wire or electronic communications as a common carrier for hire; and

(B) includes—

(i) a person or entity engaged in providing commercial mobile service (as defined in section 332(d) of this title); or

(ii) a person or entity engaged in providing wire or electronic communication switching or transmission service to the extent that the Commission finds that such service is a replacement for a substantial portion of the local telephone exchange service and that it is in the public interest to deem such a person or entity to be a telecommunications carrier for purposes of this subchapter; but

(C) does not include—

(i) persons or entities insofar as they are engaged in providing information services; and

(ii) any class or category of telecommunications carriers that the Commission exempts by rule after consultation with the Attorney General.

(Pub. L. 103–414, title I, § 102, Oct. 25, 1994, 108 Stat. 4279.)

EFFECTIVE DATE

Section 111 of title I of Pub. L. 103–414 provided that: ''(a) IN GENERAL.—Except as provided in subsection (b), this title [enacting this subchapter and provisions set out below] shall take effect on the date of enactment of this Act [Oct. 25, 1994].

''(b) ASSISTANCE CAPABILITY AND SYSTEMS SECURITY AND INTEGRITY REQUIREMENTS.—Sections 103 and 105 of this title [enacting sections 1002 and 1004 of this title] shall take effect on the date that is 4 years after the date of enactment of this Act.''

SHORT TITLE

Section 101 of title I of Pub. L. 103–414 provided that: ''This title [enacting this subchapter and provisions set out as a note above] may be cited as the 'Communications Assistance for Law Enforcement Act'.''

§ 1002. Assistance capability requirements

(a) Capability requirements

Except as provided in subsections (b), (c), and (d) of this section and sections 1007(a) and 1008(b) and (d) of this title, a telecommunications carrier shall ensure that its equipment, facilities, or services that provide a customer or subscriber with the ability to originate, terminate, or direct communications are capable of—

(1) expeditiously isolating and enabling the government, pursuant to a court order or other lawful authorization, to intercept, to the exclusion of any other communications, all wire and electronic communications carried by the carrier within a service area to or from equipment, facilities, or services of a subscriber of such carrier concurrently with their transmission to or from the subscriber's equipment, facility, or service, or at such later time as may be acceptable to the government;

(2) expeditiously isolating and enabling the government, pursuant to a court order or other lawful authorization, to access call-identifying information that is reasonably available to the carrier—

(A) before, during, or immediately after the transmission of a wire or electronic communication (or at such later time as may be acceptable to the government); and

(B) in a manner that allows it to be associated with the communication to which it pertains,

except that, with regard to information acquired solely pursuant to the authority for pen registers and trap and trace devices (as defined in section 3127 of title 18), such call-identifying information shall not include any information that may disclose the physical location of the subscriber (except to the extent that the location may be determined from the telephone number);

(3) delivering intercepted communications and call-identifying information to the government, pursuant to a court order or other lawful authorization, in a format such that they may be transmitted by means of equipment, facilities, or services procured by the government to a location other than the premises of the carrier; and

(4) facilitating authorized communications interceptions and access to call-identifying information unobtrusively and with a minimum of interference with any subscriber's telecommunications service and in a manner that protects—

(A) the privacy and security of communications and call-identifying information not authorized to be intercepted; and

(B) information regarding the government's interception of communications and access to call-identifying information.

(b) Limitations

(1) Design of features and systems configurations

This subchapter does not authorize any law enforcement agency or officer—

(A) to require any specific design of equipment, facilities, services, features, or system configurations to be adopted by any provider of a wire or electronic communication service, any manufacturer of telecommunications equipment, or any provider of telecommunications support services; or

(B) to prohibit the adoption of any equipment, facility, service, or feature by any provider of a wire or electronic communication service, any manufacturer of telecommunications equipment, or any provider of telecommunications support services.

(2) Information services; private networks and interconnection services and facilities

The requirements of subsection (a) of this section do not apply to—

(A) information services; or

(B) equipment, facilities, or services that support the transport or switching of communications for private networks or for the sole purpose of interconnecting telecommunications carriers.

(3) Encryption

A telecommunications carrier shall not be responsible for decrypting, or ensuring the government's ability to decrypt, any communication encrypted by a subscriber or customer, unless the encryption was provided by the carrier and the carrier possesses the information necessary to decrypt the communication.

(c) Emergency or exigent circumstances

In emergency or exigent circumstances (including those described in sections 2518(7) or

(11)(b) and 3125 of title 18 and section 1805(e)[1] of title 50), a carrier at its discretion may comply with subsection (a)(3) of this section by allowing monitoring at its premises if that is the only means of accomplishing the interception or access.

(d) Mobile service assistance requirements

A telecommunications carrier that is a provider of commercial mobile service (as defined in section 332(d) of this title) offering a feature or service that allows subscribers to redirect, hand off, or assign their wire or electronic communications to another service area or another service provider or to utilize facilities in another service area or of another service provider shall ensure that, when the carrier that had been providing assistance for the interception of wire or electronic communications or access to call-identifying information pursuant to a court order or lawful authorization no longer has access to the content of such communications or call-identifying information within the service area in which interception has been occurring as a result of the subscriber's use of such a feature or service, information is made available to the government (before, during, or immediately after the transfer of such communications) identifying the provider of a wire or electronic communication service that has acquired access to the communications.

(Pub. L. 103–414, title I, § 103, Oct. 25, 1994, 108 Stat. 4280.)

REFERENCES IN TEXT

Section 1805(e) of title 50, referred to in subsec. (c), was redesignated section 1805(f) of title 50 by Pub. L. 106–567, title VI, § 602(b)(1), Dec. 27, 2000, 114 Stat. 2851.

EFFECTIVE DATE

Section effective on the date that is 4 years after Oct. 25, 1994, see section 111(b) of Pub. L. 103–414, set out as a note under section 1001 of this title.

§ 1003. Notices of capacity requirements

(a) Notices of maximum and actual capacity requirements

(1) In general

Not later than 1 year after October 25, 1994, after consulting with State and local law enforcement agencies, telecommunications carriers, providers of telecommunications support services, and manufacturers of telecommunications equipment, and after notice and comment, the Attorney General shall publish in the Federal Register and provide to appropriate telecommunications industry associations and standard-setting organizations—

(A) notice of the actual number of communication interceptions, pen registers, and trap and trace devices, representing a portion of the maximum capacity set forth under subparagraph (B), that the Attorney General estimates that government agencies authorized to conduct electronic surveillance may conduct and use simultaneously by the date that is 4 years after October 25, 1994; and

(B) notice of the maximum capacity required to accommodate all of the communication interceptions, pen registers, and trap and trace devices that the Attorney General estimates that government agencies authorized to conduct electronic surveillance may conduct and use simultaneously after the date that is 4 years after October 25, 1994.

(2) Basis of notices

The notices issued under paragraph (1)—

(A) may be based upon the type of equipment, type of service, number of subscribers, type or size or[1] carrier, nature of service area, or any other measure; and

(B) shall identify, to the maximum extent practicable, the capacity required at specific geographic locations.

(b) Compliance with capacity notices

(1) Initial capacity

Within 3 years after the publication by the Attorney General of a notice of capacity requirements or within 4 years after October 25, 1994, whichever is longer, a telecommunications carrier shall, subject to subsection (e) of this section, ensure that its systems are capable of—

(A) accommodating simultaneously the number of interceptions, pen registers, and trap and trace devices set forth in the notice under subsection (a)(1)(A) of this section; and

(B) expanding to the maximum capacity set forth in the notice under subsection (a)(1)(B) of this section.

(2) Expansion to maximum capacity

After the date described in paragraph (1), a telecommunications carrier shall, subject to subsection (e) of this section, ensure that it can accommodate expeditiously any increase in the actual number of communication interceptions, pen registers, and trap and trace devices that authorized agencies may seek to conduct and use, up to the maximum capacity requirement set forth in the notice under subsection (a)(1)(B) of this section.

(c) Notices of increased maximum capacity requirements

(1) Notice

The Attorney General shall periodically publish in the Federal Register, after notice and comment, notice of any necessary increases in the maximum capacity requirement set forth in the notice under subsection (a)(1)(B) of this section.

(2) Compliance

Within 3 years after notice of increased maximum capacity requirements is published under paragraph (1), or within such longer time period as the Attorney General may specify, a telecommunications carrier shall, subject to subsection (e) of this section, ensure that its systems are capable of expanding to the increased maximum capacity set forth in the notice.

[1] See References in Text note below.

[1] So in original. Probably should be "of".

(d) Carrier statement

Within 180 days after the publication by the Attorney General of a notice of capacity requirements pursuant to subsection (a) or (c) of this section, a telecommunications carrier shall submit to the Attorney General a statement identifying any of its systems or services that do not have the capacity to accommodate simultaneously the number of interceptions, pen registers, and trap and trace devices set forth in the notice under such subsection.

(e) Reimbursement required for compliance

The Attorney General shall review the statements submitted under subsection (d) of this section and may, subject to the availability of appropriations, agree to reimburse a telecommunications carrier for costs directly associated with modifications to attain such capacity requirement that are determined to be reasonable in accordance with section 1008(e) of this title. Until the Attorney General agrees to reimburse such carrier for such modification, such carrier shall be considered to be in compliance with the capacity notices under subsection (a) or (c) of this section.

(Pub. L. 103–414, title I, § 104, Oct. 25, 1994, 108 Stat. 4282.)

§ 1004. Systems security and integrity

A telecommunications carrier shall ensure that any interception of communications or access to call-identifying information effected within its switching premises can be activated only in accordance with a court order or other lawful authorization and with the affirmative intervention of an individual officer or employee of the carrier acting in accordance with regulations prescribed by the Commission.

(Pub. L. 103–414, title I, § 105, Oct. 25, 1994, 108 Stat. 4283.)

EFFECTIVE DATE

Section effective on the date that is 4 years after Oct. 25, 1994, see section 111(b) of Pub. L. 103–414, set out as a note under section 1001 of this title.

§ 1005. Cooperation of equipment manufacturers and providers of telecommunications support services

(a) Consultation

A telecommunications carrier shall consult, as necessary, in a timely fashion with manufacturers of its telecommunications transmission and switching equipment and its providers of telecommunications support services for the purpose of ensuring that current and planned equipment, facilities, and services comply with the capability requirements of section 1002 of this title and the capacity requirements identified by the Attorney General under section 1003 of this title.

(b) Cooperation

Subject to sections 1003(e), 1007(a), and 1008(b) and (d) of this title, a manufacturer of telecommunications transmission or switching equipment and a provider of telecommunications support services shall, on a reasonably timely basis and at a reasonable charge, make available to the telecommunications carriers using its equipment, facilities, or services such features or modifications as are necessary to permit such carriers to comply with the capability requirements of section 1002 of this title and the capacity requirements identified by the Attorney General under section 1003 of this title.

(Pub. L. 103–414, title I, § 106, Oct. 25, 1994, 108 Stat. 4284.)

§ 1006. Technical requirements and standards; extension of compliance date

(a) Safe harbor

(1) Consultation

To ensure the efficient and industry-wide implementation of the assistance capability requirements under section 1002 of this title, the Attorney General, in coordination with other Federal, State, and local law enforcement agencies, shall consult with appropriate associations and standard-setting organizations of the telecommunications industry, with representatives of users of telecommunications equipment, facilities, and services, and with State utility commissions.

(2) Compliance under accepted standards

A telecommunications carrier shall be found to be in compliance with the assistance capability requirements under section 1002 of this title, and a manufacturer of telecommunications transmission or switching equipment or a provider of telecommunications support services shall be found to be in compliance with section 1005 of this title, if the carrier, manufacturer, or support service provider is in compliance with publicly available technical requirements or standards adopted by an industry association or standard-setting organization, or by the Commission under subsection (b) of this section, to meet the requirements of section 1002 of this title.

(3) Absence of standards

The absence of technical requirements or standards for implementing the assistance capability requirements of section 1002 of this title shall not—

(A) preclude a telecommunications carrier, manufacturer, or telecommunications support services provider from deploying a technology or service; or

(B) relieve a carrier, manufacturer, or telecommunications support services provider of the obligations imposed by section 1002 or 1005 of this title, as applicable.

(b) Commission authority

If industry associations or standard-setting organizations fail to issue technical requirements or standards or if a Government[1] agency or any other person believes that such requirements or standards are deficient, the agency or person may petition the Commission to establish, by rule, technical requirements or standards that—

(1) meet the assistance capability requirements of section 1002 of this title by cost-effective methods;

[1] So in original. Probably should not be capitalized.

(2) protect the privacy and security of communications not authorized to be intercepted;

(3) minimize the cost of such compliance on residential ratepayers;

(4) serve the policy of the United States to encourage the provision of new technologies and services to the public; and

(5) provide a reasonable time and conditions for compliance with and the transition to any new standard, including defining the obligations of telecommunications carriers under section 1002 of this title during any transition period.

(c) Extension of compliance date for equipment, facilities, and services

(1) Petition

A telecommunications carrier proposing to install or deploy, or having installed or deployed, any equipment, facility, or service prior to the effective date of section 1002 of this title may petition the Commission for 1 or more extensions of the deadline for complying with the assistance capability requirements under section 1002 of this title.

(2) Grounds for extension

The Commission may, after consultation with the Attorney General, grant an extension under this subsection, if the Commission determines that compliance with the assistance capability requirements under section 1002 of this title is not reasonably achievable through application of technology available within the compliance period.

(3) Length of extension

An extension under this subsection shall extend for no longer than the earlier of—

(A) the date determined by the Commission as necessary for the carrier to comply with the assistance capability requirements under section 1002 of this title; or

(B) the date that is 2 years after the date on which the extension is granted.

(4) Applicability of extension

An extension under this subsection shall apply to only that part of the carrier's business on which the new equipment, facility, or service is used.

(Pub. L. 103–414, title I, § 107, Oct. 25, 1994, 108 Stat. 4284.)

REFERENCES IN TEXT

The effective date of section 1002 of this title, referred to in subsec. (c)(1), is the date that is 4 years after Oct. 25, 1994, see section 111(b) of Pub. L. 103–414, set out as an Effective Date note under section 1001 of this title.

§ 1007. Enforcement orders

(a) Grounds for issuance

A court shall issue an order enforcing this subchapter under section 2522 of title 18 only if the court finds that—

(1) alternative technologies or capabilities or the facilities of another carrier are not reasonably available to law enforcement for implementing the interception of communications or access to call-identifying information; and

(2) compliance with the requirements of this subchapter is reasonably achievable through the application of available technology to the equipment, facility, or service at issue or would have been reasonably achievable if timely action had been taken.

(b) Time for compliance

Upon issuing an order enforcing this subchapter, the court shall specify a reasonable time and conditions for complying with its order, considering the good faith efforts to comply in a timely manner, any effect on the carrier's, manufacturer's, or service provider's ability to continue to do business, the degree of culpability or delay in undertaking efforts to comply, and such other matters as justice may require.

(c) Limitations

An order enforcing this subchapter may not—

(1) require a telecommunications carrier to meet the Government's[1] demand for interception of communications and acquisition of call-identifying information to any extent in excess of the capacity for which the Attorney General has agreed to reimburse such carrier;

(2) require any telecommunications carrier to comply with assistance capability requirement[2] of section 1002 of this title if the Commission has determined (pursuant to section 1008(b)(1) of this title) that compliance is not reasonably achievable, unless the Attorney General has agreed (pursuant to section 1008(b)(2) of this title) to pay the costs described in section 1008(b)(2)(A) of this title; or

(3) require a telecommunications carrier to modify, for the purpose of complying with the assistance capability requirements of section 1002 of this title, any equipment, facility, or service deployed on or before January 1, 1995, unless—

(A) the Attorney General has agreed to pay the telecommunications carrier for all reasonable costs directly associated with modifications necessary to bring the equipment, facility, or service into compliance with those requirements; or

(B) the equipment, facility, or service has been replaced or significantly upgraded or otherwise undergoes major modification.

(Pub. L. 103–414, title I, § 108, Oct. 25, 1994, 108 Stat. 4285.)

§ 1008. Payment of costs of telecommunications carriers to comply with capability requirements

(a) Equipment, facilities, and services deployed on or before January 1, 1995

The Attorney General may, subject to the availability of appropriations, agree to pay telecommunications carriers for all reasonable costs directly associated with the modifications performed by carriers in connection with equipment, facilities, and services installed or deployed on or before January 1, 1995, to establish the capabilities necessary to comply with section 1002 of this title.

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[1] So in original. Probably should not be capitalized.

[2] So in original. Probably should be "requirements".

(b) Equipment, facilities, and services deployed after January 1, 1995

(1) Determinations of reasonably achievable

The Commission, on petition from a telecommunications carrier or any other interested person, and after notice to the Attorney General, shall determine whether compliance with the assistance capability requirements of section 1002 of this title is reasonably achievable with respect to any equipment, facility, or service installed or deployed after January 1, 1995. The Commission shall make such determination within 1 year after the date such petition is filed. In making such determination, the Commission shall determine whether compliance would impose significant difficulty or expense on the carrier or on the users of the carrier's systems and shall consider the following factors:

(A) The effect on public safety and national security.

(B) The effect on rates for basic residential telephone service.

(C) The need to protect the privacy and security of communications not authorized to be intercepted.

(D) The need to achieve the capability assistance requirements of section 1002 of this title by cost-effective methods.

(E) The effect on the nature and cost of the equipment, facility, or service at issue.

(F) The effect on the operation of the equipment, facility, or service at issue.

(G) The policy of the United States to encourage the provision of new technologies and services to the public.

(H) The financial resources of the telecommunications carrier.

(I) The effect on competition in the provision of telecommunications services.

(J) The extent to which the design and development of the equipment, facility, or service was initiated before January 1, 1995.

(K) Such other factors as the Commission determines are appropriate.

(2) Compensation

If compliance with the assistance capability requirements of section 1002 of this title is not reasonably achievable with respect to equipment, facilities, or services deployed after January 1, 1995—

(A) the Attorney General, on application of a telecommunications carrier, may agree, subject to the availability of appropriations, to pay the telecommunications carrier for the additional reasonable costs of making compliance with such assistance capability requirements reasonably achievable; and

(B) if the Attorney General does not agree to pay such costs, the telecommunications carrier shall be deemed to be in compliance with such capability requirements.

(c) Allocation of funds for payment

The Attorney General shall allocate funds appropriated to carry out this subchapter in accordance with law enforcement priorities determined by the Attorney General.

(d) Failure to make payment with respect to equipment, facilities, and services deployed on or before January 1, 1995

If a carrier has requested payment in accordance with procedures promulgated pursuant to subsection (e) of this section, and the Attorney General has not agreed to pay the telecommunications carrier for all reasonable costs directly associated with modifications necessary to bring any equipment, facility, or service deployed on or before January 1, 1995, into compliance with the assistance capability requirements of section 1002 of this title, such equipment, facility, or service shall be considered to be in compliance with the assistance capability requirements of section 1002 of this title until the equipment, facility, or service is replaced or significantly upgraded or otherwise undergoes major modification.

(e) Cost control regulations

(1) In general

The Attorney General shall, after notice and comment, establish regulations necessary to effectuate timely and cost-efficient payment to telecommunications carriers under this subchapter, under chapters 119 and 121 of title 18, and under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

(2) Contents of regulations

The Attorney General, after consultation with the Commission, shall prescribe regulations for purposes of determining reasonable costs under this subchapter. Such regulations shall seek to minimize the cost to the Federal Government and shall—

(A) permit recovery from the Federal Government of—

(i) the direct costs of developing the modifications described in subsection (a) of this section, of providing the capabilities requested under subsection (b)(2) of this section, or of providing the capacities requested under section 1003(e) of this title, but only to the extent that such costs have not been recovered from any other governmental or nongovernmental entity;

(ii) the costs of training personnel in the use of such capabilities or capacities; and

(iii) the direct costs of deploying or installing such capabilities or capacities;

(B) in the case of any modification that may be used for any purpose other than lawfully authorized electronic surveillance by a law enforcement agency of a government, permit recovery of only the incremental cost of making the modification suitable for such law enforcement purposes; and

(C) maintain the confidentiality of trade secrets.

(3) Submission of claims

Such regulations shall require any telecommunications carrier that the Attorney General has agreed to pay for modifications pursuant to this section and that has installed or deployed such modification to submit to the Attorney General a claim for payment that contains or is accompanied by such information as the Attorney General may require.

(Pub. L. 103–414, title I, § 109, Oct. 25, 1994, 108 Stat. 4286.)

REFERENCES IN TEXT

The Foreign Intelligence Surveillance Act of 1978, referred to in subsec. (e)(1), is Pub. L. 95–511, Oct. 25, 1978, 92 Stat. 1783, as amended, which is classified principally to chapter 36 (§ 1801 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of Title 50 and Tables.

§ 1009. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter a total of $500,000,000 for fiscal years 1995, 1996, 1997, and 1998. Such sums are authorized to remain available until expended.

(Pub. L. 103–414, title I, § 110, Oct. 25, 1994, 108 Stat. 4288.)

§ 1010. Reports

(a) Reports by Attorney General

(1) In general

On or before November 30, 1995, and on or before November 30 of each year thereafter, the Attorney General shall submit to Congress and make available to the public a report on the amounts paid during the preceding fiscal year to telecommunications carriers under sections 1003(e) and 1008 of this title.

(2) Contents

A report under paragraph (1) shall include—

(A) a detailed accounting of the amounts paid to each carrier and the equipment, facility, or service for which the amounts were paid; and

(B) projections of the amounts expected to be paid in the current fiscal year, the carriers to which payment is expected to be made, and the equipment, facilities, or services for which payment is expected to be made.

(b) Reports by Comptroller General and Inspector General

(1) On or before April 1, 1996, the Comptroller General of the United States, and every two years thereafter, the Inspector General of the Department of Justice, shall submit to the Congress a report, after consultation with the Attorney General and the telecommunications industry—

(A) describing the type of equipment, facilities, and services that have been brought into compliance under this subchapter; and

(B) reflecting its analysis of the reasonableness and cost-effectiveness of the payments made by the Attorney General to telecommunications carriers for modifications necessary to ensure compliance with this subchapter.

(2) COMPLIANCE COST ESTIMATES.—A report under paragraph (1) shall include findings and conclusions on the costs to be incurred by telecommunications carriers to comply with the assistance capability requirements of section 1002 of this title after the effective date of such section 1002 of this title, including projections of the amounts expected to be incurred and a description of the equipment, facilities, or services for which they are expected to be incurred.

(Pub. L. 103–414, title I, § 112, Oct. 25, 1994, 108 Stat. 4288; Pub. L. 104–316, title I, § 126(b), Oct. 19, 1996, 110 Stat. 3840.)

REFERENCES IN TEXT

The effective date of section 1002 of this title, referred to in subsec. (b)(2), is the date that is 4 years after Oct. 25, 1994, see section 111(b) of Pub. L. 103–414, set out as an Effective Date note under section 1001 of this title.

AMENDMENTS

1996—Subsec. (b)(1). Pub. L. 104–316, § 126(b)(1), inserted introductory provisions and struck out heading and text of former introductory provisions. Text read as follows: ''On or before April 1, 1996, and every 2 years thereafter, the Comptroller General of the United States, after consultation with the Attorney General and the telecommunications industry, shall submit to the Congress a report—''.

Subsec. (b)(2). Pub. L. 104–316, § 126(b)(2), substituted ''findings and conclusions'' for ''the findings and conclusions of the Comptroller General''.

SUBCHAPTER II—TELECOMMUNICATIONS CARRIER COMPLIANCE PAYMENTS

§ 1021. Department of Justice Telecommunications Carrier Compliance Fund

(a) Establishment of Fund

There is hereby established in the United States Treasury a fund to be known as the Department of Justice Telecommunications Carrier Compliance Fund (hereafter referred to as ''the Fund''), which shall be available without fiscal year limitation to the Attorney General for making payments to telecommunications carriers, equipment manufacturers, and providers of telecommunications support services pursuant to section 1008 of this title.

(b) Deposits to Fund

Notwithstanding any other provision of law, any agency of the United States with law enforcement or intelligence responsibilities may deposit as offsetting collections to the Fund any unobligated balances that are available until expended, upon compliance with any Congressional notification requirements for reprogrammings of funds applicable to the appropriation from which the deposit is to be made.

(c) Termination

(1) The Attorney General may terminate the Fund at such time as the Attorney General determines that the Fund is no longer necessary.

(2) Any balance in the Fund at the time of its termination shall be deposited in the General Fund of the Treasury.

(3) A decision of the Attorney General to terminate the Fund shall not be subject to judicial review.

(d) Availability of funds for expenditure

Funds shall not be available for obligation unless an implementation plan as set forth in subsection (e) of this section is submitted to each member of the Committees on the Judiciary and Appropriations of both the House of Representa-

tives and the Senate and the Congress does not by law block or prevent the obligation of such funds. Such funds shall be treated as a reprogramming of funds under section 605 of the Department of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1997, and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section and this section.

(e) Implementation plan

The implementation plan shall include:

(1) the law enforcement assistance capability requirements and an explanation of law enforcement's recommended interface;

(2) the proposed actual and maximum capacity requirements for the number of simultaneous law enforcement communications intercepts, pen registers, and trap and trace devices that authorized law enforcement agencies may seek to conduct, set forth on a county-by-county basis for wireline services and on a market service area basis for wireless services, and the historical baseline of electronic surveillance activity upon which such capacity requirements are based;

(3) a prioritized list of carrier equipment, facilities, and services deployed on or before January 1, 1995, to be modified by carriers at the request of law enforcement based on its investigative needs;

(4) a projected reimbursement plan that estimates the cost for the coming fiscal year and for each fiscal year thereafter, based on the prioritization of law enforcement needs as outlined in (3),[1] of modification by carriers of equipment, facilities and services, installed on or before January 1, 1995.

(f) Annual report to Congress

The Attorney General shall submit to the Congress each year a report specifically detailing all deposits and expenditures made pursuant to subchapter I[2] of this chapter in each fiscal year. This report shall be submitted to each member of the Committees on the Judiciary and Appropriations of both the House of Representatives and the Senate, and to the Speaker and minority leader of the House of Representatives and to the majority and minority leaders of the Senate, no later than 60 days after the end of each fiscal year.

(Pub. L. 103–414, title IV, § 401, as added Pub. L. 104–208, div. A, title I, § 101(a) [title I, § 110], Sept. 30, 1996, 110 Stat. 3009, 3009–19.)

REFERENCES IN TEXT

Section 605 of the Department of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1997, referred to in subsec. (d), probably means section 605 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1997, Pub. L. 104–208, div. A, title I, § 101(a) [title VI], Sept. 30, 1996, 110 Stat. 3009, 3009–64, which is not classified to the Code.

Subchapter I of this chapter, referred to in subsec. (f), was in the original "this Act" and was translated as reading "title I of this Act", meaning title I of Pub. L. 103–414, Oct. 25, 1994, 108 Stat. 4279, which is classified to subchapter I of this chapter, to reflect the probable intent of Congress.

DIRECT PAYMENTS FROM FUND

Pub. L. 106–246, div. B, title II, July 13, 2000, 114 Stat. 542, provided in part: "That, hereafter, in the discretion of the Attorney General, any expenditures from the [Telecommunications Carrier Compliance] Fund to pay or reimburse pursuant to sections 104(e) and 109(a) of Public Law 103–414 [47 U.S.C. 1003(e), 1008(a)], may be made directly to any parties specified in section 401(a) thereof [47 U.S.C. 1021(a)], and may be made either pursuant to the regulations promulgated under such section 109, or pursuant to firm fixed-price agreements, upon provision of such information as the Attorney General may require".

[1] So in original. Probably should be "paragraph (3),".

[2] See References in Text note below.

CHAPTER 10—LOCAL TV

Sec.
1101. Purpose.
1102. LOCAL Television Loan Guarantee Board.
1103. Approval of loan guarantees.
1104. Administration of loan guarantees.
1105. Annual audit.
1106. Improved cellular service in rural areas.
1107. Sunset.
1108. Definitions.
1109. Authorization of appropriations.
1110. Prevention of interference to direct broadcast satellite services.

§ 1101. Purpose

The purpose of this chapter is to facilitate access, on a technologically neutral basis and by December 31, 2006, to signals of local television stations for households located in nonserved areas and underserved areas.

(Pub. L. 106–553, § 1(a)(2) [title X, § 1002], Dec. 21, 2000, 114 Stat. 2762, 2762A–128.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", and was translated as reading "this title" meaning title X of H.R. 5548, as enacted by Pub. L. 106–553, § 1(a)(2), Dec. 21, 2000, 114 Stat. 2762, 2762A–128, to reflect the probable intent of Congress. Title X enacted this chapter and amended section 339 of this title. For complete classification of title X to the Code, see Short Title note set out below and Tables.

SHORT TITLE

Pub. L. 106–553, § 1(a)(2) [title X, § 1001], Dec. 21, 2000, 114 Stat. 2762, 2762A–128, provided that: "This title [title X of H.R. 5548, as enacted by section 1(a)(2) of Pub. L. 106–553, enacting this chapter and amending section 339 of this title] may be cited as the 'Launching Our Communities' Access to Local Television Act of 2000'."

§ 1102. LOCAL Television Loan Guarantee Board

(a) Establishment

There is established the LOCAL Television Loan Guarantee Board (in this chapter referred to as the "Board").

(b) Members

(1) In general

Subject to paragraph (2), the Board shall consist of the following members:

(A) The Secretary of the Treasury, or the designee of the Secretary.

(B) The Chairman of the Board of Governors of the Federal Reserve System, or the designee of the Chairman.

(C) The Secretary of Agriculture, or the designee of the Secretary.

(D) The Secretary of Commerce, or the designee of the Secretary.

(2) Requirement as to designees

An individual may not be designated a member of the Board under paragraph (1) unless the individual is an officer of the United States pursuant to an appointment by the President, by and with the advice and consent of the Senate.

(c) Functions of the Board

(1) In general

The Board shall determine whether or not to approve loan guarantees under this chapter. The Board shall make such determinations consistent with the purpose of this chapter and in accordance with this subsection and section 1103[1] of this title.

(2) Consultation authorized

(A) In general

In carrying out its functions under this chapter, the Board shall consult with such departments and agencies of the Federal Government as the Board considers appropriate, including the Department of Commerce, the Department of Agriculture, the Department of the Treasury, the Department of Justice, the Department of the Interior, the Board of Governors of the Federal Reserve System, the Federal Communications Commission, the Federal Trade Commission, and the National Aeronautics and Space Administration.

(B) Response

A department or agency consulted by the Board under subparagraph (A) shall provide the Board such expertise and assistance as the Board requires to carry out its functions under this chapter.

(3) Approval by majority vote

The determination of the Board to approve a loan guarantee under this chapter shall be by an affirmative vote of not less than 3 members of the Board.

(Pub. L. 106–553, § 1(a)(2) [title X, § 1003], Dec. 21, 2000, 114 Stat. 2762, 2762A–128.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (c), was in the original ''this Act'', and was translated as reading ''this title''. See References in Text note set out under section 1101 of this title.

Section 1103 of this title, referred to in subsec. (c)(1), was in the original ''section 4'', and was translated as reading ''section 1004'', meaning section 1004 of title X of H.R. 5548, as enacted by Pub. L. 106–553, § 1(a)(2), to reflect the probable intent of Congress. Pub. L. 106–553 does not contain a section 4 and section 1004 relates to approval of loan guarantees.

§ 1103. Approval of loan guarantees

(a) Authority to approve loan guarantees

Subject to the provisions of this section and consistent with the purpose of this chapter, the Board may approve loan guarantees under this chapter.

(b) Regulations

(1) Requirements

The Administrator (as defined in section 1104 of this title), under the direction of and for approval by the Board, shall prescribe regulations to implement the provisions of this chapter and shall do so not later than 120 days after funds authorized to be appropriated under section 1109 of this title have been appropriated in a bill signed into law.

(2) Elements

The regulations prescribed under paragraph (1) shall—

(A) set forth the form of any application to be submitted to the Board under this chapter;

(B) set forth time periods for the review and consideration by the Board of applications to be submitted to the Board under this chapter, and for any other action to be taken by the Board with respect to such applications;

(C) provide appropriate safeguards against the evasion of the provisions of this chapter;

(D) set forth the circumstances in which an applicant, together with any affiliate of an applicant, shall be treated as an applicant for a loan guarantee under this chapter;

(E) include requirements that appropriate parties submit to the Board any documents and assurances that are required for the administration of the provisions of this chapter; and

(F) include such other provisions consistent with the purpose of this chapter as the Board considers appropriate.

(3) Construction

(A) Nothing in this chapter shall be construed to prohibit the Board from requiring, to the extent and under circumstances considered appropriate by the Board, that affiliates of an applicant be subject to certain obligations of the applicant as a condition to the approval or maintenance of a loan guarantee under this chapter.

(B) If any provision of this chapter or the application of such provision to any person or entity or circumstance is held to be invalid by a court of competent jurisdiction, the remainder of this chapter, or the application of such provision to such person or entity or circumstance other than those as to which it is held invalid, shall not be affected thereby.

(c) Authority limited by appropriations acts

The Board may approve loan guarantees under this chapter only to the extent provided for in advance in appropriations Acts, and the Board may accept credit risk premiums from a non-Federal source in order to cover the cost of a loan guarantee under this chapter, to the extent that appropriations of budget authority are insufficient to cover such costs.

(d) Requirements and criteria applicable to approval

(1) In general

The Board shall utilize the underwriting criteria developed under subsection (g) of this

[1] See References in Text note below.

section, and any relevant information provided by the departments and agencies with which the Board consults under section 1102 of this title, to determine which loans may be eligible for a loan guarantee under this chapter.

(2) Prerequisites

In addition to meeting the underwriting criteria under paragraph (1), a loan may not be guaranteed under this chapter unless—

(A) the loan is made to finance the acquisition, improvement, enhancement, construction, deployment, launch, or rehabilitation of the means by which local television broadcast signals will be delivered to a nonserved area or underserved area;

(B) the proceeds of the loan will not be used for operating, advertising, or promotion expenses, or for the acquisition of licenses for the use of spectrum in any competitive bidding under section 309(j) of this title;

(C) the proposed project, as determined by the Board in consultation with the National Telecommunications and Information Administration, is not likely to have a substantial adverse impact on competition that outweighs the benefits of improving access to the signals of a local television station in a nonserved area or underserved area and is commercially viable;

(D)(i) the loan—

(I) is provided by any entity engaged in the business of commercial lending—

(aa) if the loan is made in accordance with loan-to-one-borrower and affiliate transaction restrictions to which the entity is subject under applicable law; or

(bb) if item (aa) does not apply, the loan is made only to a borrower that is not an affiliate of the entity and only if the amount of the loan and all outstanding loans by that entity to that borrower and any of its affiliates does not exceed 10 percent of the net equity of the entity; or

(II) is provided by a nonprofit corporation, including the National Rural Utilities Cooperative Finance Corporation, engaged primarily in commercial lending, if the Board determines that such nonprofit corporation has one or more issues of outstanding long-term debt that is rated within the highest 3 rating categories of a nationally recognized statistical rating organization;

(ii) if the loan is provided by a lender described in clause (i)(II) and the Board determines that the making of the loan by such lender will cause a decline in such lender's debt rating as described in that clause, the Board at its discretion may disapprove the loan guarantee on this basis;

(iii) no loan may be made for purposes of this chapter by a governmental entity or affiliate thereof, or by the Federal Agricultural Mortgage Corporation, or any institution supervised by the Office of Federal Housing Enterprise Oversight, the Federal Housing Finance Board, or any affiliate of such entities;

(iv) any loan must have terms, in the judgment of the Board, that are consistent in material respects with the terms of similar obligations in the private capital market;

(v) for purposes of clause (i)(I)(bb), the term ''net equity'' means the value of the total assets of the entity, less the total liabilities of the entity, as recorded under generally accepted accounting principles for the fiscal quarter ended immediately prior to the date on which the subject loan is approved;

(E) repayment of the loan is required to be made within a term of the lesser of—

(i) 25 years from the date of the execution of the loan; or

(ii) the economically useful life, as determined by the Board or in consultation with persons or entities deemed appropriate by the Board, of the primary assets to be used in the delivery of the signals concerned; and

(F) the loan meets any additional criteria developed under subsection (g) of this section.

(3) Protection of United States financial interests

The Board may not approve the guarantee of a loan under this chapter unless—

(A) the Board has been given documentation, assurances, and access to information, persons, and entities necessary, as determined by the Board, to address issues relevant to the review of the loan by the Board for purposes of this chapter; and

(B) the Board makes a determination in writing that—

(i) to the best of its knowledge upon due inquiry, the assets, facilities, or equipment covered by the loan will be utilized economically and efficiently;

(ii) the terms, conditions, security, and schedule and amount of repayments of principal and the payment of interest with respect to the loan protect the financial interests of the United States and are reasonable;

(iii) the value of collateral provided by an applicant is at least equal to the unpaid balance of the loan amount covered by the loan guarantee (the ''Amount'' for purposes of this clause); and if the value of collateral provided by an applicant is less than the Amount, the additional required collateral is provided by any affiliate of the applicant;

(iv) all necessary and required regulatory and other approvals, spectrum licenses, and delivery permissions have been received for the loan and the project under the loan;

(v) the loan would not be available on reasonable terms and conditions without a loan guarantee under this chapter; and

(vi) repayment of the loan can reasonably be expected.

(e) Considerations

(1) Type of market

(A) Priority considerations

To the maximum extent practicable, the Board shall give priority in the approval of

loan guarantees under this chapter in the following order:

(i) First, to projects that will serve households in nonserved areas. In considering such projects, the Board shall balance projects that will serve the largest number of households with projects that will serve remote, isolated communities (including noncontiguous States) in areas that are unlikely to be served through market mechanisms.

(ii) Second, to projects that will serve households in underserved areas. In considering such projects, the Board shall balance projects that will serve the largest number of households with projects that will serve remote, isolated communities (including noncontiguous States) in areas that are unlikely to be served through market mechanisms.

Within each category, the Board shall consider the project's estimated cost per household and shall give priority to those projects that provide the highest quality service at the lowest cost per household.

(B) Additional consideration

The Board should give additional consideration to projects that also provide high-speed Internet service.

(C) Prohibitions

The Board may not approve a loan guarantee under this chapter for a project that—

(i) is designed primarily to serve 1 or more of the top 40 designated market areas (as that term is defined in section 122(j) of title 17); or

(ii) would alter or remove National Weather Service warnings from local broadcast signals.

(2) Other considerations

The Board shall consider other factors, which shall include projects that would—

(A) offer a separate tier of local broadcast signals, but for applicable Federal, State, or local laws or regulations;

(B) provide lower projected costs to consumers of such separate tier; and

(C) enable the delivery of local broadcast signals consistent with the purpose of this chapter by a means reasonably compatible with existing systems or devices predominantly in use.

(3) Further consideration

In implementing this chapter, the Board shall support the use of loan guarantees for projects that would serve households not likely to be served in the absence of loan guarantees under this chapter.

(f) Guarantee limits

(1) Limitation on aggregate value of loans

The aggregate value of all loans for which loan guarantees are issued under this chapter (including the unguaranteed portion of such loans) may not exceed $1,250,000,000.

(2) Guarantee level

A loan guarantee issued under this chapter may not exceed an amount equal to 80 percent of a loan meeting in its entirety the requirements of subsection (d)(2)(A) of this section. If only a portion of a loan meets the requirements of that subsection, the Board shall determine that percentage of the loan meeting such requirements (the ''applicable portion'') and may issue a loan guarantee in an amount not exceeding 80 percent of the applicable portion.

(g) Underwriting criteria

Within the period provided for under subsection (b)(1) of this section, the Board shall, in consultation with the Director of the Office of Management and Budget and an independent public accounting firm, develop underwriting criteria relating to the guarantee of loans that are consistent with the purpose of this chapter, including appropriate collateral and cash flow levels for loans guaranteed under this chapter, and such other matters as the Board considers appropriate.

(h) Credit risk premiums

(1) Establishment and acceptance

(A) In general

The Board may establish and approve the acceptance of credit risk premiums with respect to a loan guarantee under this chapter in order to cover the cost, as defined in section 661a(5) of title 2, of the loan guarantee. To the extent that appropriations of budget authority are insufficient to cover the cost, as so determined, of a loan guarantee under this chapter, credit risk premiums shall be accepted from a non-Federal source under this subsection on behalf of the applicant for the loan guarantee.

(B) Authority limited by appropriations Acts

Credit risk premiums under this subsection shall be imposed only to the extent provided for in advance in appropriations Acts.

(2) Credit risk premium amount

(A) In general

The Board shall determine the amount of any credit risk premium to be accepted with respect to a loan guarantee under this chapter on the basis of—

(i) the financial and economic circumstances of the applicant for the loan guarantee, including the amount of collateral offered;

(ii) the proposed schedule of loan disbursements;

(iii) the business plans of the applicant for providing service;

(iv) any financial commitment from a broadcast signal provider; and

(v) the concurrence of the Director of the Office of Management and Budget as to the amount of the credit risk premium.

(B) Proportionality

To the extent that appropriations of budget authority are sufficient to cover the cost, as determined under section 661a(5) of title 2, of loan guarantees under this chapter, the credit risk premium with respect to each loan guarantee shall be reduced proportionately.

(C) Payment of premiums

Credit risk premiums under this subsection shall be paid to an account (the ''Escrow Account'') established in the Treasury which shall accrue interest and such interest shall be retained by the account, subject to subparagraph (D).

(D) Deductions from Escrow Account

If a default occurs with respect to any loan guaranteed under this chapter and the default is not cured in accordance with the terms of the underlying loan or loan guarantee agreement, the Administrator, in accordance with subsections (i) and (j) of section 1104 of this title, shall liquidate, or shall cause to be liquidated, all assets collateralizing such loan as to which it has a lien or security interest. Any shortfall between the proceeds of the liquidation net of costs and expenses relating to the liquidation, and the guarantee amount paid pursuant to this chapter shall be deducted from funds in the Escrow Account and credited to the Administrator for payment of such shortfall. At such time as determined under subsection (d)(2)(E) of this section when all loans guaranteed under this chapter have been repaid or otherwise satisfied in accordance with this chapter and the regulations promulgated hereunder, remaining funds in the Escrow Account, if any, shall be refunded, on a pro rata basis, to applicants whose loans guaranteed under this chapter were not in default, or where any default was cured in accordance with the terms of the underlying loan or loan guarantee agreement.

(i) Limitations on guarantees for certain cable operators

Notwithstanding any other provision of this chapter, no loan guarantee under this chapter may be granted or used to provide funds for a project that extends, upgrades, or enhances the services provided over any cable system to an area that, as of December 21, 2000, is covered by a cable franchise agreement that expressly obligates a cable system operator to serve such area.

(j) Judicial review

The decision of the Board to approve or disapprove the making of a loan guarantee under this chapter shall not be subject to judicial review.

(k) Applicability of APA

Except as otherwise provided in subsection (j) of this section, the provisions of subchapter II of chapter 5 and chapter 7 of title 5 (commonly referred to as the Administrative Procedure Act), shall apply to actions taken under this chapter.

(Pub. L. 106–553, §1(a)(2) [title X, §1004], Dec. 21, 2000, 114 Stat. 2762, 2762A–129; Pub. L. 107–171, title VI, §6404(b)(1), May 13, 2002, 116 Stat. 430.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', and was translated as reading ''this title''. See References in Text note set out under section 1101 of this title.

AMENDMENTS

2002—Subsec. (b)(1). Pub. L. 107–171, §6404(b)(1)(A), made technical amendments to references in original Act which appear in text as references to sections 1104 and 1109 of this title.

Subsec. (d)(1). Pub. L. 107–171, §6404(b)(1)(B), made technical amendment to reference in original Act which appears in text as a reference to section 1102 of this title.

Subsec. (h)(2)(D). Pub. L. 107–171, §6404(b)(1)(C), made technical amendment to reference in original Act which appears in text as a reference to section 1104 of this title.

§1104. Administration of loan guarantees

(a) In general

The Administrator of the Rural Utilities Service (in this chapter referred to as the ''Administrator'') shall issue and otherwise administer loan guarantees that have been approved by the Board in accordance with sections 1102 and 1103 of this title.

(b) Security for protection of United States financial interests

(1) Terms and conditions

An applicant shall agree to such terms and conditions as are satisfactory, in the judgment of the Board, to ensure that, as long as any principal or interest is due and payable on a loan guaranteed under this chapter, the applicant—

(A) shall maintain assets, equipment, facilities, and operations on a continuing basis;

(B) shall not make any discretionary dividend payments that impair its ability to repay obligations guaranteed under this chapter;

(C) shall remain sufficiently capitalized; and

(D) shall submit to, and cooperate fully with, any audit of the applicant under section 1105(a)(2) of this title.

(2) Collateral

(A) Existence of adequate collateral

An applicant shall provide the Board such documentation as is necessary, in the judgment of the Board, to provide satisfactory evidence that appropriate and adequate collateral secures a loan guaranteed under this chapter.

(B) Form of collateral

Collateral required by subparagraph (A) shall consist solely of assets of the applicant, any affiliate of the applicant, or both (whichever the Board considers appropriate), including primary assets to be used in the delivery of signals for which the loan is guaranteed.

(C) Review of valuation

The value of collateral securing a loan guaranteed under this chapter may be reviewed by the Board, and may be adjusted downward by the Board if the Board reasonably believes such adjustment is appropriate.

(3) Lien on interests in assets

Upon the Board's approval of a loan guarantee under this chapter, the Administrator

shall have liens on assets securing the loan, which shall be superior to all other liens on such assets, and the value of the assets (based on a determination satisfactory to the Board) subject to the liens shall be at least equal to the unpaid balance of the loan amount covered by the loan guarantee, or that value approved by the Board under section 1103(d)(3)(B)(iii) of this title.

(4) Perfected security interest

With respect to a loan guaranteed under this chapter, the Administrator and the lender shall have a perfected security interest in assets securing the loan that are fully sufficient to protect the financial interests of the United States and the lender.

(5) Insurance

In accordance with practices in the private capital market, as determined by the Board, the applicant for a loan guarantee under this chapter shall obtain, at its expense, insurance sufficient to protect the financial interests of the United States, as determined by the Board.

(c) Assignment of loan guarantees

The holder of a loan guarantee under this chapter may assign the loan guaranteed under this chapter in whole or in part, subject to such requirements as the Board may prescribe.

(d) Expiration of loan guarantee upon stripping

Notwithstanding subsections (c), (e), and (h) of this section, a loan guarantee under this chapter shall have no force or effect if any part of the guaranteed portion of the loan is transferred separate and apart from the unguaranteed portion of the loan.

(e) Adjustment

The Board may approve the adjustment of any term or condition of a loan guarantee or a loan guaranteed under this chapter, including the rate of interest, time of payment of principal or interest, or security requirements only if—

(1) the adjustment is consistent with the financial interests of the United States;

(2) consent has been obtained from the parties to the loan agreement;

(3) the adjustment is consistent with the underwriting criteria developed under section 1103(g) of this title;

(4) the adjustment does not adversely affect the interest of the Federal Government in the assets or collateral of the applicant;

(5) the adjustment does not adversely affect the ability of the applicant to repay the loan; and

(6) the National Telecommunications and Information Administration has been consulted by the Board regarding the adjustment.

(f) Performance schedules

(1) Performance schedules

An applicant for a loan guarantee under this chapter for a project covered by section 1103(e)(1)[1] of this title shall enter into stipulated performance schedules with the Administrator with respect to the signals to be provided through the project.

(2) Penalty

The Administrator may assess against and collect from an applicant described in paragraph (1) a penalty not to exceed 3 times the interest due on the guaranteed loan of the applicant under this chapter if the applicant fails to meet its stipulated performance schedule under that paragraph.

(g) Compliance

The Administrator, in cooperation with the Board and as the regulations of the Board may provide, shall enforce compliance by an applicant, and any other party to a loan guarantee for whose benefit assistance under this chapter is intended, with the provisions of this chapter, any regulations under this chapter, and the terms and conditions of the loan guarantee, including through the submittal of such reports and documents as the Board may require in regulations prescribed by the Board and through regular periodic inspections and audits.

(h) Commercial validity

A loan guarantee under this chapter shall be incontestable—

(1) in the hands of an applicant on whose behalf the loan guarantee is made, unless the applicant engaged in fraud or misrepresentation in securing the loan guarantee; and

(2) as to any person or entity (or their respective successor in interest) who makes or contracts to make a loan to the applicant for the loan guarantee in reliance thereon, unless such person or entity (or respective successor in interest) engaged in fraud or misrepresentation in making or contracting to make such loan.

(i) Defaults

The Board shall prescribe regulations governing defaults on loans guaranteed under this chapter, including the administration of the payment of guaranteed amounts upon default.

(j) Recovery of payments

(1) In general

The Administrator shall be entitled to recover from an applicant for a loan guarantee under this chapter the amount of any payment made to the holder of the guarantee with respect to the loan.

(2) Subrogation

Upon making a payment described in paragraph (1), the Administrator shall be subrogated to all rights of the party to whom the payment is made with respect to the guarantee which was the basis for the payment.

(3) Disposition of property

(A) Sale or disposal

The Administrator shall, in an orderly and efficient manner, sell or otherwise dispose of any property or other interests obtained under this chapter in a manner that maximizes taxpayer return and is consistent with the financial interests of the United States.

(B) Maintenance

The Administrator shall maintain in a cost-effective and reasonable manner any

[1] See References in Text note below.

property or other interests pending sale or disposal of such property or other interests under subparagraph (A).

(k) Action against obligor

(1) Authority to bring civil action

The Administrator may bring a civil action in an appropriate district court of the United States in the name of the United States or of the holder of the obligation in the event of a default on a loan guaranteed under this chapter. The holder of a loan guarantee shall make available to the Administrator all records and evidence necessary to prosecute the civil action.

(2) Fully satisfying obligations owed the United States

The Administrator may accept property in satisfaction of any sums owed the United States as a result of a default on a loan guaranteed under this chapter, but only to the extent that any cash accepted by the Administrator is not sufficient to satisfy fully the sums owed as a result of the default.

(*l*) Breach of conditions

The Administrator shall commence a civil action in a court of appropriate jurisdiction to enjoin any activity which the Board finds is in violation of this chapter, the regulations under this chapter, or any conditions which were duly agreed to, and to secure any other appropriate relief, including relief against any affiliate of the applicant.

(m) Attachment

No attachment or execution may be issued against the Administrator or any property in the control of the Administrator pursuant to this chapter before the entry of a final judgment (as to which all rights of appeal have expired) by a Federal, State, or other court of competent jurisdiction against the Administrator in a proceeding for such action.

(n) Fees

(1) Application fee

The Board shall charge and collect from an applicant for a loan guarantee under this chapter a fee to cover the cost of the Board in making necessary determinations and findings with respect to the loan guarantee application under this chapter. The amount of the fee shall be reasonable.

(2) Loan guarantee origination fee

The Board shall charge, and the Administrator may collect, a loan guarantee origination fee with respect to the issuance of a loan guarantee under this chapter.

(3) Use of fees collected

(A) In general

Any fee collected under this subsection shall be used, subject to subparagraph (B), to offset administrative costs under this chapter, including costs of the Board and of the Administrator.

(B) Subject to appropriations

The authority provided by this subsection shall be effective only to such extent or in such amounts as are provided in advance in appropriations Acts.

(C) Limitation on fees

The aggregate amount of fees imposed by this subsection shall not exceed the actual amount of administrative costs under this chapter.

(*o*) Requirements relating to affiliates

(1) Indemnification

The United States shall be indemnified by any affiliate (acceptable to the Board) of an applicant for a loan guarantee under this chapter for any losses that the United States incurs as a result of—

(A) a judgment against the applicant or any of its affiliates;

(B) any breach by the applicant or any of its affiliates of their obligations under the loan guarantee agreement;

(C) any violation of the provisions of this chapter, and the regulations prescribed under this chapter, by the applicant or any of its affiliates;

(D) any penalties incurred by the applicant or any of its affiliates for any reason, including violation of a stipulated performance schedule under subsection (f) of this section; and

(E) any other circumstances that the Board considers appropriate.

(2) Limitation on transfer of loan proceeds

An applicant for a loan guarantee under this chapter may not transfer any part of the proceeds of the loan to an affiliate.

(p) Effect of bankruptcy

(1) Notwithstanding any other provision of law, whenever any person or entity is indebted to the United States as a result of any loan guarantee issued under this chapter and such person or entity is insolvent or is a debtor in a case under title 11, the debts due to the United States shall be satisfied first.

(2) A discharge in bankruptcy under title 11 shall not release a person or entity from an obligation to the United States in connection with a loan guarantee under this chapter.

(Pub. L. 106–553, §1(a)(2) [title X, §1005], Dec. 21, 2000, 114 Stat. 2762, 2762A–134; Pub. L. 107–171, title VI, §6404(b)(2), May 13, 2002, 116 Stat. 430.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', and was translated as reading ''this title''. See References in Text note set out under section 1101 of this title.

Section 1103(e)(1) of this title, referred to in subsec. (f)(1), was in the original a reference to section 4(e)(1), and was translated as referring to section 1004(e)(1) of title X of H.R. 5548, as enacted by Pub. L. 106–553, §1(a)(2), to reflect the probable intent of Congress. Pub. L. 106–553 does not contain a section 4 and section 1004 relates to projects to be given priority for loan guarantees.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–171, §6404(b)(2)(A), made technical amendments to references in original Act which appear in text as references to sections 1102 and 1103 of this title.

Subsec. (b)(1)(D). Pub. L. 107–171, § 6404(b)(2)(B)(i), made technical amendment to reference in original Act which appears in text as a reference to section 1105(a)(2) of this title.

Subsec. (b)(3). Pub. L. 107–171, § 6404(b)(2)(B)(ii), made technical amendment to reference in original Act which appears in text as a reference to section 1103(d)(3)(B)(iii) of this title.

Subsec. (e)(3). Pub. L. 107–171, § 6404(b)(2)(C), made technical amendment to reference in original Act which appears in text as a reference to section 1103(g) of this title.

§ 1105. Annual audit

(a) Requirement

The Comptroller General of the United States shall conduct on an annual basis an audit of—

(1) the administration of the provisions of this chapter; and

(2) the financial position of each applicant who receives a loan guarantee under this chapter, including the nature, amount, and purpose of investments made by the applicant.

(b) Report

The Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking and Financial Services of the House of Representatives a report on each audit conducted under subsection (a) of this section.

(Pub. L. 106–553, § 1(a)(2) [title X, § 1006], Dec. 21, 2000, 114 Stat. 2762, 2762A–138.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original ''this Act'', and was translated as reading ''this title''. See References in Text note set out under section 1101 of this title.

CHANGE OF NAME

Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 1106. Improved cellular service in rural areas

(a) Reinstatement of applicants as tentative selectees

(1) In general

Notwithstanding the order of the Federal Communications Commission in the proceeding described in paragraph (3), the Commission shall—

(A) reinstate each applicant as a tentative selectee under the covered rural service area licensing proceeding; and

(B) permit each applicant to amend its application, to the extent necessary to update factual information and to comply with the rules of the Commission, at any time before the Commission's final licensing action in the covered rural service area licensing proceeding.

(2) Exemption from petitions to deny

For purposes of the amended applications filed pursuant to paragraph (1)(B), the provisions of section 309(d)(1) of this title shall not apply.

(3) Proceeding

The proceeding described in this paragraph is the proceeding of the Commission In re Applications of Cellwave Telephone Services L.P., Futurewave General Partners L.P., and Great Western Cellular Partners, 7 FCC Rcd No. 19 (1992).

(b) Continuation of license proceeding; fee assessment

(1) Award of licenses

The Commission shall award licenses under the covered rural service area licensing proceeding within 90 days after December 21, 2000.

(2) Service requirements

The Commission shall provide that, as a condition of an applicant receiving a license pursuant to the covered rural service area licensing proceeding, the applicant shall provide cellular radiotelephone service to subscribers in accordance with sections 22.946 and 22.947 of the Commission's rules (47 CFR 22.946, 22.947); except that the time period applicable under section 22.947 of the Commission's rules (or any successor rule) to the applicants identified in subparagraphs (A) and (B) of subsection (d)(1) of this section shall be 3 years rather than 5 years and the waiver authority of the Commission shall apply to such 3-year period.

(3) Calculation of license fee

(A) Fee required

The Commission shall establish a fee for each of the licenses under the covered rural service area licensing proceeding. In determining the amount of the fee, the Commission shall consider—

(i) the average price paid per person served in the Commission's Cellular Unserved Auction (Auction No. 12); and

(ii) the settlement payments required to be paid by the permittees pursuant to the consent decree set forth in the Commission's order, In re the Tellesis Partners (7 FCC Rcd 3168 (1992)), multiplying such payments by two.

(B) Notice of fee

Within 30 days after the date an applicant files the amended application permitted by subsection (a)(1)(B) of this section, the Commission shall notify each applicant of the fee established for the license associated with its application.

(4) Payment for licenses

No later than 18 months after the date that an applicant is granted a license, each applicant shall pay to the Commission the fee established pursuant to paragraph (3) for the license granted to the applicant under paragraph (1).

(5) Auction authority

If, after the amendment of an application pursuant to subsection (a)(1)(B) of this section, the Commission finds that the applicant is ineligible for grant of a license to provide cellular radiotelephone services for a rural

service area or the applicant does not meet the requirements under paragraph (2) of this subsection, the Commission shall grant the license for which the applicant is the tentative selectee ([1] pursuant to subsection (a)(1)(B) of this section by competitive bidding pursuant to section 309(j) of this title.

(c) Prohibition of transfer

During the 5-year period that begins on the date that an applicant is granted any license pursuant to subsection (a) of this section, the Commission may not authorize the transfer or assignment of that license under section 310 of this title. Nothing in this chapter may be construed to prohibit any applicant granted a license pursuant to subsection (a) of this section from contracting with other licensees to improve cellular telephone service.

(d) Definitions

For the purposes of this section, the following definitions shall apply:

(1) Applicant

The term ''applicant'' means—

(A) Great Western Cellular Partners, a California general partnership chosen by the Commission as tentative selectee for RSA #492 on May 4, 1989;

(B) Monroe Telephone Services L.P., a Delaware limited partnership chosen by the Commission as tentative selectee for RSA #370 on August 24, 1989 (formerly Cellwave Telephone Services L.P.); and

(C) FutureWave General Partners L.P., a Delaware limited partnership chosen by the Commission as tentative selectee for RSA #615 on May 25, 1990.

(2) Commission

The term ''Commission'' means the Federal Communications Commission.

(3) Covered rural service area licensing proceeding

The term ''covered rural service area licensing proceeding'' means the proceeding of the Commission for the grant of cellular radiotelephone licenses for rural service areas #492 (Minnesota 11), #370 (Florida 11), and #615 (Pennsylvania 4).

(4) Tentative selectee

The term ''tentative selectee'' means a party that has been selected by the Commission under a licensing proceeding for grant of a license, but has not yet been granted the license because the Commission has not yet determined whether the party is qualified under the Commission's rules for grant of the license.

(Pub. L. 106–553, § 1(a)(2) [title X, § 1007], Dec. 21, 2000, 114 Stat. 2762, 2762A–138.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original ''this Act'', and was translated as reading ''this title''. See References in Text note set out under section 1101 of this title.

[1] So in original. No closing parenthesis was enacted.

§ 1107. Sunset

No loan guarantee may be approved under this chapter after December 31, 2006.

(Pub. L. 106–553, § 1(a)(2) [title X, § 1009], Dec. 21, 2000, 114 Stat. 2762, 2762A–140.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', and was translated as reading ''this title''. See References in Text note set out under section 1101 of this title.

§ 1108. Definitions

In this chapter:

(1) Affiliate

The term ''affiliate''—

(A) means any person or entity that controls, or is controlled by, or is under common control with, another person or entity; and

(B) may include any individual who is a director or senior management officer of an affiliate, a shareholder controlling more than 25 percent of the voting securities of an affiliate, or more than 25 percent of the ownership interest in an affiliate not organized in stock form.

(2) Nonserved area

The term ''nonserved area'' means any area that—

(A) is outside the grade B contour (as determined using standards employed by the Federal Communications Commission) of the local television broadcast signals serving a particular designated market area; and

(B) does not have access to such signals by any commercial, for profit, multichannel video provider.

(3) Underserved area

The term ''underserved area'' means any area that—

(A) is outside the grade A contour (as determined using standards employed by the Federal Communications Commission) of the local television broadcast signals serving a particular designated market area; and

(B) has access to local television broadcast signals from not more than one commercial, for-profit multichannel video provider.

(4) Common terms

Except as provided in paragraphs (1) through (3), any term used in this chapter that is defined in the Communications Act of 1934 (47 U.S.C. 151 et seq.) has the meaning given that term in the Communications Act of 1934.

(Pub. L. 106–553, § 1(a)(2) [title X, § 1010], Dec. 21, 2000, 114 Stat. 2762, 2762A–140.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', and was translated as reading ''this title''. See References in Text note set out under section 1101 of this title.

The Communications Act of 1934, referred to in par. (4), is act June 19, 1934, ch. 652, 48 Stat. 1064, as amended, which is classified principally to chapter 5 (§ 151 et seq.) of this title. For complete classification of this Act to the Code, see section 609 of this title and Tables.

§ 1109. Authorizations of appropriations

(a) Cost of loan guarantees

(1) Authorization of appropriations

For the cost of the loans guaranteed under this chapter, including the cost of modifying the loans, as defined in section 661a of title 2, there are authorized to be appropriated for fiscal years 2001 through 2006, such amounts as may be necessary.

(2) Commodity Credit Corporation funds

(A) In general

Notwithstanding any other provision of law, subject to subparagraph (B), in addition to amounts made available under paragraph (1), of the funds of the Commodity Credit Corporation, the Secretary of Agriculture shall make available for loan guarantees to carry out this chapter $80,000,000 for the period beginning on May 13, 2002, and ending on December 31, 2006, to remain available until expended.

(B) Broadband loans and loan guarantees

(i) In general

Amounts made available under subparagraph (A) that are not obligated as of the release date described in clause (ii) shall be available to the Secretary to make loans and loan guarantees under section 950bb of title 7.

(ii) Release date

For purposes of clause (i), the release date is the date that is the earlier of—

(I) the date the Secretary determines that at least 75 percent of the designated market areas (as defined in section 122(j) of title 17) not in the top 40 designated market areas described in section 1103(e)(1)(C)(i) of this title have access to local television broadcast signals for virtually all households (as determined by the Secretary); or

(II) December 31, 2006.

(C) Advanced appropriations

Subsections (c) and (h)(1)(B) of section 1103 of this title and section 1104(n)(3)(B) of this title shall not apply to amounts made available under this paragraph.

(b) Cost of administration

There is hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this chapter, other than to cover costs under subsection (a) of this section.

(c) Availability

Any amounts appropriated pursuant to the authorizations of appropriations in subsections (a) and (b) of this section shall remain available until expended.

(Pub. L. 106–553, § 1(a)(2) [title X, § 1011], Dec. 21, 2000, 114 Stat. 2762, 2762A–141; Pub. L. 107–171, title VI, § 6404(a), May 13, 2002, 116 Stat. 429.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1) and (b), was in the original ''this Act'', and was translated as reading ''this title''. See References in Text note set out under section 1101 of this title.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–171 designated existing provisions as par. (1), inserted heading, and added par. (2).

§ 1110. Prevention of interference to direct broadcast satellite services

(a) Testing for harmful interference

The Federal Communications Commission shall provide for an independent technical demonstration of any terrestrial service technology proposed by any entity that has filed an application to provide terrestrial service in the direct broadcast satellite frequency band to determine whether the terrestrial service technology proposed to be provided by that entity will cause harmful interference to any direct broadcast satellite service.

(b) Technical demonstration

In order to satisfy the requirement of subsection (a) of this section for any pending application, the Commission shall select an engineering firm or other qualified entity independent of any interested party based on a recommendation made by the Institute of Electrical and Electronics Engineers (IEEE), or a similar independent professional organization, to perform the technical demonstration or analysis. The demonstration shall be concluded within 60 days after December 21, 2000, and shall be subject to public notice and comment for not more than 30 days thereafter.

(c) Definitions

As used in this section:

(1) Direct broadcast satellite frequency band

The term ''direct broadcast satellite frequency band'' means the band of frequencies at 12.2 to 12.7 gigahertz.

(2) Direct broadcast satellite service

The term ''direct broadcast satellite service'' means any direct broadcast satellite system operating in the direct broadcast satellite frequency band.

(Pub. L. 106–553, § 1(a)(2) [title X, § 1012], Dec. 21, 2000, 114 Stat. 2762, 2762A–141.)

CHAPTER 11—COMMERCIAL MOBILE SERVICE ALERTS

Sec.
1201. Federal Communications Commission duties.
1202. Commercial Mobile Service Alert Advisory Committee.
1203. Research and development.
1204. Grant program for remote community alert systems.
1205. Funding.

§ 1201. Federal Communications Commission duties

(a) Commercial mobile service alert regulations

Within 180 days after the date on which the Commercial Mobile Service Alert Advisory Committee, established pursuant to section 1202(a) of this title, transmits recommendations to the Federal Communications Commission, the Commission shall complete a proceeding to adopt relevant technical standards, protocols, proce-

dures, and other technical requirements based on the recommendations of such Advisory Committee necessary to enable commercial mobile service alerting capability for commercial mobile service providers that voluntarily elect to transmit emergency alerts. The Commission shall consult with the National Institute of Standards and Technology regarding the adoption of technical standards under this subsection.

(b) Commercial mobile service election

(1) Amendment of commercial mobile service license

Within 120 days after the date on which the Federal Communications Commission adopts relevant technical standards and other technical requirements pursuant to subsection (a), the Commission shall complete a proceeding—

(A) to allow any licensee providing commercial mobile service (as defined in section 332(d)(1) of this title) to transmit emergency alerts to subscribers to, or users of, the commercial mobile service provided by such licensee;

(B) to require any licensee providing commercial mobile service that elects, in whole or in part, under paragraph (2) not to transmit emergency alerts to provide clear and conspicuous notice at the point of sale of any devices with which its commercial mobile service is included, that it will not transmit such alerts via the service it provides for the device; and

(C) to require any licensee providing commercial mobile service that elects under paragraph (2) not to transmit emergency alerts to notify its existing subscribers of its election.

(2) Election

(A) In general

Within 30 days after the Commission issues its order under paragraph (1), each licensee providing commercial mobile service shall file an election with the Commission with respect to whether or not it intends to transmit emergency alerts.

(B) Transmission standards; notification

If a licensee providing commercial mobile service elects to transmit emergency alerts via its commercial mobile service, the licensee shall—

(i) notify the Commission of its election; and

(ii) agree to transmit such alerts in a manner consistent with the technical standards, protocols, procedures, and other technical requirements implemented by the Commission.

(C) No fee for service

A commercial mobile service licensee that elects to transmit emergency alerts may not impose a separate or additional charge for such transmission or capability.

(D) Withdrawal; late election

The Commission shall establish a procedure—

(i) for a commercial mobile service licensee that has elected to transmit emergency alerts to withdraw its election without regulatory penalty or forfeiture upon advance written notification of the withdrawal to its affected subscribers;

(ii) for a commercial mobile service licensee to elect to transmit emergency alerts at a date later than provided in subparagraph (A); and

(iii) under which a subscriber may terminate a subscription to service provided by a commercial mobile service licensee that withdraws its election without penalty or early termination fee.

(E) Consumer choice technology

Any commercial mobile service licensee electing to transmit emergency alerts may offer subscribers the capability of preventing the subscriber's device from receiving such alerts, or classes of such alerts, other than an alert issued by the President. Within 2 years after the Commission completes the proceeding under paragraph (1), the Commission shall examine the issue of whether a commercial mobile service provider should continue to be permitted to offer its subscribers such capability. The Commission shall submit a report with its recommendations to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives.

(c) Digital television transmission towers retransmission capability

Within 90 days after the date on which the Commission adopts relevant technical standards based on recommendations of the Commercial Mobile Service Alert Advisory Committee, established pursuant to section 1202(a) of this title, the Commission shall complete a proceeding to require licensees and permittees of noncommercial educational broadcast stations or public broadcast stations (as those terms are defined in section 397(6) of this title) to install necessary equipment and technologies on, or as part of, any broadcast television digital signal transmitter to enable the distribution of geographically targeted alerts by commercial mobile service providers that have elected to transmit emergency alerts under this section.

(d) FCC regulation of compliance

The Federal Communications Commission may enforce compliance with this chapter but shall have no rulemaking authority under this chapter, except as provided in subsections (a), (b), (c), and (f).

(e) Limitation of liability

(1) In general

Any commercial mobile service provider (including its officers, directors, employees, vendors, and agents) that transmits emergency alerts and meets its obligations under this chapter shall not be liable to any subscriber to, or user of, such person's service or equipment for—

(A) any act or omission related to or any harm resulting from the transmission of, or failure to transmit, an emergency alert; or

(B) the release to a government agency or entity, public safety, fire service, law en-

forcement official, emergency medical service, or emergency facility of subscriber information used in connection with delivering such an alert.

(2) Election not to transmit alerts

The election by a commercial mobile service provider under subsection (b)(2)(A) not to transmit emergency alerts, or to withdraw its election to transmit such alerts under subsection (b)(2)(D) shall not, by itself, provide a basis for liability against the provider (including its officers, directors, employees, vendors, and agents).

(f) Testing

The Commission shall require by regulation technical testing for commercial mobile service providers that elect to transmit emergency alerts and for the devices and equipment used by such providers for transmitting such alerts.

(Pub. L. 109–347, title VI, § 602, Oct. 13, 2006, 120 Stat. 1936.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (d) and (e)(1), was in the original ''this title'', meaning title VI of Pub. L. 109–347, Oct. 13, 2006, 120 Stat. 1936, which is classified principally to this chapter. For complete classification of title VI to the Code, see Short Title note set out below and Tables.

SHORT TITLE

Pub. L. 109–347, title VI, § 601, Oct. 13, 2006, 120 Stat. 1936, provided that: ''This title [enacting this chapter, section 314a of Title 6, Domestic Security, and section 5189e of Title 42, The Public Health and Welfare, and amending section 101 of Title 6 and sections 5150, 5172, 5173, and 5184 of Title 42] may be cited as the 'Warning, Alert, and Response Network Act'.''

§ 1202. Commercial Mobile Service Alert Advisory Committee

(a) Establishment

Not later than 60 days after October 13, 2006, the chairman of the Federal Communications Commission shall establish an advisory committee, to be known as the Commercial Mobile Service Alert Advisory Committee (referred to in this section as the ''Advisory Committee'').

(b) Membership

The chairman of the Federal Communications Commission shall appoint the members of the Advisory Committee, as soon as practicable after October 13, 2006, from the following groups:

(1) State and local government representatives

Representatives of State and local governments and representatives of emergency response providers, selected from among individuals nominated by national organizations representing such governments and personnel.

(2) Tribal governments

Representatives from Federally recognized Indian tribes and National Indian organizations.

(3) Subject matter experts

Individuals who have the requisite technical knowledge and expertise to serve on the Advisory Committee in the fulfillment of its duties, including representatives of—

(A) communications service providers;

(B) vendors, developers, and manufacturers of systems, facilities, equipment, and capabilities for the provision of communications services;

(C) third-party service bureaus;

(D) technical experts from the broadcasting industry;

(E) the national organization representing the licensees and permittees of noncommercial broadcast television stations;

(F) national organizations representing individuals with special needs, including individuals with disabilities and the elderly; and

(G) other individuals with relevant technical expertise.

(4) Qualified representatives of other stakeholders and interested parties

Qualified representatives of such other stakeholders and interested and affected parties as the chairman deems appropriate.

(c) Development of system-critical recommendations

Within 1 year after October 13, 2006, the Advisory Committee shall develop and submit to the Federal Communications Commission recommendations—

(1) for protocols, technical capabilities, and technical procedures through which electing commercial mobile service providers receive, verify, and transmit alerts to subscribers;

(2) for the establishment of technical standards for priority transmission of alerts by electing commercial mobile service providers to subscribers;

(3) for relevant technical standards for devices and equipment and technologies used by electing commercial mobile service providers to transmit emergency alerts to subscribers;

(4) for the technical capability to transmit emergency alerts by electing commercial mobile providers to subscribers in languages in addition to English, to the extent practicable and feasible;

(5) under which electing commercial mobile service providers may offer subscribers the capability of preventing the subscriber's device from receiving emergency alerts, or classes of such alerts, (other than an alert issued by the President), consistent with section 1201(b)(2)(E) of this title;

(6) for a process under which commercial mobile service providers can elect to transmit emergency alerts if—

(A) not all of the devices or equipment used by such provider are capable of receiving such alerts; or

(B) the provider cannot offer such alerts throughout the entirety of its service area; and

(7) as otherwise necessary to enable electing commercial mobile service providers to transmit emergency alerts to subscribers.

(d) Meetings

(1) Initial meeting

The initial meeting of the Advisory Committee shall take place not later than 60 days after October 13, 2006.

(2) Other meetings

After the initial meeting, the Advisory Committee shall meet at the call of the chair.

(3) Notice; open meetings

Any meetings held by the Advisory Committee shall be duly noticed at least 14 days in advance and shall be open to the public.

(e) Rules

(1) Quorum

One-third of the members of the Advisory Committee shall constitute a quorum for conducting business of the Advisory Committee.

(2) Subcommittees

To assist the Advisory Committee in carrying out its functions, the chair may establish appropriate subcommittees composed of members of the Advisory Committee and other subject matter experts as deemed necessary.

(3) Additional rules

The Advisory Committee may adopt other rules as needed.

(f) Federal Advisory Committee Act

Neither the Federal Advisory Committee Act (5 U.S.C. App.) nor any rule, order, or regulation promulgated under that Act shall apply to the Advisory Committee.

(g) Consultation with NIST

The Advisory Committee shall consult with the National Institute of Standards and Technology in its work on developing recommendations under paragraphs (2) and (3) of subsection (c).

(Pub. L. 109–347, title VI, § 603, Oct. 13, 2006, 120 Stat. 1938.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (f), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

§ 1203. Research and development

(a) In general

The Under Secretary of Homeland Security for Science and Technology, in consultation with the director of the National Institute of Standards and Technology and the chairman of the Federal Communications Commission, shall establish a research, development, testing, and evaluation program based on the recommendations of the Commercial Mobile Service Alert Advisory Committee, established pursuant to section 1202(a) of this title, to support the development of technologies to increase the number of commercial mobile service devices that can receive emergency alerts.

(b) Functions

The program established under subsection (a) shall—

(1) fund research, development, testing, and evaluation at academic institutions, private sector entities, government laboratories, and other appropriate entities; and

(2) ensure that the program addresses, at a minimum—

(A) developing innovative technologies that will transmit geographically targeted emergency alerts to the public; and

(B) research on understanding and improving public response to warnings.

(Pub. L. 109–347, title VI, § 604, Oct. 13, 2006, 120 Stat. 1940.)

§ 1204. Grant program for remote community alert systems

(a) Grant program

The Under Secretary of Commerce for Oceans and Atmosphere, in consultation with the Secretary of Homeland Security, shall establish a program under which grants may be made to provide for outdoor alerting technologies in remote communities effectively unserved by commercial mobile service (as determined by the Federal Communications Commission within 180 days after October 13, 2006) for the purpose of enabling residents of those communities to receive emergency alerts.

(b) Applications and conditions

In conducting the program, the Under Secretary—

(1) shall establish a notification and application procedure; and

(2) may establish such conditions, and require such assurances, as may be appropriate to ensure the efficiency and integrity of the grant program.

(c) Sunset

The Under Secretary may not make grants under subsection (a) more than 5 years after October 13, 2006.

(d) Limitation

The sum of the amounts awarded for all fiscal years as grants under this section may not exceed $10,000,000.

(Pub. L. 109–347, title VI, § 605, Oct. 13, 2006, 120 Stat. 1940.)

§ 1205. Funding

(a) In general

In addition to any amounts provided by appropriation Acts, funding for this chapter shall be provided from the Digital Transition and Public Safety Fund in accordance with section 3010 of the Digital Television Transition and Public Safety Act of 2005 (47 U.S.C. 309 note).

(b) Compensation

The Assistant Secretary of Commerce for Communications and Information shall compensate any such broadcast station licensee or permittee for reasonable costs incurred in complying with the requirements imposed pursuant to section 1201(c) of this title from funds made available under this section. The Assistant Secretary shall ensure that sufficient funds are made available to effectuate geographically targeted alerts.

(c) Credit

The Assistant Secretary of Commerce for Communications and Information, in consultation with the Under Secretary of Homeland Se-

curity for Science and Technology and the Under Secretary of Commerce for Oceans and Atmosphere, may borrow from the Treasury beginning on October 1, 2006, such sums as may be necessary, but not to exceed $106,000,000, to implement this chapter. The Assistant Secretary of Commerce for Communications and Information shall ensure that the Under Secretary of Homeland Security for Science and Technology and the Under Secretary of Commerce for Oceans and Atmosphere are provided adequate funds to carry out their responsibilities under sections 1203 and 1204 of this title. The Treasury shall be reimbursed, without interest, from amounts in the Digital Television Transition and Public Safety Fund as funds are deposited into the Fund.

(Pub. L. 109–347, title VI, § 606, Oct. 13, 2006, 120 Stat. 1941.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (c), was in the original ''this title'', meaning title VI of Pub. L. 109–347, Oct. 13, 2006, 120 Stat. 1936, which is classified principally to this chapter. For complete classification of title VI to the Code, see Short Title note set out under section 1201 of this title and Tables.

Section 3010 of the Digital Television Transition and Public Safety Act of 2005, referred to in subsec. (a), is section 3010 of Pub. L. 109–171, which is set out in a note under section 309 of this title.