

tion, 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 sys-

tem 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 non-discrimination 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<sup>1</sup> 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-

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.”

<sup>1</sup> So in original.

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 re-

newal” 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