

105TH CONGRESS  
2D SESSION

# H. R. 3559

To modify the application of the antitrust laws with respect to obtaining video programming for multichannel distribution, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 26, 1998

Mr. HYDE (himself, Mr. INGLIS of South Carolina, Mr. HUTCHINSON, Mr. PEASE, Mr. GRAHAM, Mr. CONYERS, Mr. BOUCHER, and Mr. DELAHUNT) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To modify the application of the antitrust laws with respect to obtaining video programming for multichannel distribution, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Antitrust Video Com-  
5 petition Improvement Act of 1998”.

1 **SEC. 2. ANTICOMPETITIVE EXCLUSIVE CONTRACTS BY**  
2 **MULTICHANNEL VIDEO PROGRAMMING DIS-**  
3 **TRIBUTORS.**

4 In any civil action based on a claim arising under  
5 section 1, 2, or 3 of the Sherman Act (15 U.S.C. 1, 2,  
6 3), evidence that a multichannel video programming dis-  
7 tributor that has market power in a particular market has  
8 acted by means of a contract that is exclusive with respect  
9 to that market, to prevent another multichannel video pro-  
10 gramming distributor that competes, has a franchise to  
11 compete, or is certified by the Federal Communications  
12 Commission to compete, in that market from obtaining  
13 particular video programming from any person shall be  
14 sufficient to establish a presumption of a violation of such  
15 section.

16 **SEC. 3. ANTICOMPETITIVE DIFFERENTIAL CONTRACTS BY**  
17 **MULTICHANNEL VIDEO PROGRAMMING DIS-**  
18 **TRIBUTORS.**

19 In any civil action based on a claim arising under  
20 section 1, 2, or 3 of the Sherman Act (15 U.S.C. 1, 2,  
21 3), evidence that a multichannel video programming dis-  
22 tributor that has market power in a particular market has  
23 obtained particular video programming from any person  
24 on terms and conditions, other than terms justified by de-  
25 monstrable cost differentials, that are more favorable than  
26 those offered by such person to another multichannel video

1 programming distributor that competes, has a franchise  
2 to compete, or is certified by the Federal Communications  
3 Commission to compete, in that market shall be sufficient  
4 to establish a presumption of a violation of such section.

5 **SEC. 4. DEFINITIONS.**

6 For the purposes of this Act:

7 (1) CABLE OPERATOR.—The term “cable opera-  
8 tor” means any person that—

9 (A) provides cable service over a cable sys-  
10 tem and directly, or through 1 or more affili-  
11 ates, owns a significant interest in a cable sys-  
12 tem, or

13 (B) otherwise controls or is responsible for,  
14 through any arrangement, the management and  
15 operation of such a cable system.

16 (2) CABLE SERVICE.—The term “cable service”  
17 means—

18 (A) the 1-way transmission to subscribers  
19 of video programming or other programming  
20 service, and

21 (B) subscriber interaction, if any, that is  
22 required for the selection or use of such video  
23 programming or such programming service.

24 (3) CABLE SYSTEM.—The term “cable system”  
25 means a facility, consisting of a set of closed trans-

1 mission paths and associated signal generation, re-  
2 ception, and control equipment, that is designed to  
3 provide cable service that includes video program-  
4 ming, and that is provided to multiple subscribers  
5 within a community, but excludes—

6 (A) a facility that serves only to retransmit  
7 the television signals of 1 or more television  
8 broadcast stations,

9 (B) a facility that serves subscribers with-  
10 out using any public right-of-way,

11 (C) a facility of a common carrier that is  
12 subject, in whole or in part, to the provisions of  
13 title II of the Communications Act of 1934 (47  
14 U.S.C. 201–276), but such facility shall be con-  
15 sidered to be a cable system (other than for  
16 purposes of section 621(c) of the Communica-  
17 tions Act of 1934 (47 U.S.C. 541(c)) to the ex-  
18 tent such facility is used in the transmission of  
19 video programming directly to subscribers, un-  
20 less the extent of such use is solely to provide  
21 interactive on-demand services,

22 (D) an open video system that complies  
23 with section 653 of the Communications Act of  
24 1934 (47 U.S.C. 573), or

1           (E) any facilities of any electric utility  
2           used solely for operating its electric utility sys-  
3           tems.

4           (4) FRANCHISE.—The term “franchise” means  
5           an initial authorization, or renewal thereof (includ-  
6           ing a renewal of an authorization which has been  
7           granted subject to section 626 of the Communica-  
8           tions Act of 1934 (47 U.S.C. 546)), issued by a  
9           franchising authority, whether such authorization is  
10          designated as a franchise, permit, license, resolution,  
11          contract, certificate, agreement, or otherwise, which  
12          authorizes the construction or operation of a cable  
13          system.

14          (5) MULTICHANNEL VIDEO PROGRAMMING DIS-  
15          TRIBUTOR.—The term “multichannel video program-  
16          ming distributor” means a person, including a cable  
17          operator, a multichannel multipoint distribution  
18          service, a direct broadcast satellite service, an open  
19          video system, a multichannel television broadcaster,  
20          or a television receive-only satellite program distribu-  
21          tor, that makes available for purchase, by subscrib-  
22          ers or customers, multiple channels of video pro-  
23          gramming.

24          (6) VIDEO PROGRAMMING.—The term “video  
25          programming” means programming provided by, or

1 generally considered comparable to programming  
2 provided by, a television broadcast station.

3 **SEC. 5. EFFECTIVE DATE AND APPLICABILITY.**

4 This Act shall take effect on the date of the enact-  
5 ment of this Act, but shall not apply with respect to con-  
6 duct occurring before such date.

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