

# HOUSE OF REPRESENTATIVES—Monday, September 14, 1992

The House met at 12 noon.

## DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,  
September 14, 1992.

I hereby designate the Honorable BUTLER DERRICK to act as Speaker pro tempore on this day.

THOMAS S. FOLEY,  
Speaker of the House of Representatives.

## PRAYER

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

We are grateful, O God, for all those who seek to use their abilities in service to others, who dedicate themselves and their energies to the works of justice and peace.

On this day we remember the gifts of our friend and colleague, TED WEISS, who served with distinction and honor in this place for many years. We are thankful for the commitment and loyalty that he shared with the people of his community in New York and with all who serve in this place.

May each of us who continue in our responsibilities be found faithful in our tasks and may we, in all things, seek to do justice, love, mercy, and ever walk humbly with You. Amen.

## THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

## PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. The Chair recognizes the gentleman from Arizona [Mr. RHODES] to lead us in the Pledge of Allegiance.

Mr. RHODES led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

## MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced

that the Senate had passed without amendment a joint resolution of the House of the following title:

H.J. Res. 413. Joint resolution to designate September 13, 1992, as "Commodore John Barry Day."

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 5488. An act making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies, for the fiscal year ending September 30, 1993, and for other purposes; and

H.R. 5679. An act making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1993, and for other purposes.

The message also announced that the Senate insists upon its amendment to the bill (H.R. 5488), "An act making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies, for the fiscal year ending September 30, 1993, and for other purposes," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. DECONCINI, Mr. BYRD, Ms. MIKULSKI, Mr. KERREY, Mr. DOMENICI, Mr. HATFIELD, and Mr. D'AMATO, to be the conferees on the part of the Senate.

The message also announced that the Senate insists upon its amendments to the bill (H.R. 5679), "An act making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1993, and for other purposes," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Ms. MIKULSKI, Mr. LEAHY, Mr. JOHNSTON, Mr. LAUTENBERG, Mr. FOWLER, Mr. KERREY, Mr. BYRD, Mr. GARN, Mr. D'AMATO, Mr. NICKLES, Mr. GRAMM, Mr. BOND, and Mr. HATFIELD, to be the conferees on the part of the Senate.

The message also announced that the Senate had passed bills of the following titles, in which the concurrence of the House is requested:

S. 2507. An act to amend the Act of October 19, 1984 (Public Law 98-530; 98 Stat. 2698), to authorize certain uses of water by the Ak-Chin Indian Community, Arizona;

S. 2572. An act to authorize an exchange of lands in the States of Arkansas and Idaho;

S. 2880. An act to authorize appropriations for fiscal years 1993 and 1994 for the Office of the United States Trade Representative, the United States International Trade Commission, and the United States Customs Service, and for other purposes;

S. 3095. An act to restore and clarify the Federal relationship with the Jena Band of Choctaws of Louisiana; and

S. 3224. An act to designate the United States Courthouse to be constructed in Fargo, North Dakota the Quentin N. Burdick United States Courthouse.

The message also announced that pursuant to Public Law 102-166, the Chair, on behalf of the Republican leader and the majority leader, appoints Mr. SEYMOUR, as a member of the Glass Ceiling Commission.

The message also announced that pursuant to Public Law 102-166, the Chair, on behalf of the Republican leader, appoints Mrs. Marilyn Pauly of Kansas, as a member of the Glass Ceiling Commission.

## CONFERENCE REPORT ON S. 12, CABLE TELEVISION CONSUMER PROTECTION AND COMPETITION ACT OF 1992

Mr. DINGELL submitted the following conference report and statement on the Senate bill (S. 12) to amend title VI of the Communications Act of 1934 to ensure carriage on cable television of local news and other programming and to restore the right of local regulatory authorities to regulate cable television rates, and for other purposes:

### CONFERENCE REPORT (H. REPT. 102-862)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 12), to amend title VI of the Communications Act of 1934 to ensure carriage on cable television of local news and other programming and to restore the right of local regulatory authorities to regulate cable television rates, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment, insert the following:

### SECTION 1. SHORT TITLE.

This Act may be cited as the "Cable Television Consumer Protection and Competition Act of 1992".

### SEC. 2. FINDINGS; POLICY; DEFINITIONS.

(a) FINDINGS.—The Congress finds and declares the following:

(1) Pursuant to the Cable Communications Policy Act of 1984, rates for cable television services have been deregulated in approximately 97

□ This symbol represents the time of day during the House proceedings, e.g., □ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

percent of all franchises since December 29, 1986. Since rate deregulation, monthly rates for the lowest priced basic cable service have increased by 40 percent or more for 28 percent of cable television subscribers. Although the average number of basic channels has increased from about 24 to 30, average monthly rates have increased by 29 percent during the same period. The average monthly cable rate has increased almost 3 times as much as the Consumer Price Index since rate deregulation.

(2) For a variety of reasons, including local franchising requirements and the extraordinary expense of constructing more than one cable television system to serve a particular geographic area, most cable television subscribers have no opportunity to select between competing cable systems. Without the presence of another multichannel video programming distributor, a cable system faces no local competition. The result is undue market power for the cable operator as compared to that of consumers and video programmers.

(3) There has been a substantial increase in the penetration of cable television systems over the past decade. Nearly 56,000,000 households, over 60 percent of the households with televisions, subscribe to cable television, and this percentage is almost certain to increase. As a result of this growth, the cable television industry has become a dominant nationwide video medium.

(4) The cable industry has become highly concentrated. The potential effects of such concentration are barriers to entry for new programmers and a reduction in the number of media voices available to consumers.

(5) The cable industry has become vertically integrated; cable operators and cable programmers often have common ownership. As a result, cable operators have the incentive and ability to favor their affiliated programmers. This could make it more difficult for noncable-affiliated programmers to secure carriage on cable systems. Vertically integrated program suppliers also have the incentive and ability to favor their affiliated cable operators over nonaffiliated cable operators and programming distributors using other technologies.

(6) There is a substantial governmental and First Amendment interest in promoting a diversity of views provided through multiple technology media.

(7) There is a substantial governmental and First Amendment interest in ensuring that cable subscribers have access to local noncommercial educational stations which Congress has authorized, as expressed in section 396(a)(5) of the Communications Act of 1934. The distribution of unique noncommercial, educational programming services advances that interest.

(8) The Federal Government has a substantial interest in making all nonduplicative local public television services available on cable systems because—

(A) public television provides educational and informational programming to the Nation's citizens, thereby advancing the Government's compelling interest in educating its citizens;

(B) public television is a local community institution, supported through local tax dollars and voluntary citizen contributions in excess of \$10,800,000,000 since 1972, that provides public service programming that is responsive to the needs and interests of the local community;

(C) the Federal Government, in recognition of public television's integral role in serving the educational and informational needs of local communities, has invested more than \$3,000,000,000 in public broadcasting since 1969; and

(D) absent carriage requirements there is a substantial likelihood that citizens, who have supported local public television services, will be deprived of those services.

(9) The Federal Government has a substantial interest in having cable systems carry the signals of local commercial television stations because the carriage of such signals is necessary to serve the goals contained in section 307(b) of the Communications Act of 1934 of providing a fair, efficient, and equitable distribution of broadcast services.

(10) A primary objective and benefit of our Nation's system of regulation of television broadcasting is the local origination of programming. There is a substantial governmental interest in ensuring its continuation.

(11) Broadcast television stations continue to be an important source of local news and public affairs programming and other local broadcast services critical to an informed electorate.

(12) Broadcast television programming is supported by revenues generated from advertising broadcast over stations. Such programming is otherwise free to those who own television sets and do not require cable transmission to receive broadcast signals. There is a substantial governmental interest in promoting the continued availability of such free television programming, especially for viewers who are unable to afford other means of receiving programming.

(13) As a result of the growth of cable television, there has been a marked shift in market share from broadcast television to cable television services.

(14) Cable television systems and broadcast television stations increasingly compete for television advertising revenues. As the proportion of households subscribing to cable television increases, proportionately more advertising revenues will be reallocated from broadcast to cable television systems.

(15) A cable television system which carries the signal of a local television broadcaster is assisting the broadcaster to increase its viewership, and thereby attract additional advertising revenues that otherwise might be earned by the cable system operator. As a result, there is an economic incentive for cable systems to terminate the retransmission of the broadcast signal, refuse to carry new signals, or reposition a broadcast signal to a disadvantageous channel position. There is a substantial likelihood that absent the reimposition of such a requirement, additional local broadcast signals will be deleted, repositioned, or not carried.

(16) As a result of the economic incentive that cable systems have to delete, reposition, or not carry local broadcast signals, coupled with the absence of a requirement that such systems carry local broadcast signals, the economic viability of free local broadcast television and its ability to originate quality local programming will be seriously jeopardized.

(17) Consumers who subscribe to cable television often do so to obtain local broadcast signals which they otherwise would not be able to receive, or to obtain improved signals. Most subscribers to cable television systems do not or cannot maintain antennas to receive broadcast television services, do not have input selector switches to convert from a cable to antenna reception system, or cannot otherwise receive broadcast television services. The regulatory system created by the Cable Communications Policy Act of 1984 was premised upon the continued existence of mandatory carriage obligations for cable systems, ensuring that local stations would be protected from anticompetitive conduct by cable systems.

(18) Cable television systems often are the single most efficient distribution system for television programming. A Government mandate for a substantial societal investment in alternative distribution systems for cable subscribers, such as the "A/B" input selector antenna system, is not an enduring or feasible method of distribution and is not in the public interest.

(19) At the same time, broadcast programming that is carried remains the most popular programming on cable systems, and a substantial portion of the benefits for which consumers pay cable systems is derived from carriage of the signals of network affiliates, independent television stations, and public television stations. Also cable programming placed on channels adjacent to popular off-the-air signals obtains a larger audience than on other channel positions. Cable systems, therefore, obtain great benefits from local broadcast signals which, until now, they have been able to obtain without the consent of the broadcaster or any copyright liability. This has resulted in an effective subsidy of the development of cable systems by local broadcasters. While at one time, when cable systems did not attempt to compete with local broadcasters for programming, audience, and advertising, this subsidy may have been appropriate, it is so no longer and results in a competitive imbalance between the 2 industries.

(20) The Cable Communications Policy Act of 1984, in its amendments to the Communications Act of 1934, limited the regulatory authority of franchising authorities over cable operators. Franchising authorities are finding it difficult under the current regulatory scheme to deny renewals to cable systems that are not adequately serving cable subscribers.

(21) Cable systems should be encouraged to carry low-power television stations licensed to the communities served by those systems where the low-power station creates and broadcasts, as a substantial part of its programming day, local programming.

(b) STATEMENT OF POLICY.—It is the policy of the Congress in this Act to—

(1) promote the availability to the public of a diversity of views and information through cable television and other video distribution media;

(2) rely on the marketplace, to the maximum extent feasible, to achieve that availability;

(3) ensure that cable operators continue to expand, where economically justified, their capacity and the programs offered over their cable systems;

(4) where cable television systems are not subject to effective competition, ensure that consumer interests are protected in receipt of cable service; and

(5) ensure that cable television operators do not have undue market power vis-a-vis video programmers and consumers.

(c) DEFINITIONS.—Section 602 of the Communications Act of 1934 (47 U.S.C. 531) is amended—

(1) by redesignating paragraph (16) as paragraph (19);

(2) by striking "and" at the end of paragraph (15);

(3) by redesignating paragraphs (11) through (15) as paragraphs (13) through (17), respectively;

(4) by redesignating paragraphs (1) through (10) as paragraphs (2) through (11), respectively;

(5) by inserting before paragraph (2) (as so redesignated) the following new paragraph:

"(1) the term 'activated channels' means those channels engineered at the headend of a cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel designated for public, educational, or governmental use;"

(6) by inserting after paragraph (11) (as so redesignated) the following new paragraph:

"(12) the term 'multichannel video programming distributor' means a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only

satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming;" and (7) by inserting after paragraph (17) (as so redesignated) the following new paragraph:

"(18) the term 'usable activated channels' means activated channels of a cable system, except those channels whose use for the distribution of broadcast signals would conflict with technical and safety regulations as determined by the Commission; and".

### SEC. 3. REGULATION OF RATES.

(a) AMENDMENT.—Section 623 of the Communications Act of 1934 (47 U.S.C. 543) is amended to read as follows:

#### "SEC. 623. 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 612. Any franchising authority may regulate the rates for the provision of cable service, or any other communications service provided over a cable system to cable subscribers, but only to the extent provided under this section. No Federal agency, State, or franchising authority may regulate the rates for cable service of a cable system that is owned or operated by a local government or franchising authority within whose jurisdiction that cable system is located and that is the only cable system located within such jurisdiction.

"(2) PREFERENCE FOR COMPETITION.—If the Commission finds that a cable system is subject to effective competition, the rates for the provision of cable service by such system shall not be subject to regulation by the Commission or by a State or franchising authority under this section. If the Commission finds that a cable system is not subject to effective competition—

"(A) the rates for the provision of basic cable service shall be subject to regulation by a franchising authority, or by the Commission if the Commission exercises jurisdiction pursuant to paragraph (6), in accordance with the regulations prescribed by the Commission under subsection (b); and

"(B) the rates for cable programming services shall be subject to regulation by the Commission under subsection (c).

"(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);

"(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);

"(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 au-

thority 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), 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.

"(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 the date of enactment of the Cable Television Consumer Protection and Competition Act of 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 614 and 615.

"(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 the date of enactment of the Cable Television Consumer Protection and Competition Act of 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 the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission shall, by regulation, establish the following:

"(A) criteria prescribed in accordance with paragraph (2) for identifying, in individual cases, rates for cable programming services that are unreasonable;

"(B) fair and expeditious procedures for the receipt, consideration, and resolution of complaints from any subscriber, franchising authority, or other relevant State or local government entity alleging that a rate for cable programming services charged by a cable operator violates the criteria prescribed under subparagraph (A), which procedures shall include the minimum showing that shall be required for a complaint to obtain Commission consideration and resolution of whether the rate in question is unreasonable; and

"(C) the procedures to be used to reduce rates for cable programming services that are determined by the Commission to be unreasonable and to refund such portion of the rates or charges that were paid by subscribers after the

filing of such complaint and that are determined to be unreasonable.

"(2) FACTORS TO BE CONSIDERED.—In establishing the criteria for determining in individual cases whether rates for cable programming services are unreasonable under paragraph (1)(A), the Commission shall consider, among other factors—

"(A) the rates for similarly situated cable systems offering comparable cable programming services, taking into account similarities in facilities, regulatory and governmental costs, the number of subscribers, and other relevant factors;

"(B) the rates for cable systems, if any, that are subject to effective competition;

"(C) the history of the rates for cable programming services of the system, including the relationship of such rates to changes in general consumer prices;

"(D) the rates, as a whole, for all the cable programming, cable equipment, and cable services provided by the system, other than programming provided on a per channel or per program basis;

"(E) capital and operating costs of the cable system, including the quality and costs of the customer service provided by the cable system; and

"(F) the revenues (if any) received by a cable operator from advertising from programming that is carried as part of the service for which a rate is being established, and changes in such revenues, or from other consideration obtained in connection with the cable programming services concerned.

"(3) LIMITATION ON COMPLAINTS CONCERNING EXISTING RATES.—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.

"(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.

"(e) DISCRIMINATION; SERVICES FOR THE HEARING IMPAIRED.—Nothing in this title 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 the date of enactment of the Cable Television Consumer Protection and Competition Act of 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 the date of enactment of the Cable Television Consumer Protection and Competition Act of 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), 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; or

"(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.

"(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."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 180 days after the date of enactment of this Act, except that the authority of the Federal Communications Commission to prescribe regulations is effective on such date of enactment.

#### SEC. 4. CARRIAGE OF LOCAL COMMERCIAL TELEVISION SIGNALS.

Part II of title VI of the Communications Act of 1934 is amended by inserting after section 613 (47 U.S.C. 533) the following new section:

#### "SEC. 614. CARRIAGE OF LOCAL COMMERCIAL TELEVISION SIGNALS.

"(a) CARRIAGE OBLIGATIONS.—Each cable operator shall carry, on the cable system of that

operator, the signals of local commercial television stations and qualified low power stations as provided by this section. Carriage of additional broadcast television signals on such system shall be at the discretion of such operator, subject to section 325(b).

**"(b) SIGNALS REQUIRED.—**

**"(1) IN GENERAL.—(A)** A cable operator of a cable system with 12 or fewer usable activated channels shall carry the signals of at least three local commercial television stations, except that if such a system has 300 or fewer subscribers, it shall not be subject to any requirements under this section so long as such system does not delete from carriage by that system any signal of a broadcast television station.

**"(B)** A cable operator of a cable system with more than 12 usable activated channels shall carry the signals of local commercial television stations, up to one-third of the aggregate number of usable activated channels of such system.

**"(2) SELECTION OF SIGNALS.—**Whenever the number of local commercial television stations exceeds the maximum number of signals a cable system is required to carry under paragraph (1), the cable operator shall have discretion in selecting which such stations shall be carried on its cable system, except that—

**"(A)** under no circumstances shall a cable operator carry a qualified low power station in lieu of a local commercial television station; and

**"(B)** if the cable operator elects to carry an affiliate of a broadcast network (as such term is defined by the Commission by regulation), such cable operator shall carry the affiliate of such broadcast network whose city of license reference point, as defined in section 76.53 of title 47, Code of Federal Regulations (in effect on January 1, 1991), or any successor regulation thereto, is closest to the principal headend of the cable system.

**"(3) CONTENT TO BE CARRIED.—(A)** A cable operator shall carry in its entirety, on the cable system of that operator, the primary video, accompanying audio, and line 21 closed caption transmission of each of the local commercial television stations carried on the cable system and, to the extent technically feasible, program-related material carried in the vertical blanking interval or on subcarriers. Retransmission of other material in the vertical blanking interval or other nonprogram-related material (including teletext and other subscription and advertiser-supported information services) shall be at the discretion of the cable operator. Where appropriate and feasible, operators may delete signal enhancements, such as ghost-canceling, from the broadcast signal and employ such enhancements at the system headend or headends.

**"(B)** The cable operator shall carry the entirety of the program schedule of any television station carried on the cable system unless carriage of specific programming is prohibited, and other programming authorized to be substituted, under section 76.67 or subpart F of part 76 of title 47, Code of Federal Regulations (as in effect on January 1, 1991), or any successor regulations thereto.

**"(4) SIGNAL QUALITY.—**

**"(A) NONDEGRADATION; TECHNICAL SPECIFICATIONS.—**The signals of local commercial television stations that a cable operator carries shall be carried without material degradation. The Commission shall adopt carriage standards to ensure that, to the extent technically feasible, the quality of signal processing and carriage provided by a cable system for the carriage of local commercial television stations will be no less than that provided by the system for carriage of any other type of signal.

**"(B) ADVANCED TELEVISION.—**At such time as the Commission prescribes modifications of the standards for television broadcast signals, the Commission shall initiate a proceeding to estab-

lish any changes in the signal carriage requirements of cable television systems necessary to ensure cable carriage of such broadcast signals of local commercial television stations which have been changed to conform with such modified standards.

**"(5) DUPLICATION NOT REQUIRED.—**Notwithstanding paragraph (1), a cable operator shall not be required to carry the signal of any local commercial television station that substantially duplicates the signal of another local commercial television station which is carried on its cable system, or to carry the signals of more than one local commercial television station affiliated with a particular broadcast network (as such term is defined by regulation). If a cable operator elects to carry on its cable system a signal which substantially duplicates the signal of another local commercial television station carried on the cable system, or to carry on its system the signals of more than one local commercial television station affiliated with a particular broadcast network, all such signals shall be counted toward the number of signals the operator is required to carry under paragraph (1).

**"(6) CHANNEL POSITIONING.—**Each signal carried in fulfillment of the carriage obligations of a cable operator under this section shall be carried on the cable system channel number on which the local commercial television station is broadcast over the air, or on the channel on which it was carried on July 19, 1985, or on the channel on which it was carried on January 1, 1992, at the election of the station, or on such other channel number as is mutually agreed upon by the station and the cable operator. Any dispute regarding the positioning of a local commercial television station shall be resolved by the Commission.

**"(7) SIGNAL AVAILABILITY.—**Signals carried in fulfillment of the requirements of this section shall be provided to every subscriber of a cable system. Such signals shall be viewable via cable on all television receivers of a subscriber which are connected to a cable system by a cable operator or for which a cable operator provides a connection. If a cable operator authorizes subscribers to install additional receiver connections, but does not provide the subscriber with such connections, or with the equipment and materials for such connections, the operator shall notify such subscribers of all broadcast stations carried on the cable system which cannot be viewed via cable without a converter box and shall offer to sell or lease such a converter box to such subscribers at rates in accordance with section 623(b)(3).

**"(8) IDENTIFICATION OF SIGNALS CARRIED.—**A cable operator shall identify, upon request by any person, the signals carried on its system in fulfillment of the requirements of this section.

**"(9) NOTIFICATION.—**A cable operator shall provide written notice to a local commercial television station at least 30 days prior to either deleting from carriage or repositioning that station. No deletion or repositioning of a local commercial television station shall occur during a period in which major television ratings services measure the size of audiences of local television stations. The notification provisions of this paragraph shall not be used to undermine or evade the channel positioning or carriage requirements imposed upon cable operators under this section.

**"(10) COMPENSATION FOR CARRIAGE.—**A cable operator shall not accept or request monetary payment or other valuable consideration in exchange either for carriage of local commercial television stations in fulfillment of the requirements of this section or for the channel positioning rights provided to such stations under this section, except that—

**"(A)** any such station may be required to bear the costs associated with delivering a good qual-

ity signal or a baseband video signal to the principal headend of the cable system;

**"(B)** a cable operator may accept payments from stations which would be considered distant signals under section 111 of title 17, United States Code, as indemnification for any increased copyright liability resulting from carriage of such signal; and

**"(C)** a cable operator may continue to accept monetary payment or other valuable consideration in exchange for carriage or channel positioning of the signal of any local commercial television station carried in fulfillment of the requirements of this section, through, but not beyond, the date of expiration of an agreement thereon between a cable operator and a local commercial television station entered into prior to June 26, 1990.

**"(c) LOW POWER STATION CARRIAGE OBLIGATION.—**

**"(1) REQUIREMENT.—**If there are not sufficient signals of full power local commercial television stations to fill the channels set aside under subsection (b)—

**"(A)** a cable operator of a cable system with a capacity of 35 or fewer usable activated channels shall be required to carry one qualified low power station; and

**"(B)** a cable operator of a cable system with a capacity of more than 35 usable activated channels shall be required to carry two qualified low power stations.

**"(2) USE OF PUBLIC, EDUCATIONAL, OR GOVERNMENTAL CHANNELS.—**A cable operator required to carry more than one signal of a qualified low power station under this subsection may do so, subject to approval by the franchising authority pursuant to section 611, by placing such additional station on public, educational, or governmental channels not in use for their designated purposes.

**"(d) REMEDIES.—**

**"(1) COMPLAINTS BY BROADCAST STATIONS.—**Whenever a local commercial television station believes that a cable operator has failed to meet its obligations under this section, such station shall notify the operator, in writing, of the alleged failure and identify its reasons for believing that the cable operator is obligated to carry the signal of such station or has otherwise failed to comply with the channel positioning or repositioning or other requirements of this section. The cable operator shall, within 30 days of such written notification, respond in writing to such notification and either commence to carry the signal of such station in accordance with the terms requested or state its reasons for believing that it is not obligated to carry such signal or is in compliance with the channel positioning and repositioning and other requirements of this section. A local commercial television station that is denied carriage or channel positioning or repositioning in accordance with this section by a cable operator may obtain review of such denial by filing a complaint with the Commission. Such complaint shall allege the manner in which such cable operator has failed to meet its obligations and the basis for such allegations.

**"(2) OPPORTUNITY TO RESPOND.—**The Commission shall afford such cable operator an opportunity to present data and arguments to establish that there has been no failure to meet its obligations under this section.

**"(3) REMEDIAL ACTIONS; DISMISSAL.—**Within 120 days after the date a complaint is filed, the Commission shall determine whether the cable operator has met its obligations under this section. If the Commission determines that the cable operator has failed to meet such obligations, the Commission shall order the cable operator to reposition the complaining station or, in the case of an obligation to carry a station, to commence carriage of the station and to con-

tinue such carriage for at least 12 months. If the Commission determines that the cable operator has fully met the requirements of this section, it shall dismiss the complaint.

"(e) INPUT SELECTOR SWITCH RULES ABOLISHED.—No cable operator shall be required—

"(1) to provide or make available any input selector switch as defined in section 76.5(mm) of title 47, Code of Federal Regulations, or any comparable device; or

"(2) to provide information to subscribers about input selector switches or comparable devices.

"(f) REGULATIONS BY COMMISSION.—Within 180 days after the date of enactment of this section, the Commission shall, following a rule-making proceeding, issue regulations implementing the requirements imposed by this section. Such implementing regulations shall include necessary revisions to update section 76.51 of title 47 of the Code of Federal Regulations.

"(g) SALES PRESENTATIONS AND PROGRAM LENGTH COMMERCIALS.—

"(1) CARRIAGE PENDING PROCEEDING.—Pending the outcome of the proceeding under paragraph (2), nothing in this Act shall require a cable operator to carry on any tier, or prohibit a cable operator from carrying on any tier, the signal of any commercial television station or video programming service that is predominantly utilized for the transmission of sales presentations or program length commercials.

"(2) PROCEEDING CONCERNING CERTAIN STATIONS.—Within 270 days after the date of enactment of this section, the Commission, notwithstanding prior proceedings to determine whether broadcast television stations that are predominantly utilized for the transmission of sales presentations or program length commercials are serving the public interest, convenience, and necessity, shall complete a proceeding in accordance with this paragraph to determine whether broadcast television stations that are predominantly utilized for the transmission of sales presentations or program length commercials are serving the public interest, convenience, and necessity. In conducting such proceeding, the Commission shall provide appropriate notice and opportunity for public comment. The Commission shall consider the viewing of such stations, the level of competing demands for the spectrum allocated to such stations, and the role of such stations in providing competition to nonbroadcast services offering similar programming. In the event that the Commission concludes that one or more of such stations are serving the public interest, convenience, and necessity, the Commission shall qualify such stations as local commercial television stations for purposes of subsection (a). In the event that the Commission concludes that one or more of such stations are not serving the public interest, convenience, and necessity, the Commission shall allow the licensees of such stations a reasonable period within which to provide different programming, and shall not deny such stations a renewal expectancy solely because their programming consisted predominantly of sales presentations or program length commercials.

"(h) DEFINITIONS.—

"(1) LOCAL COMMERCIAL TELEVISION STATION.—

"(A) IN GENERAL.—For purposes of this section, the term 'local commercial television station' means any full power television broadcast station, other than a qualified noncommercial educational television station within the meaning of section 615(l)(1), licensed and operating on a channel regularly assigned to its community by the Commission that, with respect to a particular cable system, is within the same television market as the cable system.

"(B) EXCLUSIONS.—The term 'local commercial television station' shall not include—

"(i) low power television stations, television translator stations, and passive repeaters which operate pursuant to part 74 of title 47, Code of Federal Regulations, or any successor regulations thereto;

"(ii) a television broadcast station that would be considered a distant signal under section 111 of title 17, United States Code, if such station does not agree to indemnify the cable operator for any increased copyright liability resulting from carriage on the cable system; or

"(iii) a television broadcast station that does not deliver to the principal headend of a cable system either a signal level of -45dBm for UHF signals or -49dBm for VHF signals at the input terminals of the signal processing equipment, if such station does not agree to be responsible for the costs of delivering to the cable system a signal of good quality or a baseband video signal.

"(C) MARKET DETERMINATIONS.—(i) For purposes of this section, a broadcasting station's market shall be determined in the manner provided in section 73.3555(d)(3)(i) of title 47, Code of Federal Regulations, as in effect on May 1, 1991, except that, following a written request, the Commission may, with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's television market to better effectuate the purposes of this section. In considering such requests, the Commission may determine that particular communities are part of more than one television market.

"(ii) In considering requests filed pursuant to clause (i), the Commission shall afford particular attention to the value of localism by taking into account such factors as—

"(I) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community;

"(II) whether the television station provides coverage or other local service to such community;

"(III) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community; and

"(IV) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.

"(iii) A cable operator shall not delete from carriage the signal of a commercial television station during the pendency of any proceeding pursuant to this subparagraph.

"(iv) In the rulemaking proceeding required by subsection (f), the Commission shall provide for expedited consideration of requests filed under this subparagraph.

"(2) QUALIFIED LOW POWER STATION.—The term 'qualified low power station' means any television broadcast station conforming to the rules established for Low Power Television Stations contained in part 74 of title 47, Code of Federal Regulations, only if—

"(A) such station broadcasts for at least the minimum number of hours of operation required by the Commission for television broadcast stations under part 73 of title 47, Code of Federal Regulations;

"(B) such station meets all obligations and requirements applicable to television broadcast stations under part 73 of title 47, Code of Federal Regulations, with respect to the broadcast of nonentertainment programming; programming and rates involving political candidates, election issues, controversial issues of public importance, editorials, and personal attacks; programming for children; and equal employment

opportunity; and the Commission determines that the provision of such programming by such station would address local news and informational needs which are not being adequately served by full power television broadcast stations because of the geographic distance of such full power stations from the low power station's community of license;.

"(C) such station complies with interference regulations consistent with its secondary status pursuant to part 74 of title 47, Code of Federal Regulations;

"(D) such station is located no more than 35 miles from the cable system's headend, and delivers to the principal headend of the cable system an over-the-air signal of good quality, as determined by the Commission;

"(E) the community of license of such station and the franchise area of the cable system are both located outside of the largest 160 Metropolitan Statistical Areas, ranked by population, as determined by the Office of Management and Budget on June 30, 1990, and the population of such community of license on such date did not exceed 35,000; and

"(F) there is no full power television broadcast station licensed to any community within the county or other political subdivision (of a State) served by the cable system.

Nothing in this paragraph shall be construed to change the secondary status of any low power station as provided in part 74 of title 47, Code of Federal Regulations, as in effect on the date of enactment of this section."

#### SEC. 5. CARRIAGE OF NONCOMMERCIAL STATIONS.

Part II of title VI of the Communications Act of 1934 (47 U.S.C. 531 et seq.) is further amended by inserting after section 614 (as added by section 4 of this Act) the following new section:

#### "SEC. 615. CARRIAGE OF NONCOMMERCIAL EDUCATIONAL TELEVISION.

"(a) CARRIAGE OBLIGATIONS.—In addition to the carriage requirements set forth in section 614, each cable operator of a cable system shall carry the signals of qualified noncommercial educational television stations in accordance with the provisions of this section.

"(b) REQUIREMENTS TO CARRY QUALIFIED STATIONS.—

"(1) GENERAL REQUIREMENT TO CARRY EACH QUALIFIED STATION.—Subject to paragraphs (2) and (3) and subsection (e), each cable operator shall carry, on the cable system of that cable operator, any qualified local noncommercial educational television station requesting carriage.

"(2)(A) SYSTEMS WITH 12 OR FEWER CHANNELS.—Notwithstanding paragraph (1), a cable operator of a cable system with 12 or fewer usable activated channels shall be required to carry the signal of one qualified local noncommercial educational television station; except that a cable operator of such a system shall comply with subsection (c) and may, in its discretion, carry the signals of other qualified noncommercial educational television stations.

"(B) In the case of a cable system described in subparagraph (A) which operates beyond the presence of any qualified local noncommercial educational television station—

"(i) the cable operator shall import and carry on that system the signal of one qualified noncommercial educational television station;

"(ii) the selection for carriage of such a signal shall be at the election of the cable operator; and

"(iii) in order to satisfy the requirements for carriage specified in this subsection, the cable operator of the system shall not be required to remove any other programming service actually provided to subscribers on March 29, 1990; except that such cable operator shall use the first channel available to satisfy the requirements of this subparagraph.

"(3) SYSTEMS WITH 13 TO 36 CHANNELS.—(A) Subject to subsection (c), a cable operator of a cable system with 13 to 36 usable activated channels—

"(i) shall carry the signal of at least one qualified local noncommercial educational television station but shall not be required to carry the signals of more than three such stations, and

"(ii) may, in its discretion, carry additional such stations.

"(B) In the case of a cable system described in this paragraph which operates beyond the presence of any qualified local noncommercial educational television station, the cable operator shall import and carry on that system the signal of at least one qualified noncommercial educational television station to comply with subparagraph (A)(i).

"(C) The cable operator of a cable system described in this paragraph which carries the signal of a qualified local noncommercial educational station affiliated with a State public television network shall not be required to carry the signal of any additional qualified local noncommercial educational television stations affiliated with the same network if the programming of such additional stations is substantially duplicated by the programming of the qualified local noncommercial educational television station receiving carriage.

"(D) A cable operator of a system described in this paragraph which increases the usable activated channel capacity of the system to more than 36 channels on or after March 29, 1990, shall, in accordance with the other provisions of this section, carry the signal of each qualified local noncommercial educational television station requesting carriage, subject to subsection (e).

"(c) CONTINUED CARRIAGE OF EXISTING STATIONS.—Notwithstanding any other provision of this section, all cable operators shall continue to provide carriage to all qualified local noncommercial educational television stations whose signals were carried on their systems as of March 29, 1990. The requirements of this subsection may be waived with respect to a particular cable operator and a particular such station, upon the written consent of the cable operator and the station.

"(d) PLACEMENT OF ADDITIONAL SIGNALS.—A cable operator required to add the signals of qualified local noncommercial educational television stations to a cable system under this section may do so, subject to approval by the franchising authority pursuant to section 611, by placing such additional stations on public, educational, or governmental channels not in use for their designated purposes.

"(e) SYSTEMS WITH MORE THAN 36 CHANNELS.—A cable operator of a cable system with a capacity of more than 36 usable activated channels which is required to carry the signals of three qualified local noncommercial educational television stations shall not be required to carry the signals of additional such stations the programming of which substantially duplicates the programming broadcast by another qualified local noncommercial educational television station requesting carriage. Substantial duplication shall be defined by the Commission in a manner that promotes access to distinctive noncommercial educational television services.

"(f) WAIVER OF NONDUPLICATION RIGHTS.—A qualified local noncommercial educational television station whose signal is carried by a cable operator shall not assert any network non-duplication rights it may have pursuant to section 76.92 of title 47, Code of Federal Regulations, to require the deletion of programs aired on other qualified local noncommercial educational television stations whose signals are carried by that cable operator.

"(g) CONDITIONS OF CARRIAGE.—

"(1) CONTENT TO BE CARRIED.—A cable operator shall retransmit in its entirety the primary video, accompanying audio, and line 21 closed caption transmission of each qualified local noncommercial educational television station whose signal is carried on the cable system, and, to the extent technically feasible, program-related material carried in the vertical blanking interval, or on subcarriers, that may be necessary for receipt of programming by handicapped persons or for educational or language purposes. Retransmission of other material in the vertical blanking interval or on subcarriers shall be within the discretion of the cable operator.

"(2) BANDWIDTH AND TECHNICAL QUALITY.—A cable operator shall provide each qualified local noncommercial educational television station whose signal is carried in accordance with this section with bandwidth and technical capacity equivalent to that provided to commercial television broadcast stations carried on the cable system and shall carry the signal of each qualified local noncommercial educational television station without material degradation.

"(3) CHANGES IN CARRIAGE.—The signal of a qualified local noncommercial educational television station shall not be repositioned by a cable operator unless the cable operator, at least 30 days in advance of such repositioning, has provided written notice to the station and all subscribers of the cable system. For purposes of this paragraph, repositioning includes (A) assignment of a qualified local noncommercial educational television station to a cable system channel number different from the cable system channel number to which the station was assigned as of March 29, 1990, and (B) deletion of the station from the cable system. The notification provisions of this paragraph shall not be used to undermine or evade the channel positioning or carriage requirements imposed upon cable operators under this section.

"(4) GOOD QUALITY SIGNAL REQUIRED.—Notwithstanding the other provisions of this section, a cable operator shall not be required to carry the signal of any qualified local noncommercial educational television station which does not deliver to the cable system's principal headend a signal of good quality or a baseband video signal, as may be defined by the Commission.

"(5) CHANNEL POSITIONING.—Each signal carried in fulfillment of the carriage obligations of a cable operator under this section shall be carried on the cable system channel number on which the qualified local noncommercial educational television station is broadcast over the air, or on the channel on which it was carried on July 19, 1985, at the election of the station, or on such other channel number as is mutually agreed upon by the station and the cable operator. Any dispute regarding the positioning of a qualified local noncommercial educational television station shall be resolved by the Commission.

"(h) AVAILABILITY OF SIGNALS.—Signals carried in fulfillment of the carriage obligations of a cable operator under this section shall be available to every subscriber as part of the cable system's lowest priced service tier that includes the retransmission of local commercial television broadcast signals.

"(i) PAYMENT FOR CARRIAGE PROHIBITED.—

"(1) IN GENERAL.—A cable operator shall not accept monetary payment or other valuable consideration in exchange for carriage of the signal of any qualified local noncommercial educational television station carried in fulfillment of the requirements of this section, except that such a station may be required to bear the cost associated with delivering a good quality signal or a baseband video signal to the principal headend of the cable system.

"(2) DISTANT SIGNAL EXCEPTION.—Notwithstanding the provisions of this section, a cable operator shall not be required to add the signal of a qualified local noncommercial educational television station not already carried under the provision of subsection (c), where such signal would be considered a distant signal for copyright purposes unless such station indemnifies the cable operator for any increased copyright costs resulting from carriage of such signal.

"(j) REMEDIES.—

"(1) COMPLAINT.—Whenever a qualified local noncommercial educational television station believes that a cable operator of a cable system has failed to comply with the signal carriage requirements of this section, the station may file a complaint with the Commission. Such complaint shall allege the manner in which such cable operator has failed to comply with such requirements and state the basis for such allegations.

"(2) OPPORTUNITY TO RESPOND.—The Commission shall afford such cable operator an opportunity to present data, views, and arguments to establish that the cable operator has complied with the signal carriage requirements of this section.

"(3) REMEDIAL ACTIONS; DISMISSAL.—Within 120 days after the date a complaint is filed under this subsection, the Commission shall determine whether the cable operator has complied with the requirements of this section. If the Commission determines that the cable operator has failed to comply with such requirements, the Commission shall state with particularity the basis for such findings and order the cable operator to take such remedial action as is necessary to meet such requirements. If the Commission determines that the cable operator has fully complied with such requirements, the Commission shall dismiss the complaint.

"(k) IDENTIFICATION OF SIGNALS.—A cable operator shall identify, upon request by any person, those signals carried in fulfillment of the requirements of this section.

"(l) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED NONCOMMERCIAL EDUCATIONAL TELEVISION STATION.—The term 'qualified noncommercial educational television station' means any television broadcast station which—

"(A)(i) under the rules and regulations of the Commission in effect on March 29, 1990, is licensed by the Commission as a noncommercial educational television broadcast station and which is owned and operated by a public agency, nonprofit foundation, corporation, or association; and

"(ii) has as its licensee an entity which is eligible to receive a community service grant, or any successor grant thereto, from the Corporation for Public Broadcasting, or any successor organization thereto, on the basis of the formula set forth in section 396(k)(6)(B); or

"(B) is owned and operated by a municipality and transmits predominantly noncommercial programs for educational purposes.

Such term includes (I) the translator of any noncommercial educational television station with five watts or higher power serving the franchise area, (II) a full-service station or translator if such station or translator is licensed to a channel reserved for noncommercial educational use pursuant to section 73.606 of title 47, Code of Federal Regulations, or any successor regulations thereto, and (III) such stations and translators operating on channels not so reserved as the Commission determines are qualified as noncommercial educational stations.

"(2) QUALIFIED LOCAL NONCOMMERCIAL EDUCATIONAL TELEVISION STATION.—The term 'qualified local noncommercial educational television station' means a qualified noncommercial educational television station—

"(A) which is licensed to a principal community whose reference point, as defined in section 76.53 of title 47, Code of Federal Regulations (as in effect on March 29, 1990), or any successor regulations thereto, is within 50 miles of the principal headend of the cable system; or

"(B) whose Grade B service contour, as defined in section 73.683(a) of such title (as in effect on March 29, 1990), or any successor regulations thereto, encompasses the principal headend of the cable system."

**SEC. 6. RETRANSMISSION CONSENT FOR CABLE SYSTEMS.**

(A) AMENDMENT.—Section 325 of the Communications Act of 1934 (47 U.S.C. 325) is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(2) by inserting immediately after subsection (a) the following new subsection:

"(b)(1) Following the date that is one year after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, no cable system or other multichannel video programming distributor shall retransmit the signal of a broadcasting station, or any part thereof, except—

"(A) with the express authority of the originating station; or

"(B) pursuant to section 614, in the case of a station electing, in accordance with this subsection, to assert the right to carriage under such section.

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

"(A) retransmission of the signal of a non-commercial broadcasting station;

"(B) retransmission directly to a home satellite antenna of the signal of a broadcasting station that is not owned or operated by, or affiliated with, a broadcasting network, if such signal was retransmitted by a satellite carrier on May 1, 1991;

"(C) retransmission of the signal of a broadcasting station that is owned or operated by, or affiliated with, a broadcasting network directly to a home satellite antenna, if the household receiving the signal is an unserved household; or

"(D) retransmission by a cable operator or other multichannel video programming distributor of the signal of a superstation if such signal was obtained from a satellite carrier and the originating station was a superstation on May 1, 1991.

For purposes of this paragraph, the terms 'satellite carrier', 'superstation', and 'unserved household' have the meanings given those terms, respectively, in section 119(d) of title 17, United States Code, as in effect on the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992.

"(3)(A) Within 45 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission shall commence a rulemaking proceeding to establish regulations to govern the exercise by television broadcast stations of the right to grant retransmission consent under this subsection and of the right to signal carriage under section 614, and such other regulations as are necessary to administer the limitations contained in paragraph (2). The Commission shall consider in such proceeding the impact that the grant of retransmission consent by television stations may have on the rates for the basic service tier and shall ensure that the regulations prescribed under this subsection do not conflict with the Commission's obligation under section 623(b)(1) to ensure that the rates for the basic service tier are reasonable. Such rulemaking proceeding shall be completed within 180 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992.

"(B) The regulations required by subparagraph (A) shall require that television stations, within one year after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992 and every three years thereafter, make an election between the right to grant retransmission consent under this subsection and the right to signal carriage under section 614. If there is more than one cable system which services the same geographic area, a station's election shall apply to all such cable systems.

"(4) If an originating television station elects under paragraph (3)(B) to exercise its right to grant retransmission consent under this subsection with respect to a cable system, the provisions of section 614 shall not apply to the carriage of the signal of such station by such cable system.

"(5) The exercise by a television broadcast station of the right to grant retransmission consent under this subsection shall not interfere with or supersede the rights under section 614 or 615 of any station electing to assert the right to signal carriage under that section.

"(6) Nothing in this section shall be construed as modifying the compulsory copyright license established in section 111 of title 17, United States Code, or as affecting existing or future video programming licensing agreements between broadcasting stations and video programmers."

**SEC. 7. AWARD OF FRANCHISES; PROMOTION OF COMPETITION.**

(a) ADDITIONAL COMPETITIVE FRANCHISES.—

(1) AMENDMENT.—Section 621(a)(1) of the Communications Act of 1934 (47 U.S.C. 541(a)(1)) is amended by inserting before the period at the end the following: "; 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 635 for failure to comply with this subsection".

(2) CONFORMING AMENDMENT.—Section 635(a) of the Communications Act of 1934 (47 U.S.C. 555(a)) is amended by inserting "621(a)(1)," after "section".

(b) FRANCHISE REQUIREMENTS.—Section 621(a) of the Communications Act of 1934 (47 U.S.C. 541(a)) is amended by adding at the end the following new paragraph:

"(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."

(c) MUNICIPAL AUTHORITIES PERMITTED TO OPERATE SYSTEMS.—Section 621 of the Communications Act of 1934 (47 U.S.C. 541) is amended—

(1) by inserting "and subsection (f)" before the comma in subsection (b)(1); and

(2) by adding at the end the following new subsection:

"(f) No provision of this Act 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 franchise 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."

**SEC. 8. CONSUMER PROTECTION AND CUSTOMER SERVICE.**

Section 632 of the Communications Act of 1934 (47 U.S.C. 552) is amended to read as follows:

**"SEC. 632. CONSUMER PROTECTION AND CUSTOMER SERVICE.**

"(a) FRANCHISING AUTHORITY ENFORCEMENT.—A franchising authority may establish and enforce—

"(1) customer service requirements of the cable operator; and

"(2) construction schedules and other construction-related requirements, including construction-related performance requirements, of the cable operator.

"(b) COMMISSION STANDARDS.—The Commission shall, within 180 days of enactment of the Cable Television Consumer Protection and Competition Act of 1992, establish standards by which cable operators may fulfill their customer service requirements. Such standards shall include, at a minimum, requirements governing—

"(1) cable system office hours and telephone availability;

"(2) installations, outages, and service calls; and

"(3) communications between the cable operator and the subscriber (including standards governing bills and refunds).

**"(c) CONSUMER PROTECTION LAWS AND CUSTOMER SERVICE AGREEMENTS.—**

"(1) CONSUMER PROTECTION LAWS.—Nothing in this title shall be construed to prohibit any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted by this title.

"(2) CUSTOMER SERVICE REQUIREMENT AGREEMENTS.—Nothing in this section shall be construed to preclude a franchising authority and a cable operator from agreeing to customer service requirements that exceed the standards established by the Commission under subsection (b). Nothing in this title shall be construed to prevent the establishment or enforcement of any municipal law or regulation, or any State law, concerning customer service that imposes customer service requirements that exceed the standards set by the Commission under this section, or that addresses matters not addressed by the standards set by the Commission under this section."

**SEC. 9. LEASED COMMERCIAL ACCESS.**

(a) PURPOSE.—Section 612(a) of the Communications Act of 1934 (47 U.S.C. 532(a)) is amended by inserting "to promote competition in the delivery of diverse sources of video programming and" after "purpose of this section is".

(b) COMMISSION RULES ON MAXIMUM REASONABLE RATES AND OTHER TERMS AND CONDITIONS.—Section 612(c) of such Act (47 U.S.C. 532(c)) is amended—

(1) in paragraph (1) by inserting "and with rules prescribed by the Commission under paragraph (4)" after "purpose of this section"; and

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

"(4)(A) The Commission shall have the authority to—

"(i) determine the maximum reasonable rates that a cable operator may establish pursuant to paragraph (1) for commercial use of designated channel capacity, including the rate charged for the billing of rates to subscribers and for the collection of revenue from subscribers by the cable operator for such use;

"(ii) establish reasonable terms and conditions for such use, including those for billing and collection; and

"(iii) establish procedures for the expedited resolution of disputes concerning rates or carriage under this section.

"(B) Within 180 days after the date of enactment of this paragraph, the Commission shall establish rules for determining maximum reasonable rates under subparagraph (A)(i), for establishing terms and conditions under subparagraph (A)(ii), and for providing procedures under subparagraph (A)(iii)."

(c) ACCESS FOR QUALITY MINORITY PROGRAMMING SOURCES AND QUALIFIED EDUCATIONAL PROGRAMMING SOURCES.—Section 612 of such Act (47 U.S.C. 532) is amended by adding at the end thereof the following new subsection:

"(1) Notwithstanding the provisions of subsections (b) and (c), a cable operator required by this section to designate channel capacity for commercial use may use any such channel capacity for the provision of programming from a qualified minority programming source or from any qualified educational programming source, whether or not such source is affiliated with the cable operator. The channel capacity used to provide programming from a qualified minority programming source or from any qualified educational programming source pursuant to this subsection may not exceed 33 percent of the channel capacity designated pursuant to this section. No programming provided over a cable system on July 1, 1990, may qualify as minority programming or educational programming on that cable system under this subsection.

"(2) For purposes of this subsection, the term 'qualified minority programming source' means a programming source which devotes substantially all of its programming to coverage of minority viewpoints, or to programming directed at members of minority groups, and which is over 50 percent minority-owned, as the term 'minority' is defined in section 309(i)(3)(C)(ii).

"(3) For purposes of this subsection, the term 'qualified educational programming source' means a programming source which devotes substantially all of its programming to educational or instructional programming that promotes public understanding of mathematics, the sciences, the humanities, and the arts and has a documented annual expenditure on programming exceeding \$15,000,000. The annual expenditure on programming means all annual costs incurred by the programming source to produce or acquire programs which are scheduled to be televised, and specifically excludes marketing, promotion, satellite transmission and operational costs, and general administrative costs.

"(4) Nothing in this subsection shall substitute for the requirements to carry qualified noncommercial educational television stations as specified under section 615."

(d) CONFORMING AMENDMENT.—Paragraph (5) of section 612(b) of the Communications Act of 1934 (47 U.S.C. 532(b)) is amended to read as follows:

"(5) For the purposes of this section, the term 'commercial use' means the provision of video programming, whether or not for profit."

#### SEC. 10. CHILDREN'S PROTECTION FROM INDECENT PROGRAMMING ON LEASED ACCESS CHANNELS.

(a) AUTHORITY TO ENFORCE.—Section 612(h) of the Communications Act of 1934 (47 U.S.C. 532(h)) is amended—

(1) by inserting "or the cable operator" after "franchising authority"; and

(2) by adding at the end thereof the following: "This subsection shall permit a cable operator to enforce prospectively a written and published policy of prohibiting programming that the cable operator reasonably believes describes or depicts sexual or excretory activities or organs in a patently offensive manner as measured by contemporary community standards."

(b) COMMISSION REGULATIONS.—Section 612 of the Communications Act of 1934 (47 U.S.C. 532) is amended by inserting after subsection (i) (as added by section 9(c) of this Act) the following new subsection:

"(j)(1) Within 120 days following the date of the enactment of this subsection, the Commission shall promulgate regulations designed to limit the access of children to indecent programming, as defined by Commission regulations, and which cable operators have not voluntarily prohibited under subsection (h) by—

"(A) requiring cable operators to place on a single channel all indecent programs, as identified by program providers, intended for carriage on channels designated for commercial use under this section;

"(B) requiring cable operators to block such single channel unless the subscriber requests access to such channel in writing; and

"(C) requiring programmers to inform cable operators if the program would be indecent as defined by Commission regulations.

"(2) Cable operators shall comply with the regulations promulgated pursuant to paragraph (1)."

(c) PROHIBITS SYSTEM USE.—Within 180 days following the date of the enactment of this Act, the Federal Communications Commission shall promulgate such regulations as may be necessary to enable a cable operator of a cable system to prohibit the use, on such system, of any channel capacity of any public, educational, or governmental access facility for any programming which contains obscene material, sexually explicit conduct, or material soliciting or promoting unlawful conduct.

(d) CONFORMING AMENDMENT.—Section 638 of the Communications Act of 1934 (47 U.S.C. 558) is amended by striking the period at the end and inserting the following: "unless the program involves obscene material."

#### SEC. 11. LIMITATIONS ON OWNERSHIP, CONTROL, AND UTILIZATION.

(a) CROSS-OWNERSHIP.—Section 613(a) of the Communications Act of 1934 (47 U.S.C. 533(a)) is amended—

(1) by inserting "(1)" immediately after "(a)"; and

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

"(2) It shall be unlawful for a cable operator to hold a license for multichannel multipoint distribution service, or to offer satellite master antenna television service separate and apart from any franchised cable service, in any portion of the franchise area served by that cable operator's cable system. The Commission—

"(A) shall waive the requirements of this paragraph for all existing multichannel multipoint distribution services and satellite master antenna television services which are owned by a cable operator on the date of enactment of this paragraph; and

"(B) may waive the requirements of this paragraph to the extent the Commission determines is necessary to ensure that all significant portions of a franchise area are able to obtain video programming."

(b) CLARIFICATION OF LOCAL AUTHORITY TO REGULATE OWNERSHIP.—Section 613(d) of the Communications Act of 1934 (47 U.S.C. 533(d)) is amended—

(1) by striking "any media" and inserting "any other media"; and

(2) by adding at the end thereof the following: "Nothing in this section shall be construed to prevent any State or franchising authority from prohibiting the ownership or control of a cable system in a jurisdiction by any person (1) because of such person's ownership or control of any other cable system in such jurisdiction; or (2) in circumstances in which the State or franchising authority determines that the acquisition of such a cable system may eliminate or reduce competition in the delivery of cable service in such jurisdiction."

(c) COMMISSION REGULATIONS.—Section 613 of the Communications Act of 1934 (47 U.S.C. 533) is amended—

(1) by redesignating subsections (f) and (g) as subsections (g) and (h), respectively; and

(2) by inserting after subsection (e) the following new subsection:

"(f)(1) In order to enhance effective competition, the Commission shall, within one year after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, conduct a proceeding—

"(A) to prescribe rules and regulations establishing reasonable limits on the number of cable subscribers a person is authorized to reach through cable systems owned by such person, or in which such person has an attributable interest;

"(B) to prescribe rules and regulations establishing reasonable limits on the number of channels on a cable system that can be occupied by a video programmer in which a cable operator has an attributable interest; and

"(C) to consider the necessity and appropriateness of imposing limitations on the degree to which multichannel video programming distributors may engage in the creation or production of video programming.

"(2) In prescribing rules and regulations under paragraph (1), the Commission shall, among other public interest objectives—

"(A) ensure that no cable operator or group of cable operators can unfairly impede, either because of the size of any individual operator or because of joint actions by a group of operators of sufficient size, the flow of video programming from the video programmer to the consumer;

"(B) ensure that cable operators affiliated with video programmers do not favor such programmers in determining carriage on their cable systems or do not unreasonably restrict the flow of the video programming of such programmers to other video distributors;

"(C) take particular account of the market structure, ownership patterns, and other relationships of the cable television industry, including the nature and market power of the local franchise, the joint ownership of cable systems and video programmers, and the various types of non-equity controlling interests;

"(D) account for any efficiencies and other benefits that might be gained through increased ownership or control;

"(E) make such rules and regulations reflect the dynamic nature of the communications marketplace;

"(F) not impose limitations which would bar cable operators from serving previously unserved rural areas; and

"(G) not impose limitations which would impair the development of diverse and high quality video programming."

#### SEC. 12. REGULATION OF CARRIAGE AGREEMENTS.

Part II of title VI of the Communications Act of 1934 is amended by inserting after section 615 (as added by section 5 of this Act) the following new section:

##### "SEC. 616. REGULATION OF CARRIAGE AGREEMENTS.

"(a) REGULATIONS.—Within one year after the date of enactment of this section, the Commission shall establish regulations governing program carriage agreements and related practices between cable operators or other multichannel video programming distributors and video programming vendors. Such regulations shall—

"(1) include provisions designed to prevent a cable operator or other multichannel video programming distributor from requiring a financial interest in a program service as a condition for carriage on one or more of such operator's systems;

"(2) include provisions designed to prohibit a cable operator or other multichannel video programming distributor from coercing a video programming vendor to provide, and from retaliat-

ing against such a vendor for failing to provide, exclusive rights against other multichannel video programming distributors as a condition of carriage on a system;

"(3) contain provisions designed to prevent a multichannel video programming distributor from engaging in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or non-affiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors;

"(4) provide for expedited review of any complaints made by a video programming vendor pursuant to this section;

"(5) provide for appropriate penalties and remedies for violations of this subsection, including carriage; and

"(6) provide penalties to be assessed against any person filing a frivolous complaint pursuant to this section.

"(b) DEFINITION.—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."

#### SEC. 13. SALES OF CABLE SYSTEMS.

Part II of title VI of the Communications Act of 1934 is further amended by adding at the end thereof the following new section:

##### "SEC. 617. SALES OF CABLE SYSTEMS.

"(a) 3-YEAR HOLDING PERIOD REQUIRED.—Except as provided in this section, no cable operator may sell or otherwise transfer ownership in a cable system within a 36-month period following either the acquisition or initial construction of such system by such operator.

"(b) TREATMENT OF MULTIPLE TRANSFERS.—In the case of a sale of multiple systems, if the terms of the sale require the buyer to subsequently transfer ownership of one or more such systems to one or more third parties, such transfers shall be considered a part of the initial transaction.

"(c) EXCEPTIONS.—Subsection (a) shall not apply to—

"(1) any transfer of ownership interest in any cable system which is not subject to Federal income tax liability;

"(2) any sale required by operation of any law or any act of any Federal agency, any State or political subdivision thereof, or any franchising authority; or

"(3) any sale, assignment, or transfer, to one or more purchasers, assignees, or transferees controlled by, controlling, or under common control with, the seller, assignor, or transferor.

"(d) WAIVER AUTHORITY.—The Commission may, consistent with the public interest, waive the requirement of subsection (a), except that, if the franchise requires franchise authority approval of a transfer, the Commission shall not waive such requirements unless the franchise authority has approved the transfer. The Commission shall use its authority under this subsection to permit appropriate transfers in the cases of default, foreclosure, or other financial distress.

"(e) 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 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."

#### SEC. 14. SUBSCRIBER BILL ITEMIZATION.

Section 622(c) of the Communications Act of 1934 (47 U.S.C. 542(c)) is amended to read as follows:

"(c) Each cable operator may identify, consistent with the regulations prescribed by the Commission pursuant to section 623, 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."

#### SEC. 15. NOTICE TO CABLE SUBSCRIBERS ON UNSOLICITED SEXUALLY EXPLICIT PROGRAMS.

Section 624(d) of the Communications Act of 1934 (47 U.S.C. 544(d)) is amended by adding at the end the following new paragraph:

"(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."

#### SEC. 16. TECHNICAL STANDARDS; EMERGENCY ANNOUNCEMENTS; PROGRAMMING CHANGES; HOME WIRING.

(a) TECHNICAL STANDARDS.—Section 624(e) of the Communications Act of 1934 (47 U.S.C. 544(e)) is amended to read as follows:

"(e) Within one year after the date of enactment of the Cable Television Consumer Protection and Competition Act of 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. 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."

(b) EMERGENCY ANNOUNCEMENTS.—Section 624 of such Act (47 U.S.C. 544) is amended by adding at the end the following new subsection:

"(g) 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."

(c) PROGRAMMING CHANGES.—Section 624 of such Act (47 U.S.C. 544) is further amended—

(1) in subsection (b)(1), by inserting ", except as provided in subsection (h)," after "but may not"; and

(2) by adding at the end the following new subsection:

"(h) 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."

(d) HOME WIRING.—Section 624 of such Act (47 U.S.C. 544) is further amended by adding at the end the following new subsection:

"(i) Within 120 days after the date of enactment of this subsection, 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."

#### SEC. 17. CONSUMER ELECTRONICS EQUIPMENT COMPATIBILITY.

The Communications Act of 1934 is amended by adding after section 624 (47 U.S.C. 544) the following new section:

##### "SEC. 624A. 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; and

"(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.

"(b) COMPATIBLE INTERFACES.—

"(1) REPORT; REGULATIONS.—Within 1 year after the date of enactment of this section, 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 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

**"(B)** 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—

**"(1)** 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 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

**"(E)** 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."

**SEC. 18. FRANCHISE RENEWAL.**

**(a) COMMENCEMENT OF PROCEEDINGS.—**Section 626(a) of the Communications Act of 1934 (47 U.S.C. 546(a)) is amended to read as follows:

**"SEC. 626. (a)(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 appropriate 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) 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) PROCEEDING ON RENEWAL PROPOSAL.—**Section 626(c)(1) of the Communications Act of 1934 (47 U.S.C. 546(c)(1)) is amended—

**(1)** by inserting "pursuant to subsection (b)" after "renewal of a franchise"; and

**(2)** by striking "completion of any proceedings under subsection (a)" and inserting the following: "date of the submission of the cable operator's proposal pursuant to subsection (b)".

**(c) REVIEW CRITERIA.—**Section 626(c)(1)(B) of the Communications Act of 1934 (47 U.S.C. 546(c)(1)(B)) is amended by striking "mix, quality, or level" and inserting "mix or quality".

**(d) CORRECTION OF FAILURES.—**Section 626(d) of the Communications Act of 1934 (47 U.S.C. 546(d)) is amended—

**(1)** by inserting "that has been submitted in compliance with subsection (b)" after "Any denial of a proposal for renewal"; and

**(2)** by striking "or has effectively acquiesced" and inserting "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) HARMLESS ERROR.—**Section 626(e)(2)(A) of the Communications Act of 1934 (47 U.S.C. 546(e)(2)(A)) is amended by inserting after "franchising authority" the following: ", other than harmless error."

**(f) CONFLICT BETWEEN REVOCATION AND RENEWAL PROCEEDINGS.—**Section 626 of the Communications Act of 1934 (47 U.S.C. 546) is amended by adding at the end the following new subsection:

**"(i)** Notwithstanding the provisions of subsections (a) through (h), 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."

**SEC. 19. DEVELOPMENT OF COMPETITION AND DIVERSITY IN VIDEO PROGRAMMING DISTRIBUTION.**

Part III of title VI of the Communications Act of 1934 is amended by inserting after section 627 (47 U.S.C. 547) the following new section:

**"SEC. 628. 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 increase 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 the date of enactment of this section, the Commission shall, in order to promote the public interest, convenience, and necessity by increasing competition and diversity in the multichannel video programming market and the continuing development of communications technologies, prescribe regulations to specify particular conduct that is prohibited by subsection (b).

**"(2) MINIMUM CONTENTS OF REGULATIONS.—**The regulations to be promulgated under this section shall—

**"(A)** establish effective safeguards to prevent a cable operator which has an attributable interest in a satellite cable programming vendor or a satellite broadcast programming vendor from unduly or improperly influencing the decision of such vendor to sell, or the prices, terms, and conditions of sale of, satellite cable programming or satellite broadcast programming to any unaffiliated multichannel video programming distributor;

**"(B)** prohibit discrimination by a satellite cable programming vendor in which a cable operator has an attributable interest or by a satellite broadcast programming vendor in the prices, terms, and conditions of sale or delivery of satellite cable programming or satellite broadcast programming among or between cable systems, cable operators, or other multichannel video programming distributors, or their agents or buying groups; except that such a satellite cable programming vendor in which a cable operator has an attributable interest or such a satellite broadcast programming vendor shall not be prohibited from—

**"(i)** imposing reasonable requirements for creditworthiness, offering of service, and financial stability and standards regarding character and technical quality;

**"(ii)** establishing different prices, terms, and conditions to take into account actual and reasonable differences in the cost of creation, sale, delivery, or transmission of satellite cable programming or satellite broadcast programming;

**"(iii)** establishing different prices, terms, and conditions which take into account economies of scale, cost savings, or other direct and legitimate economic benefits 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 attrib-

utable interest for distribution to persons in areas not served by a cable operator as of the date of enactment of this section; and

"(D) with respect to distribution to persons in areas served by a cable operator, prohibit exclusive contracts for satellite cable programming or satellite broadcast programming between a cable operator and a satellite cable programming vendor in which a cable operator has an attributable interest or a satellite broadcast programming vendor in which a cable operator has an attributable interest, unless the Commission determines (in accordance with paragraph (4)) that such contract is in the public interest.

"(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 programming 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 the date of enactment of this section, 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), or the regulations of the Commission under subsection (c), 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 title V or any other provision of this Act.

"(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), 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) 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 the date of enactment of this section 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 705 of this Act, 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, United States Code, with respect to satellite broadcast programming."

SEC. 20. CUSTOMER PRIVACY RIGHTS.

(a) DEFINITIONS.—Section 631(a)(2) of the Communications Act of 1934 (47 U.S.C. 551(a)(2)) is amended to read as follows:

"(2) For purposes of this section, other than subsection (h)—

"(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 602, 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) ADDITIONAL ACTIONS REQUIRED.—Section 631(c)(1) of the Communications Act of 1934 (47 U.S.C. 551(c)(1)) is amended by inserting immediately before the period at the end the following: "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".

SEC. 21. THEFT OF CABLE SERVICE.

Section 633(b) of the Communications Act of 1934 (47 U.S.C. 533(b)) is amended—

(1) in paragraph (2)—

(A) by striking "\$25,000" and inserting "\$50,000";

(B) by striking "1 year" and inserting "2 years";

(C) by striking "\$50,000" and inserting "\$100,000"; and

(D) by striking "2 years" and inserting "5 years"; and

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

"(3) For purposes of all penalties and remedies established for violations of subsection (a)(1), the prohibited activity established herein as it applies to each such device shall be deemed a separate violation."

SEC. 22. EQUAL EMPLOYMENT OPPORTUNITY.

(a) FINDINGS.—The Congress finds and declares that—

(1) despite the existence of regulations governing equal employment opportunity, females and minorities are not employed in significant numbers in positions of management authority in the cable and broadcast television industries;

(2) increased numbers of females and minorities in positions of management authority in the cable and broadcast television industries advances the Nation's policy favoring diversity in the expression of views in the electronic media; and

(3) rigorous enforcement of equal employment opportunity rules and regulations is required in order to effectively deter racial and gender discrimination.

(b) STANDARDS.—Section 634(d)(1) of the Communication Act of 1934 (47 U.S.C. 554(d)(1)) is amended to read as follows:

"(d)(1) Not later than 270 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, and after notice and opportunity for hearing, the Commission shall prescribe revisions in the rules under this section in order to implement the amendments made to this section by such Act. Such revisions shall be designed to promote equality of employment opportunities for females and minorities in each of the job categories itemized in paragraph (3)."

(c) CONTENTS OF ANNUAL STATISTICAL REPORTS.—Section 634(d)(3) of the Communications Act of 1934 (47 U.S.C. 554(d)(3)) is amended to read as follows:

"(3)(A) Such rules also shall require an entity specified in subsection (a) with more than 5 full-time employees to file with the Commission an annual statistical report identifying by race, sex, and job title the number of employees in each of the following full-time and part-time job categories:

- "(i) Corporate officers.
- "(ii) General Manager.
- "(iii) Chief Technician.
- "(iv) Comptroller.
- "(v) General Sales Manager.
- "(vi) Production Manager.
- "(vii) Managers.
- "(viii) Professionals.
- "(ix) Technicians.
- "(x) Sales Personnel.
- "(xi) Office and Clerical Personnel.
- "(xii) Skilled Craftspersons.
- "(xiii) Semiskilled Operatives.
- "(xiv) Unskilled Laborers.
- "(xv) Service Workers.

"(B) The report required by subparagraph (A) shall be made on separate forms, provided by the Commission, for full-time and part-time employees. The Commission's rules shall sufficiently define the job categories listed in clauses (i) through (v) of such subparagraph so as to ensure that only employees who are principal decisionmakers and who have supervisory authority are reported for such categories. The Commission shall adopt rules that define the job

categories listed in clauses (vii) through (xv) in a manner that is consistent with the Commission policies in effect on June 1, 1990. The Commission shall prescribe the method by which entities shall be required to compute and report the number of minorities and women in the job categories listed in clauses (i) through (x) and the number of minorities and women in the job categories listed in clauses (i) through (xv) in proportion to the total number of qualified minorities and women in the relevant labor market. The report shall include information on hiring, promotion, and recruitment practices necessary for the Commission to evaluate the efforts of entities to comply with the provisions of paragraph (2) of this subsection. The report shall be available for public inspection at the entity's central location and at every location where 5 or more full-time employees are regularly assigned to work. Nothing in this subsection shall be construed as prohibiting the Commission from collecting or continuing to collect statistical or other employment information in a manner that it deems appropriate to carry out this section."

(d) **PENALTIES.**—Section 634(f)(2) of such Act (47 U.S.C. 554(f)(2)) is amended by striking "\$200" and inserting "\$500".

(e) **APPLICATION OF REQUIREMENTS.**—Section 634(h)(1) of such Act (47 U.S.C. 554(h)(1)) is amended by inserting before the period the following: "and any multichannel video programming distributor".

(f) **BROADCASTING EQUAL EMPLOYMENT OPPORTUNITY.**—Part I of title III of the Communications Act of 1934 is amended by inserting after section 333 (47 U.S.C. 333) the following new section:

**"SEC. 334. LIMITATION ON REVISION OF EQUAL EMPLOYMENT OPPORTUNITY REGULATIONS.**

"(a) **LIMITATION.**—Except as specifically provided in this section, the Commission shall not revise—

"(1) the regulations concerning equal employment opportunity as in effect on September 1, 1992 (47 C.F.R. 73.2080) as such regulations apply to television broadcast station licensees and permittees; or

"(2) the forms used by such licensees and permittees to report pertinent employment data to the Commission.

"(b) **MIDTERM REVIEW.**—The Commission shall revise the regulations described in subsection (a) to require a midterm review of television broadcast station licensees' employment practices and to require the Commission to inform such licensees of necessary improvements in recruitment practices identified as a consequence of such review.

"(c) **AUTHORITY TO MAKE TECHNICAL REVISIONS.**—The Commission may revise the regulations described in subsection (a) to make non-substantive technical or clerical revisions in such regulations as necessary to reflect changes in technology, terminology, or Commission organization."

(g) **STUDY AND REPORT REQUIRED.**—Not later than 2 years after the date of enactment of this Act, the Commission shall submit to the Congress a report pursuant to a proceeding to review and obtain public comment on the effect and operation of the amendments made by this section. In conducting such review, the Commission shall consider the effectiveness of its procedures, regulations, policies, standards, and guidelines in promoting equality of employment opportunity and promotion opportunity, and particularly the effectiveness of its procedures, regulations, policies, standards, and guidelines in promoting the congressional policy favoring increased employment opportunity for women and minorities in positions of management authority. The Commission shall forward to the Congress such legislative recommendations to

improve equal employment opportunity in the broadcasting and cable industries as it deems necessary.

**SEC. 23. JUDICIAL REVIEW.**

Section 635 of the Communications Act of 1934 (47 U.S.C. 555) is amended by adding at the end the following new subsection:

"(c)(1) Notwithstanding any other provision of law, any civil action challenging the constitutionality of section 614 or 615 of this Act or any provision thereof shall be heard by a district court of three judges convened pursuant to the provisions of section 2284 of title 28, United States Code.

"(2) Notwithstanding any other provision of law, an interlocutory or final judgment, decree, or order of the court of three judges in an action under paragraph (1) holding section 614 or 615 of this Act or any provision thereof unconstitutional shall be reviewable as a matter of right by direct appeal to the Supreme Court. Any such appeal shall be filed not more than 20 days after entry of such judgment, decree, or order."

**SEC. 24. LIMITATION ON FRANCHISING AUTHORITY LIABILITY.**

(a) **AMENDMENT.**—Part IV of title VI of the Communications Act of 1934 is amended by inserting after section 635 (47 U.S.C. 555) the following new section:

**"SEC. 635A. LIMITATION OF FRANCHISING AUTHORITY LIABILITY.**

"(a) **SUITS FOR DAMAGES PROHIBITED.**—In any court proceeding pending on or initiated after the date of enactment of this section involving any claim against a franchising authority or other governmental entity, or any official, member, employee, or agent of such authority or entity, arising from the regulation of cable service or from a decision of approval or disapproval with respect to a grant, renewal, transfer, or amendment of a franchise, any relief, to the extent such relief is required by any other provision of Federal, State, or local law, shall be limited to injunctive relief and declaratory relief.

"(b) **EXCEPTION FOR COMPLETED CASES.**—The limitation contained in subsection (a) shall not apply to actions that, prior to such violation, have been determined by a final order of a court of binding jurisdiction, no longer subject to appeal, to be in violation of a cable operator's rights.

"(c) **DISCRIMINATION CLAIMS PERMITTED.**—Nothing in this section shall be construed as limiting the relief authorized with respect to any claim against a franchising authority or other governmental entity, or any official, member, employee, or agent of such authority or entity, to the extent such claim involves discrimination on the basis of race, color, sex, age, religion, national origin, or handicap.

"(d) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed as creating or authorizing liability of any kind, under any law, for any action or failure to act relating to cable service or the granting of a franchise by any franchising authority or other governmental entity, or any official, member, employee, or agent of such authority or entity."

(b) **CONFORMING AMENDMENT.**—Section 635(b) of the Communications Act of 1934 (47 U.S.C. 555(b)) is amended by inserting "and with the provisions of subsection (a)" after "subsection (a)".

**SEC. 25. DIRECT BROADCAST SATELLITE SERVICE OBLIGATIONS.**

(a) **AMENDMENT.**—Part I of title III of the Communications Act of 1934 is further amended by inserting after section 334 (as added by section 22(f) of this Act) the following new section:

**"SEC. 335. DIRECT BROADCAST SATELLITE SERVICE OBLIGATIONS.**

"(a) **PROCEEDING REQUIRED TO REVIEW DBS RESPONSIBILITIES.**—The Commission shall, within 180 days after the date of enactment of this

section, initiate a rulemaking proceeding to impose, on providers of direct broadcast satellite service, public interest or other requirements for providing video programming. Any regulations prescribed pursuant to such rulemaking shall, at a minimum, apply the access to broadcast time requirement of section 312(a)(7) and the use of facilities requirements of section 315 to providers of direct broadcast satellite service providing video programming. Such proceeding also shall examine the opportunities that the establishment of direct broadcast satellite service provides for the principle of localism under this Act, and the methods by which such principle may be served through technological and other developments in, or regulation of, such service.

**"(b) CARRIAGE OBLIGATIONS FOR NONCOMMERCIAL, EDUCATIONAL, AND INFORMATIONAL PROGRAMMING.—**

"(1) **CHANNEL CAPACITY REQUIRED.**—The Commission shall require, as a condition of any provision, initial authorization, or authorization renewal for a provider of direct broadcast satellite service providing video programming, that the provider of such service reserve a portion of its channel capacity, equal to not less than 4 percent nor more than 7 percent, exclusively for noncommercial programming of an educational or informational nature.

"(2) **USE OF UNUSED CHANNEL CAPACITY.**—A provider of such service may utilize for any purpose any unused channel capacity required to be reserved under this subsection pending the actual use of such channel capacity for noncommercial programming of an educational or informational nature.

"(3) **PRICES, TERMS, AND CONDITIONS; EDITORIAL CONTROL.**—A provider of direct broadcast satellite service shall meet the requirements of this subsection by making channel capacity available to national educational programming suppliers, upon reasonable prices, terms, and conditions, as determined by the Commission under paragraph (4). The provider of direct broadcast satellite service shall not exercise any editorial control over any video programming provided pursuant to this subsection.

"(4) **LIMITATIONS.**—In determining reasonable prices under paragraph (3)—

"(A) the Commission shall take into account the nonprofit character of the programming provider and any Federal funds used to support such programming;

"(B) the Commission shall not permit such prices to exceed, for any channel made available under this subsection, 50 percent of the total direct costs of making such channel available; and

"(C) in the calculation of total direct costs, the Commission shall exclude—

"(i) marketing costs, general administrative costs, and similar overhead costs of the provider of direct broadcast satellite service; and

"(ii) the revenue that such provider might have obtained by making such channel available to a commercial provider of video programming.

"(5) **DEFINITIONS.**—For purposes of this subsection—

"(A) The term 'provider of direct broadcast satellite service' means—

"(i) a licensee for a Ku-band satellite system under part 100 of title 47 of the Code of Federal Regulations; or

"(ii) any distributor who controls a minimum number of channels (as specified by Commission regulation) using a Ku-band fixed service satellite system for the provision of video programming directly to the home and licensed under part 25 of title 47 of the Code of Federal Regulations.

"(B) The term 'national educational programming supplier' includes any qualified non-commercial educational television station, other

public telecommunications entities, and public or private educational institutions."

(b) **TECHNICAL AMENDMENT.**—Section 331 of such Act as added by Public Law 97-259 (47 U.S.C. 332) is redesignated as section 332.

**SEC. 26. SPORTS PROGRAMMING MIGRATION STUDY AND REPORT.**

(a) **STUDY REQUIRED.**—The Federal Communications Commission shall conduct an ongoing study on the carriage of local, regional, and national sports programming by broadcast stations, cable programming networks, and pay-per-view services. The study shall investigate and analyze, on a sport-by-sport basis, trends in the migration of such programming from carriage by broadcast stations to carriage over cable programming networks and pay-per-view systems, including the economic causes and the economic and social consequences of such trends.

(b) **REPORT ON STUDY.**—The Federal Communications Commission shall, on or before July 1, 1993, and July 1, 1994, submit an interim and a final report, respectively, on the results of the study required by subsection (a) to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate. Such reports shall include a statement of the results, on a sport-by-sport basis, of the analysis of the trends required by subsection (a) and such legislative or regulatory recommendations as the Commission considers appropriate.

(c) **ANALYSIS OF PRECLUSIVE CONTRACTS REQUIRED.**—

(1) **ANALYSIS REQUIRED.**—In conducting the study required by subsection (a), the Commission shall analyze the extent to which preclusive contracts between college athletic conferences and video programming vendors have artificially and unfairly restricted the supply of the sporting events of local colleges for broadcast on local television stations. In conducting such analysis, the Commission shall consult with the Attorney General to determine whether and to what extent such preclusive contracts are prohibited by existing statutes. The reports required by subsection (b) shall include separate statements of the results of the analysis required by this subsection, together with such recommendations for legislation as the Commission considers necessary and appropriate.

(2) **DEFINITION.**—For purposes of the subsection, the term "preclusive contract" includes any contract that prohibits—

(A) the live broadcast by a local television station of a sporting event of a local college team that is not carried, on a live basis, by any cable system within the local community served by such local television station; or

(B) the delayed broadcast by a local television station of a sporting event of a local college team that is not carried, on a live or delayed basis, by any cable system within the local community served by such local television station.

**SEC. 27. APPLICABILITY OF ANTITRUST LAWS.**

Nothing in this Act or the amendments made by this Act shall be construed to alter or restrict in any manner the applicability of any Federal or State antitrust law.

**SEC. 28. EFFECTIVE DATE.**

Except where otherwise expressly provided, the provisions of this Act and the amendments made thereby shall take effect 60 days after the date of enactment of this Act.

And the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House to the title of the bill and agree to the same.

JOHN D. DINGELL,  
EDWARD J. MARKEY,  
BILLY TAUZIN,  
DENNIS E. ECKART,  
THOMAS J. MANTON,

RALPH M. HALL,  
CLAUDE HARRIS,

Provided that Mr. Ritter is appointed in place of Mr. Fields for consideration of so much of section 16 of the Senate bill as would add a new section 614(g) of the Communications Act of 1934 and so much of section 5 of the House amendment as would add a new section 614(f) to the Communications Act of 1934.

*Managers on the Part of the House.*

ERNEST F. HOLLINGS,  
DANIEL K. INOUE,  
WENDELL FORD,  
JOHN C. DANFORTH,

*Managers on the Part of the Senate.*

**JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE**

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 12) to amend title VI of the Communications Act of 1934 to ensure carriage on cable television of local news and other programming and to restore the right of local regulatory authorities to regulate cable television rates, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment to the text of the bill struck all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment that is a substitute for the Senate bill and the House amendment. The differences between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clerical changes.

**SECTION 1—SHORT TITLE**

*Senate bill*

The Senate bill, in Section 1, provides the following short title: "Cable Television Consumer Protection Act of 1992".

*House amendment*

The House amendment, in Section 1, provides the following short title: "Cable Television Consumer Protection and Competition Act of 1992"

*Conference agreement*

The conference agreement adopts the House provision.

**SECTION 2—FINDINGS; STATEMENT OF POLICY; DEFINITIONS**

*Senate bill*

The Congress finds that:

(1) Cable rates have increased significantly;

(2) Without a sufficient number of local television stations and another multichannel video programming distributor, cable systems are not subject to effective competition;

(3) There is a substantial governmental and First Amendment interest in promoting a diversity of views through multiple technology media;

(4) The cable industry has become a dominant nationwide video medium;

(5) The cable industry has become more concentrated;

(6) Cable rates other than for basic service should be regulated only when needed to control undue market power;

(7) The cable industry has become more vertically integrated into programming, which may harm competing programmers;

(8) There is a substantial governmental and First Amendment interest in ensuring that cable subscribers have access to local noncommercial educational stations to further education and promote diversity and alternative telecommunications services;

(9) There is a substantial governmental interest in having all non-duplicative public television stations available to: promote education and public service programming; ensure the maximum use of the federal contributions to public broadcasting; and ensure that citizens have access to the public service programming responding to their needs and interests which is provided by the public broadcast stations which they help to fund;

(10) There is a substantial governmental interest in ensuring the continuation of locally originated television broadcasting;

(11) Television stations are an important source of local programming, especially for local news and public affairs programming;

(12) Television broadcasting is especially important for those who cannot afford to pay for video programming;

(13) Over the past decade, the market share of cable television has increased, while that of television broadcasting has decreased;

(14) Cable television and television broadcasting increasingly compete for advertising, and more advertising is aired on cable television;

(15) By carrying television broadcast stations, cable operators may increase the viewership of these stations at the expense of programming aired exclusively on cable systems;

(16) As a result, cable operators have an incentive not to carry television broadcast stations, which may jeopardize the future of these stations and the local programming they air;

(17) Subscribers to cable television often do not have the equipment to make it easy to switch between viewing cable television and television broadcast signals over-the-air;

(18) Cable systems are often the single most efficient distribution system for television programming;

(19) Broadcast programming is the most popular programming on cable systems and as a result, cable operators and programmers derive substantial benefits from the carriage of local broadcast signals. Since cable systems can take broadcast signals without the consent of the broadcasters, cable systems now are effectively subsidized by broadcast stations;

(20) Franchising authorities had their authority to oversee the cable industry limited by the 1984 Cable Communications Policy Act, especially with regard to franchise renewals;

(21) Given the lack of clear guidelines in applying the First Amendment to cable franchise decisions, franchising authorities are unreasonably exposed to liability for monetary damages under the Civil Rights Acts;

(22) Cable systems should be encouraged to carry those low power television stations that carry a substantial amount of local programming.

*Statement of policy*

Section 3 of the Senate bill sets forth the policy of the Congress in this Act to:

(1) promote information diversity;

(2) rely on the marketplace, to the maximum extent;

(3) ensure that cable systems can continue to grow and develop;

(4) protect consumers by regulating where effective competition does not exist as a substitute for market forces; and

(5) ensure that consumers and programmers are not harmed by undue market power.

#### Definitions

The Senate bill amends Section 602 of the Communications Act of 1934 to add the following:

(1) The term "activated channels" means those channels engineered at the headend of a cable system for the provision of services generally available to residential cable subscribers, regardless of whether such services actually are provided, including access channels;

(3) The term "available to a household" or "available to a home" when used in reference to a multichannel video programming distributor means a particular household which is a subscriber of customer of the distributor or a particular household which is actively and currently sought as a subscriber or customer by a multichannel video programming distributor and which is capable of receiving the service offered by the multichannel video programming distributor;

(6) The term "cable community" means all of the households in the geographic area in which a cable system is authorized by a franchising authority to provide cable service, regardless of whether the cable operator is actually providing cable service to such households;

(7) The term "headend" means the location of any equipment of a cable system used to process the signals of television broadcast stations for redistribution to subscribers;

(8) The term "multichannel video programming distributor" means a person who makes available for purchase, by subscribers or customers, multiple channels of video programming;

(9) The term "principal headend" means—  
(A) the headend, in the case of a cable system with a single headend, (B) in the case of a cable system with more than one headend, the headend designated by the cable operator to the Commission as the principal headend;

(10) (A) The term "local commercial television station" means any commercial television station licensed and operating on a channel regularly assigned to its community by the Commission that, with respect to a particular cable system, is licensed to a community whose reference point is within 50 miles of the principal headend and which delivers to the principal headend either a signal level of -45 dBm (UHF) or -49 dBm (VHF) at the input terminals of the signal processing equipment or a baseband video signal; signals that would be considered distant signals under 17 U.S.C. 111 shall be considered local commercial television stations upon agreement by the station to pay the cable operator the copyright costs of carrying the station;

(B) such term does not include television translator stations, and other passive repeaters;

(11) The term "qualified non-commercial educational television station" means any television broadcast station which (A) under FCC rules is licensed by the FCC as a non-commercial educational television station and which is owned and operated by a public agency or a nonprofit private entity, (B) is owned or operated by a municipality and transmits only noncommercial programs for educational purposes, or (C) has as its licensee an entity which is eligible to receive a community service grant from the Corporation for Public Broadcasting pursuant to

47 U.S.C. 396(k)(6)(b). A "qualified" station also includes any translator which operates at five watts of power or higher and rebroadcasts the signal of a qualified noncommercial educational television station;

(12) The term "qualified low power station" means any station that (a) meets the rules set forth in 47 C.F.R. part 74; (b) meets the minimum number of broadcast hours set forth in 47 C.F.R. part 73 for television broadcast stations; (c) meets the requirements of the Commission that a significant part of its programming be locally originated and produced; (d) meets all of the obligations imposed on television broadcast stations in 47 C.F.R. part 73 with respect to the broadcast of non-entertainment programming; programming and rates involving political candidates and election issues; controversial issues of public importance, and editorials, personal attacks; children's programming; and equal employment opportunity; (e) complies with the interference regulations consistent with their secondary status pursuant to 47 C.F.R. part 74; and (f) is located within 35 miles of the cable system's principal headend, or no more than 20 miles if the station is located in one of the largest 50 markets, and delivers a signal level of -45 dBm for UHF and -49 dBm for VHF stations to input terminals at the cable headend;

(13) The term "usable activated channels" means activated channels of a cable system, except those channels whose use for the distribution of broadcast signals would conflict with technical and safety regulations as determined by the FCC;

(14) The term "video programmer" means a person engaged in the production, creation, or wholesale distribution of a video programming service for sale. This term applies to those video programmers who enter into arrangements with cable operators for carriage of a programming service;

(15) The term "Line 21 Closed caption" means the data signal which displays a visual depiction of aural information simultaneously being presented on a television channel.

#### House amendment

##### Findings

The Congress finds that:

(1) Fair competition in the delivery of television programming should foster the greatest possible choice of programming and should result in lower prices for consumers;

(2) Since passage of the Cable Communications Policy Act of 1984, rates for cable television services have been deregulated in 97 percent of all franchises. A minority of cable operators have abused their deregulated status and their market power and have unreasonably raised cable subscriber rates. The FCC's rules governing local rate regulation will not provide protection for more than two-thirds of the nation's cable subscribers and will not protect subscribers from unreasonable rates in those communities where the rules apply;

(3) In order to protect consumers, it is necessary for the Congress to establish a means for local franchising authorities and the FCC to prevent cable operators from imposing rates upon consumers that are unreasonable;

(4) There is a substantial governmental and First Amendment interest in promoting a diversity of views provided through multiple technology media;

(5) The Federal government has a compelling interest in making all nonduplicative local public television services available on cable systems because:

a. public television provides educational and informational programming to the Nation's citizens, thereby advancing the Government's compelling interest in educating its citizens;

b. public television is a local community institution, supported through local tax dollars and voluntary citizen contributions in excess of \$10.8 billion between 1972 and 1990, that provides public service programming that is responsive to the needs and interests of the local community;

c. The Federal Government, in recognition of public television's integral role in serving the educational and informational needs of local communities, has invested more than \$3 billion in public broadcasting between 1969 and 1992; and

d. absent carriage requirements, there is a substantial likelihood that citizens, who have supported local public television services, will be deprived of those services.

(6) The Federal Government also has a compelling interest in having cable systems carry the signals of local commercial television stations because the carriage of such signals;

a. promotes localism and provides a significant source of news, public affairs, and educational programming;

b. is necessary to serve the goals contained in the Communications Act of providing a fair, efficient, and equitable distribution of broadcast services; and

c. will enhance the access to such signals of Americans living in areas where the quality of reception of broadcast signals is poor;

(7) Broadcast television programming is supported by advertising revenues. Such programming is otherwise free to those who own television sets and do not require cable transmission to receive broadcast signals. There is a substantial governmental interest in promoting the continued availability of such free television programming, especially for viewers who are unable to afford other means of receiving programming;

(8) Television broadcasters and cable television operators compete directly for the television viewing audience, programming materials, and advertising revenue. The Federal interest in ensuring that such competition is fair and operates to the benefit of consumers requires that local broadcast stations be made available on cable systems;

(9) Cable systems should be encouraged to carry low power television stations licensed to the communities served by those systems where the low power station creates and broadcasts, as a substantial part of its programming day, local programming;

(10) Secure carriage and channel positioning on cable television systems are the most effective means through which off-air broadcast television can access cable subscribers. In the absence of rules mandating carriage and channel positioning of broadcast television stations, some cable system operators have denied carriage or repositioned the carriage of some television stations;

(11) Cable television systems and broadcast television stations increasingly compete for television advertising and audience. A cable system has a direct financial interest in promoting those channels on which it sells advertising or owns programming. As a result, there is an economic incentive for cable systems to deny carriage to local broadcast signals, or to reposition signals to disadvantageous channel positions, or both. Absent repositioning of must carry and channel positioning requirements, such activity could occur, thereby threatening diversity, economic competition, and the Federal tele-

vision broadcast allocation structure in local markets across the country;

(12) Cable systems provide the most effective access to television households that subscribe to cable. As a result of the cable operator's provision of this access and the operator's economic incentives to promote channels on which it sells advertising or owns programming, negotiations between cable operators and local broadcast stations have not been an effective mechanism for securing carriage and channel positioning;

(13) Most subscribers to cable television systems do not or cannot maintain antennas to receive broadcast television services, do not have input selector switches to convert from a cable to antenna reception system, or cannot otherwise receive broadcast television services. A government mandate for a substantial societal investment in alternative distribution systems for cable subscribers, such as the "A/B" input selector antenna system, is not an enduring or feasible method of distribution and is not in the public interest;

(14) At the same time, broadcast programming has proven to be the most popular programming on cable systems, and a substantial portion of the benefits for which consumers pay cable systems is derived from carriage of local broadcast signals. Also, cable programming placed on channels adjacent to popular off-the-air signals obtains a larger audience than on other channel positions. Cable systems, therefore, obtain great benefits from carriage of local broadcast signals which they have been able to obtain without the consent of the broadcaster. This has resulted in an effective subsidy of the development of cable systems by local broadcasters. While at one time, when cable systems did not attempt to compete with local broadcasters, this subsidy may have been appropriate, it is no longer and results in a competitive imbalance between the two industries.

The House amendment does not include a Statement of Policy.

The "Definitions" section of the House amendment contains only a definition of "multichannel video programming distributor". That definition is identical to the Senate definition. The remainder of the definitions in the House amendment are dispersed throughout the House amendment.

#### Conference agreement

##### Findings

The conference agreement combines, with modification, the findings of the House amendment and the Senate bill, many of which were quite similar. The conferees adopted the following findings:

The Congress finds and declares the following:

(1) Pursuant to the Cable Communications Policy Act of 1984, rates for cable television services have been deregulated in approximately 97 percent of all franchises since December 29, 1986. Since rate deregulation, monthly rates for the lowest priced basic cable service have increased by 40 percent or more for 28 percent of cable television subscribers. Although the average number of basic channels has increased from about 24 to 30, average monthly rates have increased by 29 percent during the same period. The average monthly cable rate has increased almost three times as much as the Consumer Price Index since rate deregulation.

(2) For a variety of reasons, including local franchising requirements and the extraordinary expense of constructing more than one cable television system to serve a particular geographic area, most cable tele-

vision subscribers have no opportunity to select between competing cable systems. Without the presence of another multichannel video programming distributor, a cable system faces no local competition. The result is undue market power for the cable operator as compared to that of consumers and video programmers.

(3) There has been a substantial increase in the penetration of cable television systems over the past decade. Nearly 56 million households, over 60 percent of the households with televisions, subscribe to cable television, and this percentage is almost certain to increase. As a result of this growth, the cable television industry has become a dominant nationwide video medium.

(4) The cable industry has become highly concentrated. The effects of such concentration are barriers to entry for new programmers and a reduction in the number of media voices available to consumers.

(5) The cable industry has become vertically integrated; cable operators and cable programmers often have common ownership. As a result, cable operators have the incentive and ability to favor their affiliated programmers. This has made it more difficult for non-cable-affiliated programmers to secure carriage on cable systems. Vertically integrated program suppliers also have the incentive and ability to favor their affiliated cable operators over non-affiliated cable operators and programming distributors using other technologies.

(6) There is a substantial governmental and First Amendment interest in promoting a diversity of views provided through multiple technology media.

(7) There is a substantial governmental and First Amendment interest in ensuring that cable subscribers have access to local noncommercial educational stations which Congress has authorized, as expressed in section 396(a)(5) of the Communications Act of 1934. The distribution of unique noncommercial, educational programming services advances that interest.

(8) The Federal Government has a substantial interest in making all nonduplicative local public television services available on cable systems because—

(A) public television provides educational and informational programming to the Nation's citizens, thereby advancing the Government's compelling interest in educating its citizens;

(B) public television is a local community institution, supported through local tax dollars and voluntary citizen contributions in excess of \$10,800,000,000 since 1972, that provides public service programming that is responsive to the needs and interests of the local community;

(C) the Federal Government, in recognition of public television's integral role in serving the educational and informational needs of local communities, has invested more than \$3,000,000,000 in public broadcasting since 1969; and

(D) absent carriage requirements there is a substantial likelihood that citizens, who have supported local public television services, will be deprived of those services.

(9) The Federal Government has a substantial interest in having cable systems carry the signals of local commercial television stations because the carriage of such signals is necessary to serve the goals contained in section 307(b) of this Act of providing a fair, efficient, and equitable distribution of broadcast services.

(10) A primary objective and benefit of our Nation's system of regulation of television

broadcasting is the local origination of programming. There is a substantial governmental interest in ensuring its continuation.

(11) Broadcast television stations continue to be an important source of local news and public affairs programming and other local broadcast services critical to an informed electorate.

(12) Broadcast television programming is supported by revenues generated from advertising broadcast over stations. Such programming is otherwise free to those who own television sets and do not require cable transmission to receive broadcast signals. There is a substantial governmental interest in promoting the continued availability of such free television programming, especially for viewers who are unable to afford other means of receiving programming.

(13) As a result of the growth of cable television, there has been a marked shift in market share from broadcast television to cable television services.

(14) Cable television systems and broadcast television stations increasingly compete for television advertising revenues. As the proportion of households subscribing to cable television increases, proportionately more advertising revenues will be reallocated from broadcast to cable television systems.

(15) A cable television system carries the signal of a local television broadcaster is assisting the broadcaster to increase its viewership, and thereby attract additional advertising revenues that otherwise might be earned by the cable system operator. As a result, there is an economic incentive for cable systems to terminate the retransmission of the broadcast signal, refuse to carry new signals, or reposition a broadcast signal to a disadvantageous channel position. There is a substantial likelihood that absent the reimposition of such a requirement, additional local broadcast signals will be deleted, repositioned, or not carried.

(16) As a result of the economic incentive that cable systems have to delete, reposition, or not carry local broadcast signals, coupled with the absence of a requirement that such systems carry local broadcast signals, the economic viability of free local broadcast television and its ability to originate quality local programming will be seriously jeopardized.

(17) Consumers who subscribe to cable television often do so to obtain local broadcast signals which they otherwise would not be able to receive, or to obtain improved signals. Most subscribers to cable television systems do not or cannot maintain antennas to receive broadcast television services, do not have input selector switches to convert from a cable to antenna reception system, or cannot otherwise receive broadcast television services. The regulatory system created by the Cable Communications Policy Act of 1984 was premised upon the continued existence of mandatory carriage obligations for cable systems, ensuring that local stations would be protected from anticompetitive conduct by cable systems.

(18) Cable television systems often are the single most efficient distribution system for television programming. A government mandate for a substantial societal investment in alternative distribution systems for cable subscribers, such as the "A/B" input selector antenna system, is not an enduring or feasible method of distribution and is not in the public interest.

(19) At the same time, broadcast programming that is carried remains the most popular programming on cable systems, and a substantial portion of the benefits for which

consumers pay cable systems is derived from carriage of the signals of network affiliates, independent television stations, and public television stations. Also cable programming placed on channels adjacent to popular off-the-air signals obtains a larger audience than on other channel positions. Cable systems, therefore, obtain great benefits from local broadcast signals which, until now, they have been able to obtain without the consent of the broadcaster or any copyright liability. This has resulted in an effective subsidy of the development of cable systems by local broadcasters. While at one time, when cable systems did not attempt to compete with local broadcasters for programming, audience, and advertising, this subsidy may have been appropriate, it is so no longer and results in a competitive imbalance between the two industries.

(20) The Cable Communications Policy Act of 1984, in its amendments to the Communications Act of 1934, limited the regulatory authority of franchising authorities over cable operators. Franchising authorities are finding it difficult under the current regulatory scheme to deny renewals to cable systems that are not adequately serving cable subscribers.

(21) Cable systems should be encouraged to carry low power television stations licensed to the communities served by those systems where the low power station creates and broadcasts, as a substantial part of its programming day, local programming.

#### Statement of policy

The conference agreement adopts the Senate Statement of Policy.

#### Definitions

The conference agreement adopts the Senate definitions of "activated channels", "multichannel video programming distributor", and "usable activated channels". Most of the remaining definitions have been included in the relevant sections of the conference agreement. Some definitions have been eliminated entirely.

#### SECTION 3—REGULATION OF RATES

##### Senate bill

Section 5 of the Senate bill amends Section 623 of the Communications Act to give the FCC, and in some cases, local authorities, the power to regulate the rates for certain cable services and equipment.

Section 623(a) states that governments may only regulate cable systems to the extent provided in this section.

Section 623(b) states that the FCC shall regulate the rates, terms, and conditions for basic cable service not subject to effective competition, and shall regulate equipment used to receive such service. If fewer than 30 percent of subscribers take only the basic cable tier, then the FCC shall also regulate the next lowest priced service tier subscribed to by at least 30 percent of the system's customers. This subsection also provides that the franchising authority may obtain jurisdiction to regulate cable rates, upon written request, if it adopts laws and regulations conforming to FCC procedures. This subsection further states that a cable operator has no obligation to put programming other than retransmitted local broadcast signals on its basic service tier. A cable operator may file for a basic service rate increase, and such increase shall be granted if it is not acted upon within 180 days of the dated of filing.

Section 623(c) provides that the FCC shall, for systems not subject to effective competition, establish reasonable rates for "cable programming services" if it finds that the

current rates are unreasonable. The FCC may act only upon the filing of a complaint that is filed within a reasonable time after a rate increase and that properly establishes that rates are unreasonable. Prior to establishing reasonable rates, the FCC shall determine whether the existing rates can be justified by reasonable business practices. A rate increase can be deemed to result from a change in the service tiers or a change in the per channel price paid by subscribers. In determining whether rates are unreasonable, the FCC shall consider the following factors, among others:

(A) the extent to which service offerings are offered on an unbundled basis;

(B) the rates for similarly-situated cable systems offering comparable services;

(C) the history of rates for such service offerings of the system;

(D) the rates for all cable programming service offerings taken as a whole; and

(E) the rates charged for similar service offerings by cable systems subject to effective competition.

Section 623(d) presumes that effective competition exists when either (1) fewer than 30 percent of the households subscribe to the cable system, or (2) when (A) a sufficient number of local television signals exists and (B) an unaffiliated multichannel video competitor offering comparable service at comparable rates if available to a majority of the homes in the market and is subscribed to by individuals in at least 15 percent of the homes.

Under Section 623(e), cable operators must offer uniform rates throughout the geographic area in which they provide cable service.

Section 623(f) allows governmental authorities to prohibit discrimination among customers of cable service and to require and regulate the installation or rental of equipment used by hearing-impaired individuals.

Section 623(g) defines "cable programming services" to include all video programming services, except basic cable service and premium or pay-per-view channels, and equipment used to receive such services.

Section 623(h) directs the FCC to adopt regulations to prevent cable operators from evading the rate regulation provisions of this section.

##### House amendment

Section 3 of the House amendment provides a new Section 623 in the Communications Act to ensure that consumers have the opportunity to purchase basic cable service at reasonable rates.

Section 623(a) provides that no government may regulate cable service except as provided under this section. It also expresses a preference for competition and that the rates for cable service shall not be subject to regulation if the cable system is subject to effective competition. This subsection also sets forth the procedures by which a franchising authority may exercise regulatory jurisdiction permitted under this section.

Section 623(b) provides that the FCC shall, by regulation, establish a formula to establish the maximum price of the basic service tier. The formula shall take into account the number of signals carried on the basic tier, the direct costs of providing the services on the basic tier, a portion of the joint and common costs properly allocable to providing such services, a reasonable profit, rates for comparable cable systems that are subject to effective competition, any franchise fee, tax or charge imposed on cable operators or subscribers, and any amount required to satisfy franchise requirements to support public, educational, or governmental channels.

This subsection also directs the Commission to establish a formula to establish the rate for the installation and lease of equipment for subscribers to receive basic cable service and connections for additional television receivers. The Commission shall also establish a formula to identify and allocate costs of satisfying franchise requirements to support public, educational, and governmental channels. The Commission shall also adopt other procedures to implement and enforce the regulations prescribed under this subsection. Such procedures shall require a cable operator to provide 30 days' notice to franchising authorities of any increase of more than five percent in the basic service rate.

Under this subsection, subscription to the basic tier is necessary to receive access to any other tier of service. Under the House amendment, the basic tier must contain all signals required to be carried under sections 614 and 615, any public, educational, and governmental access programming, and any signal of any broadcast station provided by the cable operator, as well as other video programming signals that the cable operator may choose to provide on the basic tier.

This subsection prohibits cable operators from requiring the subscription to any tier other than the basic tier as a condition of access to any programming offered on a per channel or per program basis, except this prohibition shall not apply to a cable system that, because of technical limitations, cannot offer programming on a per channel or per program basis. However, once a cable system's technology is modified to eliminate such technical limitation or after five years, the exception no longer applies. The FCC shall initiate a proceeding to consider the benefits of this prohibition and may extend the five-year period for an additional two years.

The House amendment also provides that cable operators may identify as a separate line item on each bill the amount assessed as a franchise fee, the amount of supporting public, educational, or governmental channels, any other fee, tax, assessment or charge.

Section 623(c) provides for the regulation of cable programming services other than those on the basic tier and those offered on a per program or per channel basis. The subsection directs the FCC to adopt criteria for identifying unreasonable cable programming rates, procedures to handle complaints filed by franchising authorities or other state or local government entities, including the minimum showing that complaints must make to establish a prima facie case that the rate in question is unreasonable, and procedures to reduce rates that the Commission determines to be unreasonable and to refund the portion of the rates paid by subscribers after the filing of the complaint.

In determining the regulations for these programming services, the Commission shall consider, among other factors: (A) the rates for similarly-situated cable systems; (B) the rates for comparable cable systems subject to effective competition; (C) the history of rates of the cable system; (D) the rates as a whole for all the cable programming, equipment, and services provided by the system; (E) the capital and operating costs of the cable system; (F) the quality and costs of the customer service provided by the cable system; and (G) the revenues received by a cable operator from advertising.

Except for the period before 180 days after the effective date of the Commission's regulations, complaints may be filed only within

a reasonable time following a change in rates.

Section 623(d), as added by the House amendment, permits state or franchising authorities to regulate any per-program rates charged by a cable operator for any national championship game between professional teams in baseball, basketball, football, or hockey.

Section 623(e), as added by the House amendment, permits any Federal agency, state or franchising authority to require and regulate the installation or rental of equipment to facilitate the reception of basic cable service by hearing impaired individuals and permits such authorities to prohibit discrimination among customers of basic cable service, except that no such government authority shall prohibit a cable operator from offering reasonable discounts to senior citizens or other economically disadvantaged group discounts.

Section 623(f), as added by the House amendment, prohibits a cable operator from charging a subscriber for any individually-priced channel or for any pay-per-view programming that the subscriber has not affirmatively requested.

Section 623(g), as added by the House amendment, requires cable operators to file annually such financial information as may be needed for purposes of administering and enforcing this section. The Commission shall submit to Congress a report on the financial condition, profitability, rates, and performance of the cable industry by January 1, 1994.

Section 623(h), as added by the House amendment, directs the Commission to establish by regulation standards, guidelines, and procedures to prevent evasions of the rates, services, and other requirements of this section and shall periodically review and revise such standards, guidelines, and procedures.

Section 623(i), as added by the House amendment, directs the Commission to design such regulations to reduce the administrative burdens and cost of compliance for cable systems that have 1,000 or fewer subscribers.

Section 623(j), as added by the House amendment, permits a franchising authority to regulate rates in accordance with an agreement made before July 1, 1990 for the regulation of basic cable service rates.

Section 623(k), as added by the House amendment, directs the Commission to publish quarterly statistical reports on the average rates for basic service and other cable programming and equipment both for cable systems that are and are not subject to effective competition.

Under section 623(l), as added by the House amendment, "effective competition" means (A) fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system; (B) the franchise areas is served by at least two unaffiliated multichannel video programming distributors offering comparable video programming to at least 50 percent of the households in the franchise area, and at least 15 percent of the households in the franchise area subscribe to the smaller of these two systems; or (C) a multichannel video provider operated by the franchising authority offers video programming to at least 50 percent of the households in that franchise area.

This subsection also defines "cable programming service" as any video programming provided over cable except programming carried on the basic tier and except programming offered on a per channel or per program basis.

#### Conference agreement

The conference agreement adopts the House language with the amendments described below:

Section 623(b) is amended to state specifically that the Commission shall, by regulation, ensure that the rates for the basic service tier are reasonable, and that the goal of such regulations is to protect subscribers of any cable system that is not subject to effective competition from rates that exceed the rates that would be charged if such cable system were subject to effective competition.

The conference agreement adds a provision that, in prescribing regulations to ensure that rates are reasonable, the FCC shall seek to reduce the administrative burdens on subscribers, cable operators, franchising authorities, and the Commission. Rather than requiring the Commission to adopt a formula to set a maximum rate for basic cable service, the conferees agree to allow the Commission to adopt formulas or other mechanisms and procedures to carry out this purpose. The purpose of these changes is to give the Commission the authority to choose the best method of ensuring reasonable rates for the basic service tier and to encourage the Commission to simplify the regulatory process.

The conferees agreed to the following changes to the factors to be considered in determining the regulations for basic service:

(1) The House language concerning the number of signals carried on the basic service tier is not included in the conference agreement.

(2) The language concerning joint and common costs is clarified to ensure that joint and common costs are recovered in the rates of all cable services, not only in the rates for basic cable service, as determined by the Commission. The language is also clarified to ensure that the direct costs of providing non-basic cable services are not considered joint and common costs and are not recovered in the rates charged for basic cable service. The conferees do not necessarily intend that joint and common costs be recovered on a per channel basis. For instance, the Commission may determine that the amount of joint and common costs allocated to the basic service tier should be less than the amount that would be allocated on a "per channel" basis, both because the basic service tier may contain public, educational, and governmental channels or leased access channels and because the Commission may decide as a policy matter to keep the rates for basic cable service as low as possible. The conferees believe that the basic cable tier should not be required to bear a larger portion of the joint and common costs than what would be allocated on a per channel basis. The regulated, basic tier must not be permitted to serve as the base that allows for marginal pricing of unregulated services.

(3) In addition to considering the revenues received by a cable operator from advertising, the Commission may also consider any other consideration obtained by a cable operator in connection with the basic service tier. This clarification is intended to help to keep the rates for basic cable service low.

(4) The Commission may consider the "reasonably and properly allocable portion" of franchise fees, taxes or other charges imposed by state or local authorities. The purpose of this clarification, as with the previous two clarifications, is to help keep the rates for basic cable service low.

(5) The language concerning "reasonable profit" was amended to strike "on the provi-

sion of the basic service tier" and to substitute "consistent with the Commission's obligations to subscribers" to ensure that rates are reasonable. The conferees agree that the cable operators are entitled to earn a reasonable profit. The changes included in the conference agreement reflect the belief that cable operators' profits should be consistent with the goal of ensuring that rates to consumers are reasonable. Further, the changes included in the conference agreement would allow the Commission to examine the profit earned by the cable operators on other cable services as well as the profit earned on the basic cable service tier in determining whether the rates for the basic service tier are reasonable. The intention of this change is, once again, to protect the interests of the consumers of basic cable service.

The conferees agreed to the following changes regarding the regulation of equipment:

(1) Rather than requiring the Commission to adopt a formula to establish the price for equipment, the Commission is given the authority to choose the best method of accomplishing the goals of this legislation.

(2) The "equipment necessary by subscribers to receive the basic service tier" is replaced with "equipment used by subscribers". This change gives the FCC greater authority to protect the interests of the consumer.

In determining the costs of franchise requirements, the conferees agree to replace the term "formula" with "regulations" and "standards" in order to give the Commission the authority to determine the best method of accomplishing the purposes of this legislation.

The conference agreement requires cable operators to give franchise authorities 30 days' notice of any increase in the rate for the basic service tier, rather than limiting the notice requirements to rate increases of more than 5 percent.

The House amendment required that any television broadcast station signal carried by the cable operator be provided on the basic tier, including superstations. The conferees agreed to delete the requirement that superstations be carried on the basic tier. The conference agreement allows cable operators the discretion to decide whether to carry superstations as part of the basic tier or on other tiers.

The House amendment provided an exception to the so-called "anti-buy-through" provision for those systems that, due to technical limitations, could not comply with the requirement. The House amendment limited this exception to five years, but permitted the Commission to extend the waiver for a maximum of two additional years. The conference agreement extends this exception to ten years. The conference agreement also provides that the Commission may grant waivers of the "anti-buy-through" requirement for as long as the Commission determines is reasonable and appropriate if the Commission determines that compliance with the requirement would require the cable operator to increase its rates. Because of these changes, the conference agreement does not include the requirement that the Commission initiate a proceeding to consider the costs and benefits of the "anti-buy-through" provision.

The provision in the House amendment regarding subscriber bill itemization was moved to a separate section of the bill—Section 14.

The conference agreement makes the following changes to section 623(c) concerning

the regulation of cable programming services:

The conference agreement permits subscribers, as well as franchising authorities or other relevant State or local government entities, to file complaints. The conference agreement allows the FCC to establish procedures concerning the minimum showing that a complaint must make in order to obtain Commission consideration and resolution of whether the rate in question is unreasonable. The requirement that a complaint must demonstrate a "prima facie case" is not included. The intention of the conferees is to allow consumers to simplify the process of filing complaints concerning unreasonable rates. For instance, it is not the intention of the conferees that the FCC's regulations be so technical or complicated as to require subscribers to retain the services of a lawyer to file a complaint and obtain Commission consideration of the reasonableness of the rate in question.

The conference agreement makes the following changes to the factors to be considered in establishing criteria for determining whether a rate for cable programming service is unreasonable:

(1) The conference agreement allows the Commission to consider the rates as a whole for all cable programming, equipment, and services provided by the cable system, except for the rates for those services offered on a per-program or per-channel basis.

(2) The conference agreement folds the factor concerning the quality and costs of customer service into the factor concerning capital and operating costs.

(3) As in the basic rate regulation section, the Commission is authorized to examine other consideration, in addition to advertising revenues, received by the cable operator in connection with providing cable programming services.

The provision in section 623(d) of the House amendment concerning the regulation of pay-per-view charges for championship sporting events is not included in the conference agreement. The conference agreement substitutes for this provision the Senate provision on uniform rate structure.

The language of section 623(f) from the House amendment regarding negative option billing is replaced with the language in Section 24 of the Senate bill. The language adopted by the conferees ensures that cable operators will not be able to charge customers for tiers or packages of programming services or equipment that they do not affirmatively request as well as individually-priced programs or channels. This provision is not intended to apply to changes in the mix of programming services that are included in various tiers of cable service.

The conference agreement amends section 623(g) to require cable operators to file financial information with the Commission or the franchising authority, as appropriate. The conferees intend that cable operators should file such information as the Commission requires with the franchising authority where the franchising authority is certified to regulate rates. The Congressional report requirement of the House amendment is not included in the conference agreement.

The conference agreement amends section 623(i) to include a reference to evasions that result from retiering as a specific type of evasion that the Commission should consider in establishing standards, guidelines, and procedures to implement the bill. The conferees recognize that many cable operators have shifted cable programs out of the basic service tier into other packages and that

this practice can cause subscribers' rates for cable service to increase. The conferees are concerned that such retiering may result in the evasion of the Commission's regulations to enforce the bill. The conferees expect the Commission to adopt procedures to protect consumers from being harmed by any such evasions. In adopting regulations to implement this subsection, the conferees intend that the Commission also adopt regulations to prevent cable operators from evading the "anti-buy-through" provision of the bill.

The conference agreement amends subsection 623(k) as included in the House amendment to require that the Commission publish statistical reports on average cable rates annually rather than quarterly.

Finally, the definition of "cable programming service" is amended to include the installation or rental of equipment used for the receipt of such video programming.

#### SECTION 4—CARRIAGE OF LOCAL COMMERCIAL TELEVISION SIGNALS AND

#### SECTION 5—CARRIAGE OF NONCOMMERCIAL EDUCATIONAL TELEVISION

##### Senate bill

Section 16 of the Senate bill adds a new section 614 to the Communications Act of 1934.

Subsection (a) requires each cable operator to carry the signals of local commercial television stations and qualified low power stations in accordance with the provisions of this section, except to the extent that stations elect to exercise their rights to require retransmission consent under section 325(b).

Subsection (b)(1)(A) requires a cable operator with twelve or fewer activated channels to carry at least three local commercial television stations, except that if such a system has 300 or fewer subscribers it will not be subject to any carriage requirements under this section provided that the cable system does not delete from carriage the signal of any broadcast station.

Subsection (b)(1)(B) requires cable operators which have more than 12 usable activated channels to carry the signals of local commercial television stations on up to one-third of the number of usable activated channels on their systems.

Subsection (b)(2) provides that, in situations where there are more local commercial television stations than a cable operator is required to carry, the cable operator will have the discretion to choose which of the local commercial stations it will carry except as follows:

(A) A cable operator shall not carry the signal of a qualified low power station instead of the signal of a local commercial station; and

(B) A cable system which chooses to carry an affiliate of a broadcast network (as defined by the FCC) must, if more than one affiliate of a network qualifies for carriage, carry the affiliate of that network whose city of license reference point is closest to the principal headend of the cable system.

Subsection (b)(3)(A) requires that a cable system retransmit the primary audio and video signal in its entirety of each local commercial television station carried on the system, and in addition that, if technically feasible, it also retransmits any program related material transmitted by the broadcaster on a subcarrier or in the vertical blanking interval. In addition, the cable operator is given the option, if a broadcaster implements signal enhancement technology (such as ghost-canceling) which uses information carried in the vertical blanking interval, to install equipment to use that in-

formation to process the signal at the cable headend and thus retransmit an enhanced signal to subscribers.

Subsection (b)(3)(B) requires that cable systems carry the entirety of the program schedule of any television station carried on the cable system, except where FCC rules governing network non-duplication, syndicated exclusivity, sports programming, or similar regulations require the deletion of specific programs by a cable system and permit the substitution of other programs.

Subsection (b)(4)(A) provides that the signals carried under this section shall be retransmitted by cable systems without material degradation. The FCC is directed to adopt any carriage standards which are needed to ensure that, so far as is technically feasible, cable systems afford off-the-air broadcast signals the same quality of signal processing and carriage that they employ for any other type of programming carried on the cable system.

Subsection (b)(4)(B) provides that, when the FCC adopts new standards for broadcast television signals, such as the authorization of broadcast high definition television (HDTV), it shall conduct a proceeding to make any changes in the signal carriage requirements of cable systems needed to ensure that cable systems will carry television signals complying with such modified standards in accordance with the objectives of this section.

Subsection (b)(5) exempts cable systems from the obligation to carry signals that substantially duplicate the signal of another local commercial television station or from having to carry the signal of more than one station affiliated with a particular broadcast network, although the cable system may carry such signals if it chooses. If a cable system chooses to carry duplicating signals of local commercial television stations, all such signals shall be counted towards the cable system's carriage obligations under this section.

Subsection (b)(6) governs the cable system channel position on which signals carried pursuant to this section must be placed. Signals carried pursuant to this section will be carried, at the choice of the station's licensee, on:

(1) the station's on-air channel position; or  
(2) the channel on which the station was carried on the cable system on July 19, 1985; or

(3) another channel position mutually agreed upon by the station and the cable operator.

Subsection (b)(7) provides that the signals carried under this section shall be provided to every subscriber of a cable system. The signals of all local commercial television stations carried under this section shall be viewable on each television receiver that the cable operator connects to the cable system or for which it provides a connector. If the cable operator installs wires for connection to a television set or provides materials to connect a television set to the cable system, it must ensure that all must-carry signals can be viewed on that set. If, however, the cable system authorizes subscribers to connect additional receivers, but neither provides the connections nor the equipment or material needed for such connections, its only obligation is to notify subscribers of any broadcast stations carried on the cable system which cannot be viewed via cable without a converter box, and to offer to sell or lease such a converter at reasonable rates.

Subsection (b)(8) requires cable operators to identify, to any person making a request,

the signals they carry in fulfillment of their obligations under this section.

Subsection (b)(9) provides that cable systems must give written notice to any local commercial television station carried on the system at least 30 days before dropping that station from carriage or repositioning it. A cable system may not drop or reposition any such station during a "sweeps" period when ratings services measure local television audiences. This notification provision may not be used to undermine or evade the channel positioning or carriage requirements imposed on cable operators by this section.

Subsection (b)(10) bars cable systems from seeking or accepting any consideration, monetary or otherwise, in exchange for carriage in fulfillment of a cable system's must-carry obligations or for carriage or any of the channel positions guaranteed to stations under this section. Three exceptions are provided: (1) a television station may be required by the cable system to pay any costs necessary for the cable system to receive a good quality signal from the station; (2) a cable operator may accept payments from a local commercial television station carried on the cable system which is a distant signal under section 111 of the Copyright Act in the amount of the incremental copyright charges incurred by the cable system from carriage of such a station; and (3) if a cable system and a local commercial television station entered into an agreement relating to carriage or channel positioning prior to June 26, 1990, the cable system may continue to accept any compensation specified in such agreement for the remaining life of the agreement. In no event, however, shall such agreement or the expiration of such agreement relieve a cable system of any carriage or channel positioning obligations imposed under this section.

Subsection (c) provides that, if the number of local commercial television stations carried on a cable system, either pursuant to the obligations of this section or by agreement between the cable operator and the station, is less than the number of usable activated channels which may be used for local commercial television station signals under this section, the cable operator shall carry any qualified low power stations up to the maximum number of signals which it may be required to carry under this section.

Subsection (d) sets forth the procedures to be followed when a cable system fails to meet the obligations imposed in this section and the remedies for such failure. If a local commercial television station believes that a cable system is not in compliance with this section either with respect to carriage or channel positioning, it must so notify the cable system in writing. Within 30 days of being notified, the cable system must either rectify the noncompliance or explain in writing why it believes that it has complied with the requirements imposed in this section. A television station may seek review of any such response by filing a complaint with the FCC. The FCC must provide the cable system with an opportunity to respond to the complaint and to present data and arguments that it has not failed to meet its obligations. The FCC must issue a decision on the complaint within 120 days after it is filed.

If the FCC determines that a cable system has not met its obligations with respect to carriage or channel positioning of one or more local commercial television signals, it shall either order repositioning of a station's signal or order the cable system to carry a signal for at least one year. This subsection is not intended to deprive federal or state en-

forcement authorities, consumers, or other private parties of any rights or remedies which they may have under federal or state laws safeguarding competition or consumer interests; nor is it intended to deprive parties of any contractual remedies they may have under agreements between cable operators and stations.

Subsection (e) prohibits the imposition on cable systems of any responsibility either to provide subscribers with input selector—so-called "A/B"—switches or inform subscribers of them or other similar devices.

Subsection (f) requires the FCC to conduct a rulemaking and issue regulations implementing the requirements imposed by this section within 180 days after enactment.

Subsection (g) requires the FCC to commence an inquiry within 90 days of enactment to determine whether broadcast television stations whose programming consists predominantly of sales presentations are serving the public interest, convenience, and necessity. The FCC must take into consideration the viewing of such stations, the level of competing demands for the channels allocated to such stations, and the role of such stations in providing competition to non-broadcast services offering similar programming. In the event that the FCC concludes that one or more of such stations are not serving the public interest, convenience, and necessity, the Commission shall allow the licensee a reasonable period within which to provide different programming and shall not deny such stations a renewal expectancy due to their prior programming.

This section of the Senate bill also amends Part II of title VI of the Act to add a new section 615.

Subsection (a) requires cable operators to carry local public broadcast stations.

Subsection (b)(1) requires cable systems to carry all qualified local noncommercial educational television stations that request carriage of a cable operator.

Subsection (b)(2)(A) specifies that a cable system with 12 or fewer usable activated channels is only required to carry the signal of one qualified local public television station, but such operators must comply with subsection (c) and may carry other non-commercial television stations at their discretion.

Subsection (b)(2)(B) provides that, if there are no qualified local public television stations available, and the operator has 12 or fewer usable activated channels, such operator shall select a qualified noncommercial television station to carry. Such operator shall not be required to move any other programming service carried as of March 29, 1990 to meet the requirements of this section.

Subsection (b)(3)(A) requires an operator with 13 to 36 usable activated channels to carry at least one qualified public television station, but not more than three such stations.

Subsection (b)(3)(B) states that cable systems with 13 to 36 channels have an obligation to carry at least one qualified non-commercial educational television station if no such local station is available.

Subsection (b)(3)(C) provides that cable operators with 13 to 36 channels who carry the signal of a qualified noncommercial educational television station affiliated with a State public television network shall not have to carry the signal of additional qualified noncommercial educational television stations affiliated with the same network, if the programming of the additional station substantially duplicates that of the station receiving carriage.

Subsection (b)(3)(D) requires that cable operators who increased their channel capacity to more than 36 channels on or after March 29, 1990, shall carry the signal of each qualified local noncommercial educational television station requesting carriage subject to subsection (e).

Subsection (c) preserves existing carriage arrangements for qualified noncommercial educational television stations carried on cable systems as of March 29, 1990. This requirement may be waived if agreed to in writing by both the cable operator and the station.

Subsection (d) provides that cable operators required to add qualified noncommercial educational television stations pursuant to this legislation may do so by placing them on unused public, educational, or governmental (PEG) channels not in use for their designated purpose.

Subsection (e) provides that cable operators with 36 or more channels who are required to carry three qualified noncommercial educational television stations shall not be required to carry the signals of additional stations whose programming substantially duplicates the programming of a qualified noncommercial educational television station requesting carriage.

Subsection (f) provides that a qualified local noncommercial educational television station whose signal is carried on a cable system shall not assert its network non-duplication rights provided in 47 C.F.R. 76.92. Non-duplication rights against stations that are not local are preserved.

Subsection (g) requires that a cable system retransmit the primary audio and video signal in its entirety of each local noncommercial educational television station carried on the system, and in addition that, if technically feasible, it also retransmit any program related material transmitted by the broadcaster on a subcarrier or in the vertical blanking interval necessary for the receipt of programming by handicapped persons or for educational or language purposes. Cable operators must provide each qualified local public television stations with bandwidth and technical capacity equivalent to that provided the commercial television broadcast stations carried on their systems. The signals carried under this section shall be retransmitted by cable systems without material degradation. The FCC is directed to adopt any carriage standards which are needed to ensure that, so far as is technically feasible, cable systems afford off-the-air broadcast signals the same quality of signal processing and carriage that they employ for any other type of programming carried on the cable system.

Subsection (g)(3) requires cable systems to carry a qualified local noncommercial educational television station on the channel number on which the station is broadcast over the air, or on the channel on which it was carried on July 19, 1985, at the election of the station, or on such other channel number as is mutually agreed upon. Cable systems must give written notice to any local noncommercial educational television station carried on the system at least 30 days before dropping that station from carriage or repositioning it.

Subsection (g)(4) provides that a cable operator is not required to carry the signal of a station that does not deliver to the cable system's headend a signal of good quality for purposes of retransmission.

Subsection (h) requires cable operators to ensure signals carried pursuant to this section shall be available to every subscriber on

the system's lowest priced tier that contains local broadcast signals.

Subsection (i)(1) bars cable systems from seeking or accepting any consideration, monetary or otherwise, in exchange for carriage in fulfillment of a cable system's must-carry obligations or for carriage on any of the channel positions guaranteed to stations under this section; provided, however, that local noncommercial educational television stations may be required by the cable system to pay any costs necessary for the cable system to receive a good quality signal from the station.

Subsection (i)(2) permits a cable operator to accept payments from a local commercial television station carried on its cable system where that station is a distant signal under section 111 of the Copyright Act in the amount of the incremental copyright charges incurred by the cable system from carriage of such a station.

Subsection (j) provides that a qualified noncommercial television station may file a complaint with the FCC if the station believes that a cable operator is not complying with the provisions of this section. The FCC must give cable operators an opportunity to respond and present data, views and arguments to refute any allegations contained in such complaints. The FCC shall resolve any complaints pursuant to this section within 120 days.

Subsection (k) requires cable operators to identify, to any person making a request, the signals they carry in fulfillment of their obligations under this section.

Subsection (l) defines "qualified local noncommercial television station" as a qualified noncommercial educational television station (A) that is licensed to a community whose reference point, as set forth in 47 C.F.R. 76.53 is within 50 miles of the principal headend and (B) whose grade B contour, as defined in 47 C.F.R. 73.683(a) encompasses the principal headend of the cable system.

#### House amendment

Section 5 of the House amendment amends the Communications Act by adding a new section 614 to define the obligations of cable systems with respect to the carriage of commercial television stations. Section 5 is identical to the new section 614 added by the Senate bill, except as described below.

Subsection (a) of new section 614 in the House amendment does not require cable operators to carry the signals of qualified low power stations in addition to the signals of local commercial television stations. The House amendment makes no exception to the carriage requirements for stations electing to exercise their retransmission rights.

Subsection (b)(2) of the House amendment and subsection (b)(2) of the Senate bill both provides that, in situations where there are more local commercial television stations than a cable operator is required to carry, the cable operator will have the discretion to choose which of the local commercial stations it will carry. Both the House amendment and the Senate bill require, however, that where a cable system chooses to carry an affiliate of a broadcast network, if more than one affiliate of a network qualifies for carriage, the cable operator must carry the affiliate of that network whose city of license reference point is closest to the principal headend of the cable system. The Senate bill adds a second exception by requiring that a cable operator shall not carry the signal of a qualified low power station instead of the signal of a local commercial station. There is no equivalent exception in the House amendment.

Subsection (b)(6) governs the cable system channel position on which signals carried pursuant to this section must be placed. This provision is identical to subsection (b)(6) of new Section 614 in the Senate bill with one exception. The House amendment adds a fourth option for channel position for the licensee to select: the channel on which the local commercial television station was carried on January 1, 1992.

Subsection (b)(7) of both the House amendment and the Senate bill provides that the signals carried under this section shall be provided to every subscriber of a cable system. The provisions are identical with one exception. The House amendment provides that cable operators must notify subscribers of any broadcast station on the cable system which cannot be viewed via cable without a converter box, and to offer to sell or lease such a converter box to subscribers at rates in accordance with the rate regulation provisions of the House amendment, specifically section 623(b)(1)(B). The Senate bill contains an identical provision, but requires that converter boxes can be offered "at reasonable rates."

The Senate bill, in subsection (c), provides that, if the number of local commercial television stations carried on a cable system is less than the number of usable activated channels which may be used for local commercial television stations signals under this section, the cable operator shall carry any qualified low power stations up to the maximum number of signals required. The House amendment has no equivalent provision.

Subsection (e) of the House amendment requires the FCC to conduct a rulemaking and issue regulations implementing the requirements imposed by this section within 180 days after enactment. The language is identical to subsection (f) of the Senate bill. The House amendment also requires that the implementing regulations include necessary revisions to update Section 76.51 of the Commission's regulations (47 CFR 76.51). There is no comparable provision in the Senate bill.

Subsection (f) of the House amendment provides that a cable operator is not required to carry nor prohibited from carrying on any tier the signal of any commercial television station or video programming service that is predominantly utilized for the transmission of sales presentations or program length commercials.

Subsection (g) of the House amendment states that nothing in this section shall be construed to modify or otherwise affect Title 17 of the United States Code. There is no comparable provision in the Senate bill.

Subsection (h)(1) of the House amendment defines the term "local commercial television station". The definition is similar to the definition in section 4(g) of the Senate bill, which amends Section 602 of the Communications Act to add a new paragraph (20). Subsection (h)(2) of the House amendment excludes low power television stations, television translator stations and passive repeaters from the definition of local commercial television station. The Senate bill defines a local commercial television station as a full power television broadcast station.

Subsection (h)(3) of the House amendment provides that a broadcasting station's market for purposes of this section shall be determined as provided for in the FCC's rules, 47 CFR sec. 73.3555(d)(3)(i), except that, following written request, the FCC may, with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's television mar-

ket to better effectuate the purposes of this section. The Senate bill includes a similar provision in Section 4(g), the definition of local commercial television station. Subsection (h)(3) of the House amendment also establishes criteria which the FCC shall consider in acting on requests to modify the geographic area in which stations have signal carriage rights. The Senate bill has no comparable provision.

The House amendment, in section 6, amends Part II of title VI of the Communications Act to add a new section 615. This section is identical to the new Section 615 in section 16 of the Senate bill, except as described below.

Subsection (d) of the House amendment is identical to subsection (d) of the Senate bill, with one exception. Subsection (d) provides that cable operators required to add qualified noncommercial educational television stations pursuant to this legislation may do so by placing them on unused public, educational, or governmental (PEG) channels not in use for their designated purpose. The House amendment provides that cable operators may do so subject to the approval of the franchising authority. The Senate bill has no comparable approval requirement.

Subsection (g)(3) of the House amendment requires cable systems to give written notice to any local noncommercial educational television station carried on the system at least 30 days before dropping that station from carriage or repositioning it. Subsection (g)(3) of the Senate bill contains a similar provision. The House amendment defines "repositioning" as (A) assignment to a channel number different from the channel number to which the station was assigned as of March 29, 1990, and (B) deletion of the station from the cable system. The Senate bill provides that repositioning includes deletion. The House amendment provides that the notification provisions of this subsection shall not be used to undermine or evade the channel positioning or carriage requirements imposed upon cable operators under this section. The Senate bill does not have a comparable provision.

Subsection (l) defines "qualified noncommercial educational television station" as a television broadcast station which: (A)(i) is licensed by the FCC as a noncommercial educational television broadcast station and which is owned and operated by a public agency, nonprofit foundation, corporation, or association; and (ii) has as its licensee an entity which is eligible to receive a community service grant from the Corporation for Public Broadcasting; or (B) is owned and operated by a municipality and transmits predominantly noncommercial programs for educational purposes.

#### Conference agreement

The conference agreement adopts the House provisions with amendments. The conference agreement includes a technical amendment to clarify that a "local commercial television station" is defined as any television broadcast station other than a "qualified noncommercial educational television station" within the meaning of section 615(l)(1).

In addition, the conference agreement includes the provisions of the Senate bill concerning carriage of low power television stations with the following amendments. The low power provisions of the Senate bill are amended to provide that cable systems with 35 or fewer channels are required to carry one qualified low power television station and cable systems with 36 or more channels are required to carry up to, but not more

than two qualified low power television stations. Cable systems that are required to carry two qualified low power television stations may carry one of those stations on any unused public, educational or governmental access channel, subject to the approval of the franchising authority.

The definition of qualified low power stations is amended to replace the requirement that low power television stations carry a substantial amount of locally originated and produced programming with a requirement that the Commission determine that the provision of programming by a low power station would address the local news and information needs of the community to which it is licensed. In addition, low power television stations must provide an over-the-air signal of good quality to the cable system's headend. The Commission shall determine what constitutes a good quality signal for purposes of this subsection.

The Senate bill is amended to limit carriage of low power stations to cable systems serving communities (1) which are in counties in which there is no full power station licensed, and (2) which are located outside the top 160 Metropolitan Statistical Areas. Moreover, the low power station's community of license must have a population of 35,000 or less to qualify for mandatory carriage. The conferees believe that, in communities in which residents have limited access to the signals of full power stations providing local news and information, the public interest in receiving local news and information warrants carriage of such low power stations.

Under the conference agreement, cable operators are not required to carry the signal of any commercial television station or video programming service that is predominantly utilized for the transmission of sales presentations or program length commercials pending the conclusion of a required new FCC proceeding regarding broadcast television stations that are predominantly utilized for the transmission of sales presentations or program length commercials.

The conference agreement requires the FCC to complete a proceeding within 270 days of enactment to determine, notwithstanding prior proceedings, whether broadcast television stations that are predominantly utilized for the transmission of sales presentations or program length commercials are serving the public interest, convenience, and necessity.

The conference agreement requires the Commission, in conducting such proceeding, to provide appropriate notice and opportunity for public comment. The Commission also is required to consider the viewing of such stations, the level of competing demands for the spectrum allocated to such stations, and the role of such stations in providing competition to nonbroadcast services offering similar programming.

If the Commission concludes that one or more of such stations are serving the public interest, convenience, and necessity, the conference agreement requires the Commission to qualify such stations as local commercial television stations for purposes of must-carry. If the Commission concludes that one or more of such stations are not serving the public interest, convenience, and necessity, the conference agreement requires the Commission to allow the licensees of such stations a reasonable period within which to provide different programming, and shall not deny such stations a renewal expectancy solely because their programming consisted predominantly of sales presentations or program length commercials.

The conferees find that the must-carry and channel positioning provisions in the bill are the only means to protect the federal system of television allocations, and to promote competition in local markets. Other remedies, such as a compliant based, case-by-case process—so-called "negative must-carry"—will not protect these interests. Such post hoc approaches permit significant economic harm to occur before relief is granted. By then it is simply too late. Given the current economic condition of free, local over-the-air broadcasting, an affirmative must-carry requirement is the only effective mechanism to promote the overall public interest.

In no event shall an agreement concerning channel positioning entered into prior to July 1, 1990 or the expiration of such agreement relieve a cable operator of any carriage or channel positioning obligations imposed under this new section 614.

#### SECTION 6—RETRANSMISSION CONSENT FOR CABLE SYSTEMS

##### *Senate bill*

This section amends section 325 of the Act by adding a new subsection (b).

One year after the date of enactment no cable system or other multichannel video programming distributor shall retransmit the signal of a broadcasting station or any part thereof without the express authority of the originating station, except as permitted by section 614.

The Commission will conduct a rulemaking proceeding to establish rules concerning the exercise of stations' rights of mandatory carriage under sections 614. This rulemaking proceeding is to commence within 45 days after enactment and to be completed within six months.

In such rules, the Commission shall require each television station to elect, within one year after enactment, whether to exercise the authority to grant or withhold retransmission consent under this section or the rights of signal carriage guaranteed by sections 614 of the Act. In situations where there are competing cable systems serving one geographic area, a broadcaster must make the same election with respect to all such competing cable systems.

This subsection makes clear that stations which elect to require retransmission consent from a cable system will not have signal carriage rights under sections 614 or 615 on that cable system for the duration of the stations' election.

By the same token, the election of certain stations to negotiate with cable systems for retransmission consent will not have any effect on the rights of other stations to obtain signal carriage under section 614.

##### *House amendment*

No provision.

##### *Conference agreement*

The conference agreement adopts the Senate provision. The conferees believe that a broadcaster that elects to exercise its rights to carriage and channel positioning under sections 614 does so with the expectation that it will in fact be carried by the cable system. In the event that the cable system elects not to carry such a signal in fulfillment of its obligations under section 614, for example, because it already has carried enough local broadcast stations to fill one-third of its channel capacity, the conferees intend that the broadcaster be permitted to reassert its right to require consent before carriage by the cable system under other conditions.

The conference agreement provides that the rights granted to stations under sections

614 and 615 will not be affected by the exercise of the right of retransmission consent by another station. For example, the FCC should not permit a station negotiating for retransmission rights to contract with a cable system for a channel position to which another station is entitled under sections 614 and 615.

In the proceeding implementing retransmission consent, the conferees direct the Commission to consider the impact that the grant of retransmission consent by television stations may have on the rates for the basic service tier and shall ensure that the regulations adopted under this section do not conflict with the Commission's obligations to ensure that rates for basic cable service are reasonable.

The principles that underlie the compulsory copyright license of section 111 of the copyright law (18 U.S.C. 111) are undisturbed by this legislation, but the conferees recognize that the environment in which the compulsory copyright operates may change because of the authority granted broadcasters by section 325(b)(1).

Cable systems carrying the signals of broadcast stations, whether pursuant to an agreement with the station or pursuant to the provisions of new sections 614 and 615 of the Communications Act, will continue to have the authority to retransmit the programs carried on those signals under the section 111 compulsory license. The conferees emphasize that nothing in this bill is intended to abrogate or alter existing program licensing agreements between broadcasters and program suppliers, or to limit the terms of existing or future licensing agreements.

#### SECTION 7—AWARD OF FRANCHISES; PROMOTION OF COMPETITION

##### *Senate bill*

Section 20 of the Senate bill amends Section 621(a)(1) of the Communications Act of 1934 to add a new provision which prohibits franchising authorities from unreasonably refusing to award additional franchises. Any applicant for a franchise whose application has been denied may appeal such decision pursuant to Section 635 of the Act.

Section 21 of the Senate bill amends Section 621(a) to add a new provision requiring franchising authorities to give a competing cable operator a reasonable amount of time to build its system and provide service to the entire geographic area.

Section 33 of the Senate bill provides that the Act does not prohibit a franchising authority or its affiliate from operating as a multichannel video distributor within the franchising authority's jurisdiction, even where the franchising authority has granted a franchise to one or more multichannel video distributors. This provision also states that nothing in the Communications Act of 1934 requires a local or municipal authority to secure a franchise to operate as a multichannel video program distributor.

##### *House amendment*

Section 4 of the House amendment is similar to Section 20 of the Senate bill, but includes five examples of circumstances under which it is reasonable for a franchising authority to deny a franchise:

- technical infeasibility;
- failure of the applicant to assure that it will provide adequate public, educational and governmental access channel capacity, facilities or financial support;
- failure of the applicant to assure that it will provide universal service throughout the franchise area within a reasonable period of time;

the award would interfere with the ability of the franchising authority to deny renewal of a franchise; and

failure to demonstrate financial, technical or legal qualifications.

In addition, the House amendment specifies that nothing in this provision limits the ability of franchising authorities to assess franchise fees or taxes for access to public rights of way.

Section 4(b) of the House amendment is identical to section 33 of the Senate bill, permitting municipal authorities to operate cable systems.

#### Conference agreement

The conferees adopt the Senate provision on award of franchises. The conferees believe that exclusive franchises are directly contrary to federal policy and to the purposes of S. 12, which is intended to promote the development of competition. Exclusive franchises artificially protect the cable operator from competition. Moreover, at the time most of the exclusive franchises were awarded, local authorities had the power to regulate the rates for basic cable service. However, the 1984 Cable Act repealed local authorities' ability to regulate rates.

The conference agreement adopts Section 21 of the Senate bill on franchise requirements with amendments. The conference agreement adds the provisions from Section 4 of the House amendment that specify that franchising authorities may require applicants for cable franchises to provide adequate assurance that they will provide adequate public access, educational and governmental channels, and may require adequate assurance that the cable operator is financially, technically and legally qualified to operate a cable system.

The conference agreement adopts the House provisions permitting municipal authorities to operate cable systems.

#### SECTION 8—CONSUMER PROTECTION AND CUSTOMER SERVICE

##### Senate bill

The Senate bill amends section 632 of the Communications Act of 1934 to require that the FCC adopt customer service standards. The Senate bill also permits franchising authorities to enforce laws or regulations concerning customer service that impose standards that exceed those adopted by the FCC, and grandfather any standards in existence on the date of enactment.

The Senate bill further requires the FCC, within 180 days, to adopt customer service standards, gives the franchising authorities the power to enforce the FCC standards, and permits a cable operator to file a complaint with the FCC if the operator believes that customer service standards adopted by a franchising authority are not in the public interest.

##### House amendment

Section 7 of the House amendment amends section 632 of the Communications Act. Section 632(a) allows franchising authorities to establish and enforce, as part of a franchise, or franchise renewal, modification or transfer, customer service requirements, construction schedules and other construction-related requirements.

Section 632(b) requires the FCC, within 180 days of enactment, to establish federal customer service standards which may be required in local cable franchises and enforced by local franchising authorities. Such standards shall include, at a minimum, cable systems office hours and telephone availability, installations, outages and service calls, and communications between the cable operator

and the customer (including standards governing bills and refunds).

Section 632(c) makes it clear that nothing in Title VI is intended to interfere with the authority of a state or local governmental body to enact and enforce consumer protection laws, to the extent that the exercise of such authority is not specifically preempted by the Title. Subsection (c) also provides that franchising authorities and cable operators are permitted to agree to customer service requirements, even if those requirements may result in the establishment and enforcement of customer service standards more stringent than the standards established by the FCC under section 632(b). Finally, this subsection preserves local authority to establish and enforce any municipal law or regulation, or any state law, concerning customer service requirements that are more stringent than, or address matters not addressed by, the standards established by the FCC under section 632(b).

#### Conference agreement

The conference agreement adopts the House provision.

#### SECTION 9—LEASED COMMERCIAL ACCESS

##### Senate bill

The Senate bill amends section 612 of the Communications Act. Subsection 612(a) is amended by adding a new clause that provides that among the purposes of this section is "to promote competition in the delivery of diverse sources of video programming".

Subsection (b) of this section amends section 612(c) of the Act to require the FCC to establish the maximum reasonable rate and reasonable terms and conditions for use of these commercial access channels and for the billing of rates to subscribers, and for the collection of revenue from subscribers by the cable operator for such use.

Subsection (d) creates a new section 612(i) which permits a cable operator to provide programming from a qualified minority programming source or sources on up to 33 percent of the cable system's leased access channels. Programming that was provided over a cable system on July 1, 1990 may not qualify as minority programming under this subsection.

##### House amendment

Section 18 of the House amendment amends section 612(c) of the Communications Act and requires the Commission, within 180 days after the date of enactment of this legislation, to establish, by regulation, (1) a formula to determine the maximum rates a cable operator may charge for commercial use of channel capacity by persons not affiliated with the cable operator; (2) standards concerning the terms and conditions for such use; (3) standards concerning methods for collection and billing for commercial use of such channel capacity; and (4) procedures for the expedited resolution of disputes concerning rates or carriage under this section.

Section 15(b) contains a further amendment to section 612 of the Communications Act and adds a new subsection (i). Under new section 612(i) a cable operator would be permitted to provide programming from a qualified minority or educational programming source or sources on up to 33 percent of the cable system's leased access channels. Programming that already is being provided over a cable system on July 1, 1990 shall not qualify as minority or educational programming for the purpose of this subsection. A qualified minority programming source is defined as a programming source that devotes a significant amount of its programming to coverage of minority viewpoints, or

to programming directed at persons of minority groups, and which is more than 50 percent minority-owned as the term "minority" is defined in 47 U.S.C. 309(i)(3)(C)(ii). For the purposes of this subsection, the term "minority programming sources" is not intended to include television broadcast stations.

A qualified educational programming source is defined as a programming source that devotes significantly all of its programming to educational or instructional programming of such a nature that it promotes public understanding of mathematics, the sciences, the humanities, and the arts and has a documented annual expenditure on programming exceeding \$15 million. Programming expenditures include all annual costs incurred by the channel originator to produce or acquire programs that are scheduled to appear on air, and specifically exclude marketing, promotion, satellite transmission and operational costs, and general administrative costs.

#### Conference agreement

The conference agreement adopts the Senate provision with an amendment to require the Commission to develop procedures for the expedited resolution of disputes concerning rates or carriage under this section. The conference agreement also amends the Senate provision to permit cable operators to carry qualified educational programming sources, as well as minority programming sources, on up to 33 percent of the cable system's leased access channels and to adopt the definition of qualified educational programming source contained in the House amendment.

#### SECTION 10—CHILDREN'S PROTECTION FROM INDECENT PROGRAMMING ON LEASED ACCESS CHANNELS

##### Senate bill

Section 27 of the Senate bill amends Section 612(h) of the Communications Act to permit a cable operator to enforce a written and published policy of prohibiting programming on leased access channels that the cable operator reasonably believes to be indecent. Section 612 is further amended to require the Commission to promulgate regulations designed to limit the access of children to indecent programming on leased access channels.

Section 28 of the Senate bill requires the Commission to promulgate regulations to enable a cable operator to prohibit the use of any public, educational, or governmental access facility for any obscene programming.

Section 29 of the Senate bill amends Section 638 of the Communications Act to impose liability on cable operators for obscene programming carried by the cable operator on any channel designated for public, educational, or governmental use.

##### House amendment

No provisions.

#### Conference agreement

The conference agreement adopts the Senate provisions.

#### SECTION 11—LIMITATIONS ON OWNERSHIP, CONTROL, AND UTILIZATION

##### Senate bill

The Senate bill amends 613(f) of the Communications Act as follows:

Subsection (f)(1) requires the FCC to establish reasonable limits on (A) the number of cable subscribers that any one cable operator may serve through cable systems owned by the operator or in which the operator has an attributable interest; and (B) the number of channels that can be occupied by a program-

mer that is owned by a cable operator or in which the operator has an attributable interest.

Subsection (f)(2) requires that the FCC, in establishing reasonable limitations pursuant to subsection (f)(1), shall, among other public interest objectives:

(A) Ensure cable operators, alone or in a group, do not impede the flow of video programming to the consumer;

(B) Ensure cable operators do not favor their own programming or unreasonably restrict the flow of such programming to other video distributors;

(C) Take particular account of the market structure, ownership patterns, or other relationships of the cable industry, including the nature and market power of the local franchise, the joint ownership of cable systems and video programmers, and the various types of non-equity controlling interests;

(D) Take account of any efficiencies and other benefits gained through integration;

(E) Ensure its rules reflect the dynamic nature of the communications marketplace;

(F) Not impose barriers to service in rural areas that do not now have service; and

(G) Not impose limitations which would impair the development of diverse and high quality video programming.

The Senate bill amends Section 613(a) of the Communications Act of 1934 by adding a new paragraph (2) which prohibits a cable operator from owning a multichannel multipoint distribution system (MMDS) or a satellite master antenna television service (SMATV) in the same areas in which it holds a franchise for a cable system.

Paragraph (2)(A) grandfathers all existing MMDS and SMATV systems owned by cable systems on the date of enactment.

Paragraph (2)(B) gives the FCC the authority to grant waivers of the provision where it is necessary to ensure that residents in the cable community receive the cable operator's programming.

The legislation amends Section 613(c) by adding a new subsection (c)(2) which provides that, if ten percent of the households in the U.S. with television sets subscribe to multichannel programming services provided via satellite (regardless of frequency band) directly to home satellite antennae, the FCC shall promulgate appropriate regulations (A) limiting ownership of any distributor of such direct to home satellite service by cable operators and other persons having media interests, and (B) requiring access to such service by programmers not owned or controlled by any distributor of such service.

#### House amendment

Section 21(a)(1)(A) requires the FCC to conduct a study to determine whether it is necessary or appropriate in the public interest to impose limitations on the extent to which a multichannel video programming distributor may engage in the creation or production of such programming. Section 21(a)(1)(B) requires the FCC to impose limitations on the proportion of the market, at any stage in the distribution of video programming, which may be controlled by a single multichannel video programming distributor or other person engaged in such distribution.

#### Conference agreement

The conference agreement adopts the Senate provisions with an amendment to include section 21(a)(1)(A) of the House amendment and to delete Section 9(b) of the Senate bill which requires the FCC to adopt cross-ownership restrictions for DBS systems and limitations on vertical integration of DBS systems. In view of the fact that there are no

DBS systems operating in the United States at this time, it would be premature to require the adoption of limitations now. However, the conferees expect the Commission to exercise its existing authority to adopt such limitations should it be determined that such limitations would serve the public interest.

#### SECTION 12—REGULATION OF CARRIAGE AGREEMENTS

##### Senate bill

The Senate bill requires the FCC to adopt regulations, within one year of enactment, governing program carriage agreements between cable operators and video programmers. The regulations shall:

(1) prohibit a cable operator or other multichannel video distributor from requiring a financial interest in a programmer as a condition of carriage;

(2) prohibit a cable operator or other multichannel video distributor from coercing a programmer to provide exclusive rights as a condition of carriage;

(3) prevent a multichannel video programming distributor from interfering with the ability of an unaffiliated video programmer to compete by discriminating in video distribution on the basis of affiliation or non-affiliation in the selection, terms and conditions of carriage;

(4) provide for expedited review of any complaints brought pursuant to this provision;

(5) provide for appropriate penalties and remedies for violations of this section and clarifying that one of the remedies available to the FCC is to require carriage of the program service; and

(6) provide for the assessment of penalties against persons filing frivolous complaints pursuant to this section.

##### House amendment

The provisions of the House amendment are virtually identical to those of the Senate bill. However, the prohibitions of the House amendment apply not only to cable operators, but also to other multichannel video programming distributors. Also, under the House amendment, the FCC would be required to implement regulations to prevent a cable operator or other multichannel video provider from retaliating against a video programming vendor for failing to provide exclusive rights to programming.

##### Conference agreement

The conference agreement adopts the provisions of the House amendment.

#### SECTION 13—SALES OF CABLE SYSTEMS

##### Senate bill

No provision.

##### House amendment

The House amendment adds a new section to Title VI. Subsection (a) prohibits a cable operator from selling or otherwise transferring ownership in a cable system within a 36-month period following either the acquisition or initial construction of such system, except as provided in this section.

Subsection (b) states that in the case of a sale of multiple systems, if the terms of sale require the buyer subsequently to transfer ownership of one or more such systems to one or more third parties, such transfers shall be considered part of the initial transaction.

Subsection (c) exempts any transfer of ownership interest in any cable system that is not subject to Federal income tax liability and any sale required by operation of any law or any act of any Federal agency, any

state or political subdivision of a state, or any franchising authority, or any sale, assignment, or transfer, to one or more purchasers, assignees, or transferees controlled by, controlling, or under common control with, the seller, assignor, or transferrer.

Subsection (d) empowers the Commission, consistent with the public interest, to waive the requirements of subsection (a), except that, if a franchise requires franchise authority approval of transfers, the Commission shall not waive such requirements unless the franchise authority has approved such transfer.

Subsection (e) limits the time within which a franchising authority has to disapprove a transfer. After the initial 36-month period following the sale or transfer of ownership of a cable system, if the franchise requires franchising authority approval of a sale or transfer, a franchising authority has 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. If the franchising authority fails to render a final decision on the request within 120 days, the request shall be deemed granted, unless the requesting party and the franchising authority agree to an extension of time.

The 120-day limitation does not apply to any request for approval of a cable sale or transfer subject to this section. The 120-day limitation also would not apply to requests for approval of sales or transfers submitted prior to adoption of the FCC regulations, given that such requests, by definition, could not include the information required to activate the 120-day limit.

##### Conference agreement

The conference agreement adopts the House amendment, as a new section 617 of the Communications Act of 1934, with an amendment clarifying that the Commission shall use its waiver authority to permit appropriate transfers in cases of default, foreclosure or other financial distress.

#### SECTION 14—SUBSCRIBER BILL ITEMIZATION

##### Senate bill

Section 23 of the Senate bill amends Section 622(c) of the Communications Act to permit each cable operator to identify, in accordance with standards prescribed by the Commission, as a separate line item on each bill of each subscriber: (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 to support public, educational or governmental channels; and (3) the amount of any other tax, fee, assessment or other charge imposed by any governmental authority on the transaction between the operator and the subscriber.

##### House amendment

The House amendment contains a virtually identical provision.

##### Conference agreement

The conference agreement adopts the Senate provision with an amendment clarifying that itemization of subscribers' bills under this section must be done in a manner consistent with the regulations prescribed by the Commission pursuant to Section 623 of the Communications Act of 1934.

#### SECTION 15—NOTICE TO CABLE SUBSCRIBERS ON UNSOLICITED SEXUALLY EXPLICIT PROGRAMS

##### Senate bill

Section 26 of the Senate bill requires a cable operator who provides a premium

channel without charge to any cable subscriber who does not subscribe to such premium channel to, not later than 60 days before such premium channel is provided without charge: (1) notify all cable subscribers that the cable operator plans to provide a premium channel, without charge; (2) notify all cable subscribers of the date(s) on which the cable operator plans to provide a premium channel without charge; (3) notify all subscribers that they have a right to request that the channel carrying the premium channel be blocked; and (4) block the premium channel upon the request of a subscriber. Under this section, the term "premium channel" is defined as any pay service offered on a per channel or per program basis that offers movies rated by the Motion Picture Association of America as X, NC-17 or R.

#### House amendment

The House amendment contains a virtually identical provision that substitutes 30 days for 60 days for the notification.

#### Conference agreement

The conference agreement adopts the House provision.

SECTION 16—TECHNICAL STANDARDS; EMERGENCY ANNOUNCEMENTS; PROGRAMMING CHANGES; HOME WIRING

#### Senate bill

The Senate bill amends section 624(e) of the Communications Act to:

(1) require that within one year after the date of enactment, the FCC shall establish minimum technical standards to ensure adequate signal quality;

(2) permit the FCC to establish standards for technical operation of cable systems and for any other video signals, including high definition television (HDTV);

(3) give the FCC authority to require compliance with and to enforce the technical standards;

(4) require the FCC to establish procedures for complaints asserting violations of the technical standards against cable operators, except that this section does not preclude other remedies permitted under the franchise agreement or Federal or State law; and

(5) preempt the establishment of any technical standards other than those adopted by the FCC.

The Senate bill adds a new subsection at the end of section 624 of the Communications Act of 1934, which requires that, within 120 days after the date of enactment, the FCC shall prescribe rules concerning the disposition of cable-installed wires within the home when the subscriber terminates service.

#### House amendment

Subsection (a) of Section 11 of the House amendment amends subsection 624(e) of the Communications Act and requires the FCC, within one year after enactment, to adopt minimum technical and signal quality standards for the operation of cable systems which may be required and enforced by franchising authorities as part of a local franchise (including a modification, renewal or transfer thereof pursuant to the provisions of Title VI). This subsection also requires the FCC to adopt national standards and to update periodically its technical standards to reflect improvements in technology.

Subsection (a) also allows franchising authorities to petition the FCC for a waiver to permit the imposition of technical standards more stringent than those prescribed by the FCC under this subsection. In considering requests for such waivers, the Commission may consider the existence of an agreement

between the franchising authority and the cable operator to impose on the cable operator technical standards more stringent than the Commission's standards.

Subsection (b) requires the Commission to prescribe, and cable operators to comply with, standards to ensure that viewers of video programming on cable systems are afforded the same emergency information as is afforded by the emergency broadcasting system (EBS) pursuant to Commission regulations in subpart G of part 73, title 47, Code of Federal Regulations.

Subsection (c) authorizes a franchising authority to require a cable operator to do 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 in writing that comments on programming and channel position changes are being recorded by the franchising authority.

The House amendment, in Section 15, contains a home wiring provision identical to the Senate bill.

#### Conference agreement

The conference agreement adopts the House provisions.

SECTION 17—CONSUMER ELECTRONICS COMPATIBILITY

#### Senate bill

The Senate bill amends the Communications Act by adding a new Section 624A. Subsection (b) enumerates findings made by Congress concerning consumer electronics equipment compatibility. Subsection (c) defines terms used in this new section.

Subsection (d) prohibits scrambling or encryption of local broadcast signals, except where necessary to prevent substantial theft of cable service, but permits scrambling and encryption where the use of such technologies does not interfere with the functions of cable subscribers' televisions or videocassette recorders (VCRs). Under this subsection, the Commission is required, within 180 days after the date of enactment of this subsection, to issue regulations under which a cable operator may, if necessary to protect against theft of cable service, scramble or encrypt local broadcast signals. The Commission is required periodically to review and modify such regulations.

Subsection (e) requires the Commission, within 180 days after the date of enactment, to promulgate regulations requiring a cable operator offering any channels the reception of which requires a converter box to: (1) notify subscribers that such converter box may interfere with the enjoyment of certain functions of their televisions or VCRs; (2) offer new and current subscribers who do not receive or do not wish to receive channels that require a converter box for reception the option of having cable service installed or reinstalled by direct connection to the subscriber's television or VCR, without passing through a converter box; and (3) offer subscribers who receive or wish to receive channels that require the use of a converter box the option of having their cable service installed or reinstalled, so that those channels that do not require a converter box for reception are delivered to the subscribers' televisions or VCRs without passing through a converter box.

Subsection (f) requires that any charges for installing or reinstalling cable service pursuant to subsection (e) be subject to the rate regulation provisions under section 623(b)(1).

Subsection (g) requires the Commission, within 180 days after the date of enactment,

to promulgate regulations concerning the use of remote control devices. Such regulations shall require a cable operator who offers subscribers the option of renting a remote control unit to: (1) notify subscribers that they may purchase a commercially available remote control device from any source that sells such devices; and (2) specify the types of remote control units that are compatible with the converter box supplied by the cable operator.

Subsection (h) requires the Commission, within 180 days after the date of enactment of this section, to report to the Congress on means of assuring compatibility between televisions and VCRs and cable systems. Such report shall be prepared by the Commission in consultation with representatives of the cable and consumer electronics industries. Subsection (i) requires the Commission to issue such regulations as may be necessary to assure the compatibility interface required under Subsection (h).

#### House amendment

Section 9 of the House amendment amends the Communications Act of 1934 by adding a new section 624A. Subsection (a) enumerates the findings made by Congress concerning consumer electronics equipment compatibility.

Subsection (b) directs the Commission, within one year after the enactment of this section, in consultation with representatives of the consumer electronics and cable industries, to report to the Congress on the means of assuring compatibility between televisions and VCRs and cable systems, consistent with the need to prevent theft of cable service, so that cable subscribers will be able to enjoy the full benefits of both the programming available on cable systems and the functions available on their televisions and VCRs. Within two years after the date of enactment of this section, the Commission shall issue such regulations as may be necessary to require the use of interfaces that assure such compatibility.

Subsection (c) directs the Commission, within one year after the date of submission of the report required in subsection (b), to prescribe regulations necessary to increase compatibility between television receivers equipped with premium functions and features, VCRs, and cable systems. In prescribing such regulations, the Commission shall consider: (1) the costs and benefits of requiring cable operators to adhere to technical standards for scrambling or encryption of video programming in a manner that will minimize interference with or nullification of the special functions of subscribers' television or VCRs, while providing effective protection against theft or unauthorized reception of cable service, including functions that permit the subscriber (a) to watch a program on one channel while simultaneously using a video cassette recorder to tape a program on another channel or (b) to use a video cassette recorder to tape two consecutive programs that appear on different channels or (c) to use advanced television picture generation and display features; (2) the potential for achieving economies of scale by requiring manufacturers to incorporate technologies to achieve such compatibility in all television receivers; (3) the costs and benefits to consumers of imposing compatibility requirements on cable operators and television manufacturers; and (4) the need for cable operators to protect the integrity of their signals against theft or to protect such signals against unauthorized reception.

Subsection (c) further requires the Commission to prescribe regulations necessary:

(1) to establish the technical requirements that permit a television receiver or video cassette recorder to be sold as "cable ready"; (2) to establish procedures by which manufacturers may certify television receivers that comply with the technical requirements established under this subsection in a manner that, at the point of sale, is easily understood by potential purchasers of such receivers; (3) to provide appropriate penalties for willful misrepresentation concerning such certifications; (4) to promote the commercial availability, from cable operators and retail vendors that are not affiliated with cable systems, of converters and remote control devices compatible with converters; (5) to require a cable operator who offers subscribers the option of renting a remote control (i) to notify subscribers that they may purchase a commercially available remote control from any source that sells such devices rather than renting it from the cable operator and (ii) to specify the types of remote controls that are compatible with the converter box supplied by the cable operator; and (6) 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 the commercially available remote control units.

Subsection (d) requires the Commission to review periodically and, if necessary, to modify the regulations established under this section in light of any actions taken in response to regulations issued under subsection (c) and to reflect improvements and changes in cable systems, television receivers, VCRs, and similar technology.

Subsection (e) directs the Commission to adopt standards under this section that are technologically and economically feasible, taking into account the cost and benefit to cable subscribers and purchasers of television receivers of such standards.

#### Conference agreement

The conference agreement adopts the House amendment with amendments. Section 624A(a) is amended to include the findings contained in the House amendment.

Section 624A(b)(1) directs the Commission, within one year after the date of enactment of this section, in consultation with representatives of the consumer electronics and cable industries, to report to the Congress on means of assuring compatibility between cable systems and both televisions and VCRs, 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 television and VCRs. The Commission is further directed to issue, within 180 days after the date of submission of the report required under this section, such regulations as are necessary to assure such compatibility.

Section 624A(b)(2) requires the Commission, in issuing the regulations required by section (b)(1), to 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 such technology where the use of such technology does not interfere with the functions of subscribers' television receivers or VCRs.

Section 624A(c)(1) requires the Commission, in prescribing the regulations required by this section, to consider: (1) 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 VCRs; and (2) 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.

Section 624A(c)(2)(A) requires the Commission, in prescribing regulations under this section, to include such regulations as are necessary 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". The purpose of this paragraph is to make clear what standards need to be met, consistent with and in conformity to the compatibility regulations issued pursuant to subsection (b)(1), in order for televisions or VCRs to be sold as cable ready or cable compatible. The conferees would encourage the development of voluntary efforts by the cable industry and the manufacturers of televisions and VCRs to meet the technical requirements referred to in this paragraph.

Section 624A(c)(2)(B) directs the Commission to require cable operators offering channels whose reception requires a converter box to notify subscribers that they may be unable to benefit from the special functions of their television receivers and VCRs. Under this subsection, cable operators also would be required, 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 VCRs without passing through the converter box.

Section 624A(c) further requires the Commission to prescribe regulations necessary: (1) to promote the commercial availability, from cable operators and retail vendors that are not affiliated with cable systems, of converters and remote control devices compatible with converters; (2) to require a cable operator who offers subscribers the option of renting a remote control to notify subscribers that they may purchase commercially available remote control devices from any source that sells such devices rather than renting them from the cable operator and to specify the types of remote controls that are compatible with the converter box supplied by the cable operator; and (3) 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 the commercially available remote control units.

Section 624A(d) requires the Commission to review periodically 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, VCRs and similar technology.

#### SECTION 18—FRANCHISE RENEWAL

##### Senate bill

Section 11 of the Senate bill amends section 626 of the Act to:

(a) clarify that a franchising authority is not required to commence the formal renewal process during the 6 months beginning on the 36th month before the expiration of the franchise;

(b) provide that the formal renewal process can start on the date that the cable operator submits its renewal proposal;

(c) allow the franchising authority to consider in renewal proceedings whether the

cable operator has substantially complied with the material terms of the existing franchise and with applicable law throughout the franchise term;

(d) allow the franchising authority to consider the level of service provided over the system throughout the franchise term;

(e) permit a franchising authority to deny a renewal if the cable operator has had notice and an opportunity to cure its failure to comply substantially with the franchise agreement, unless the franchising authority has waived its right to object in writing;

(f) clarify that franchising authorities should be held responsible for non-compliance with the renewal provisions only where a failure to comply actually prejudiced the cable operator; and

(g) provide that any lawful action to revoke a cable operator's franchise for cause shall not be negated by the initiation of renewal proceedings by the cable operator.

#### House amendment

No provision.

#### Conference agreement

The conference agreement adopts the Senate provision with the following amendments: Subsection (a) is amended to require that if a cable operator seeks the initiation of a renewal proceeding pursuant to this section, the franchising authority must commence that process within six months of the date that the cable operator submits its request. This amendment is intended to provide the cable operator with the opportunity to initiate the renewal process but give the franchising authority a full six months, after the cable operator submits its request, to take those actions required by this Section.

The conferees have deleted sections 11(c) and 11(d)(2) of the Senate bill which provide that a franchising authority has the right to consider the quality of service provided by the cable operator throughout the franchise term. The conferees believe that franchising authorities have the duty and authority now to consider the quality of the cable operator's service throughout the franchise term. This provision was removed out of concern that it would be applied where a new cable operator acquires a franchise from the operator who initially entered into the franchise agreement during the pendency of the franchise period. As the franchising authority has the power to approve such a transfer, it should address any deficiencies in the service of the original franchisee at the time of the transfer.

The conference agreement also amends subsection (f) of the Senate provision by replacing "and such failure to comply actually prejudiced the cable operator" with "other than harmless error". This change clarifies that it is the intent of the conferees that minor infractions or deviations from the requirements of this section by a franchising authority shall not be grounds for relief pursuant to the provision of this subsection.

Finally, the conference agreement adopts the language in subsection (g) of the Senate provision.

#### SECTION 19—DEVELOPMENT OF COMPETITION AND DIVERSITY IN VIDEO PROGRAMMING DISTRIBUTION

##### Senate bill

The Senate bill bars national and regional cable programmers who are affiliated with cable operators from (1) unreasonably refusing to deal with any multichannel video programming distributor; and (2) discriminating in the price, terms, and conditions in the sale of their programming to multichannel video distributors if such action would impede retail competition.

National and regional programmers affiliated with cable operators are required by the Senate bill to offer their programming to buying groups on terms similar to those offered to cable operators. However, reasonable cost-related conditions and certain other reasonable requirements can be imposed.

The Senate bill also requires any programmer who scrambles satellite cable programming for private viewing to make that programming available for private viewing by C-band home satellite dish owners.

Under the Senate bill, a satellite carrier that provides service pursuant to the provisions of the Home Satellite Viewers Rights Act, 17 U.S.C. Section 119, shall not (1) unreasonably refuse to deal with any distributor of video programming who provides service to home satellite dish subscribers who meet the requirements of the Home Satellite Viewers Right Act, or (2) discriminate in price, terms and conditions of the sale of programming among the distributors to home satellite dish owners qualified under the Home Satellite Viewers Rights Act or between such distributors and other multichannel video distributors.

The Senate bill directs the FCC to prescribe rules to implement this section, including rules for expedited review of complaints made pursuant to this section. This section does not apply to television broadcast signals retransmitted by satellite.

#### House amendment

The House amendment makes it unlawful for a cable operator or satellite cable programming vendor affiliated with a cable operator 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 prevent any multichannel video programming distributor from providing satellite cable programming to subscribers or consumers. The FCC is required to promulgate regulations to implement this section.

At a minimum, the regulations must prevent a cable operator affiliated with a satellite cable programming vendor from unduly or improperly influencing the vendor's decision to sell, or the price, terms, and conditions of sale of, programming to any unaffiliated multichannel video programming distributor. The regulations also must prohibit a satellite cable programming vendor affiliated with a cable operator from discriminating in the price, terms, and conditions in the sale or delivery of programming to cable operators, other multichannel video programming distributors, and their buying agents. However, such a vendor may impose reasonable cost-related and other reasonable requirements and may grant reasonable volume discounts.

With regard to areas not passed by a cable system, the regulations required by the House amendment prohibit exclusive contracts and other arrangements between a cable operator and a vendor which prevent a multichannel video programming distributor from obtaining programming from a satellite cable programming vendor affiliated with a cable operator.

With regard to areas served by cable operators, the FCC's regulations must prohibit exclusive contracts for satellite cable programming between a cable operator and a satellite cable programming vendor affiliated with a cable interest, unless the FCC determines such a contract is in the public interest. In determining whether such an exclusive contract is in the public interest, the FCC shall consider the effect of the contract on competition in local and national multi-

channel video programming distribution markets, the effect on competition from multichannel video programming distribution technologies other than cable, the effect on the ability to attract capital investment in new satellite cable programming, the effect on the diversity of programming in the multichannel video programming distribution market, and the duration of the exclusive contract. The House amendment's provisions limiting exclusive contracts in areas served by cable operators expire in 10 years. Exclusive contracts for satellite cable programming that were entered into on or before June 1, 1990 for geographic areas not served by cable operators are grandfathered under the House amendment.

The requirements imposed by this section do not apply to the signals of the broadcast affiliates of the national television networks that are retransmitted by satellite, nor do they apply to internal satellite communications of any broadcast or cable network. Furthermore, the requirements of the House amendment do not require those distributing programming regionally or nationally to make that programming available in any area beyond which it has been authorized or licensed for distribution.

Under the House amendment, any multichannel video programming distributor aggrieved by conduct that it alleges violates this section or the FCC's implementing regulations may begin an adjudicatory proceeding at the FCC. The FCC shall provide for an expedited review of complaints made pursuant to this section and shall order appropriate remedies.

#### Conference agreement.

The conference agreement adopts the House provisions, with amendments. The conference agreement clarifies that programming distributed by satellite broadcast programming vendors (fixed service satellite carriers) is covered by this section. Satellite broadcast programming vendors are to be held to the same standards as the programming vendors to whom this section applies.

Under the conference agreement, the limitations on exclusive contracts and other arrangements regarding programming distributed within an area served by a cable operator shall expire after 10 years, except that the FCC may extend the limitation if it determines that such limitations are necessary to preserve and protect competition and diversity in the distribution of video programming. For purposes of this section, the conferees intend that an area "served" by a cable system be defined as an area actually passed by a cable system and which can be connected for a standard connection fee.

In lieu of permitting volume discounts, the conference agreement amends the House provision regarding discrimination by satellite cable programming vendors affiliated with cable operators to permit such vendors to establish different prices, terms and conditions which take into account economies of scale, cost savings, or other direct and economic benefits reasonably attributable to the number of subscribers served by the distributor.

In adopting rules under this section, the conferees expect the Commission to address and resolve the problems of unreasonable cable industry practices, including restricting the availability of programming and charging discriminatory prices to non-cable technologies. The conferees intend that the Commission shall encourage arrangements which promote the development of new technologies providing facilities-based competition to cable and extending programming to areas not served by cable.

#### SECTION 20—CUSTOMER PRIVACY RIGHTS

##### Senate bill

Section 25 of the Senate bill amends section 631(c)(1) of the Act to require cable operators to ensure that persons, other than the subscriber to the cable system and the cable operator, do not have access to personally-identifiable information about the subscriber.

##### House amendment

Section 8 of the House amendment redefines the terms "cable operator" and "other service" to ensure that new communications services provided by cable operators are covered by the privacy protections embodied in section 631 of the Communications Act.

The term "other service" is defined to include any wire or radio communications service provided using any of the facilities of a cable operator that are used in the provision of cable services.

The term "cable operator" is defined so as to include, in addition to those persons within the definition of cable operator in section 602 of the Communications Act, any person who is owned or controlled by or under common ownership or control with, a cable operator, and provides any wire or radio communications service.

##### Conference agreement

The conference agreement includes both the Senate and the House provisions. The provisions in the House amendment and the Senate bill amend different subsections of Section 631 of the Communications Act of 1934.

The Senate provision amends Section 631(c)(1) to require that cable operators prevent unauthorized access of personally-identifiable information. It is not intended to prevent local franchising authorities or the Commission from acquiring such information as may be necessary to carry out its obligations in compliance with the provisions of the Communications Act of 1934.

#### SECTION 21—THEFT OF CABLE SERVICE

##### Senate bill

No provision.

##### House amendment

Section 20 of the House amendment amends section 633(b) of the Communications Act and brings into conformity penalties and remedies for theft of cable service with those for theft of satellite signals.

##### Conference agreement

The Conference adopts the House provision.

#### SECTION 22—EQUAL EMPLOYMENT OPPORTUNITY

##### Senate bill

No provision.

##### House amendment

The House amendment amends section 634(d)(1) of the Communications Act to require the Commission, within 270 days after the date of enactment of this legislation, to adopt revisions in its rules that may be necessary to implement the amendments made to section 634.

Section 634(d)(3) is amended to require cable operators, in their annual statistical reports, to identify by race, sex, and job title the number of employees within each job category. The reports shall be made on separate forms, provided by the FCC, for full-time and part-time employees.

Section 634(d)(3) also expands from nine to fifteen the job categories for which employee information is required, by prescribing six new job categories—Corporate Officers, General Manager, Chief Technician, Comptrol-

ler, General Sales Manager, and Production Manager.

The FCC is required to prescribe the method by which entities are required to compute and report the number of minorities and women in the job categories above, with the exception of the office and clerical, skilled craftspersons, semiskilled operatives, unskilled laborers, and service workers categories, and the number of minorities and women in all the job categories above in proportion to the total number of qualified minorities and women in the relevant labor market. The report is required to include information on hiring, promotion, and recruitment practices that the FCC will need to evaluate the compliance of entities with this section. The report will be available for public inspection at the entity's central location and at every location where five or more full-time employees are regularly assigned to work. This subsection does not prohibit the FCC from collecting or continuing to collect statistical or other employment information to implement this section.

Section 634(f)(2) is amended to increase the forfeiture penalty for violations of Section 634 from \$200 to \$500 for each violation.

Section 634(h)(1) is amended to extend the requirements of this section to not only cable and satellite master antenna television operators, but to any multichannel video programming distributor.

Subsection (f) requires the Commission, within 240 days after the date of enactment of this legislation, and after opportunity for public discussion, to submit to Congress a comprehensive report on the effectiveness of its procedures, regulations, policies, standards and guidelines governing the EEO performance of the broadcast industry. The Commission is expected to evaluate the effectiveness of its "best efforts" policy and all aspects of its EEO enforcement. The Commission is directed to evaluate the effectiveness of its policies in promoting: (1) equal employment opportunities; (2) opportunities for promotion; and (3) the policy of Congress favoring increased employment opportunities for women and minorities in upper management positions.

The House amendment creates a new Section 617, modeled on the cable EEO industry provisions set forth in Section 634, which codifies and strengthens the Commission's existing equal employment opportunity regulations for broadcast television stations. Section 617 requires the Commission to certify annually that an employment unit or "entity," whether a licensee for a television station eligible for carriage under Section 614 or 615, or an entity engaged primarily in the management or operation of any such licensee, is in compliance with prescribed EEO standards. An entity will be in violation of those standards, and subject to penalties under this section, where it does not provide equal opportunity for women and minorities.

Section 617(a) defines which entities are subject to this section's application, and includes both individual licensees and the companies or other entities that are primarily engaged in their management or operation. Section 617 applies to "entities" (including corporations, partnerships, associations, joint-stock companies, or trusts) but not to individual persons, that manage or operate licensees.

Subsection (b) sets forth the requirement that each entity afford equal opportunity in employment, and prohibits discrimination on the basis of race, color, religion, national origin, age, or sex.

Subsection (c) requires each employment unit to establish, maintain, and execute a

specific prescribed program of practices designed to ensure the development of equality of employment opportunity and to promote the hiring of a workforce that reflects the diversity of the entity's community. This program shall include: defining and monitoring managerial and supervisory performance of equal employment opportunity goals; informing employees, employee organizations, and sources of qualified applicants of the entity's equal employment opportunity policy; and monitoring the entity's job structure and employment practices in order to eliminate discrimination and to ensure equal opportunity throughout its organizational units, occupations, and levels of responsibility.

Subsection (d) requires the Commission, within two years of the effective date of this title, following notice and an opportunity to comment, to establish prescribed rules to enforce and effectuate the requirements of this Section.

The rules adopted under subsection (d) may be amended from time to time by the Commission. Such rules shall specify, among other things, the terms under which covered entities must: disseminate information concerning their equal opportunity programs to applicants, employees, and others; encourage job referrals from minority and women's organizations or other similar potential sources of minority and female applicants; compare their employment profiles and workforce turnover against the availability of women and minorities in their service areas; undertake to offer promotions of minorities and women to positions of greater responsibility; conduct business with minority and female entrepreneurs; and analyze the results of their equal opportunity programs.

Subsection (d) also requires an employment unit with more than 5 full-time employees to file with the Commission, and make available to the public, an annual statistical report profiling the race and sex of its employees in all full-time and part-time job categories.

The report required by subsection (d) must also state the number of job openings that occurred during the year and must either certify that the openings were filled in accordance with the entity's EEO program (required by subsection (c)) or provide the reasons for not filling those openings in accordance with the program.

Subsection (e) requires the Commission to certify annually that licensees and other entities are in compliance with prescribed EEO standards.

Subsection (f) requires the Commission to establish procedures for the enforcement of this Section, including the investigation of complaints of violations for this Section brought by employees, applicants for employment, and other interested persons. Pursuant to its rules, the Commission may investigate such complaints and enforce the requirements of the Section, or may refer such complaints to any other appropriate Federal agency.

Subsection (g) authorizes the Commission to impose a forfeiture penalty of \$200 per day for each violation of the requirements of this Section. This subsection further provides that a licensee or entity shall not be liable for more than 180 days of forfeiture accruing prior to notification by the Commission of a potential violation.

Subsection (g) also authorizes the FCC to condition, suspend, or revoke any license of any person found liable for forfeiture penalty under this section.

Subsection (h) provides that State and local governments may establish or enforce equal employment opportunity standards consistent with this section, including requirements which impose more stringent standards that are provided under this title. Subsection (h) also authorizes State and local authorities to establish or enforce requirements for conducting business with minority or locally-operated enterprises.

#### Conference agreement

The agreement of the conferees adopts the House amendment as it applies to cable systems. For television licensees and permittees, the conference agreement codifies the Commission's equal employment opportunity rules, 47 C.F.R. 73.2080. It is the intent of the conferees that this statutory provision be applied in the same manner as were the existing rules on September 9, 1992.

The agreement of the conferees also incorporates into the Communications Act the FCC's forms, FCC Form 395-B annual employment report and the FCC Form 396 Broadcast Equal Opportunity Program Report, for television broadcast stations. It is the intent of the conferees that both of these reports continue to be filed with the FCC by television broadcast licensees and permittees in the same manner, with the same format and content and same terms and conditions as in effect on September 1, 1992.

The agreement of the conferees creates an FCC Mass Media Bureau of mid-license term review of television broadcast stations' workforce employment profiles. It is the intent of the conferees that the Commission's Mass Media Bureau staff compare the workforce data submitted in the first two Forms 395 to be filed following the grant of a license renewal with the station's area labor force, utilizing as the geographic area for comparison that which the Commission staff would customarily use for such purposes (MSA or county), and applying the FCC EEO processing guidelines in effect on September 1, 1992. This review is not intended to establish and shall not be considered or utilized in any manner as establishing a quota for the employment of members of any societal group. If this staff level review suggests that improvement in the station's recruitment practices appears necessary, a staff letter shall be sent to the station licensee so indicating. This letter is not and is not to be treated for any purpose as a Commission sanction of the station's EEO practices.

The conference agreement also gives the Commission the authority to make technical and/or clerical revisions as necessary to respond to changes in technology, terminology and Commission organization.

#### SECTION 23—JUDICIAL REVIEW

##### Senate bill

Section 17 of the Senate bill amends section 635 of the Communications Act of 1934 by adding at the end a new subsection (c)(1) that provides that any civil action challenging the constitutionality of new sections 614 or 615 shall be heard by a district court of three judges convened pursuant to the provisions of section 24 of title 28, U.S. Code. New subsection (c)(2) states that an interlocutory or final judgment, decree, or order of the court of three judges under paragraph (10) holding sections 614 or 615 unconstitutional shall be reviewable as a matter of right by direct appeal to the Supreme Court.

##### House amendment

No provision.

##### Conference agreement

The conferees adopt the Senate provision.

SECTION 24—LIMITATION OF FRANCHISING  
AUTHORITY LIABILITY*Senate bill*

Section 13 of the Senate bill amends part III of title VI of the Communications Act of 1934 to include a new section 628 which exempts local franchising authorities from liability for damages (except for attorneys' fees and legal costs) in cases where the franchising authorities are charged with violating a cable operator's First Amendment rights arising from actions authorized or required by title VI of the Communications Act of 1934. This provision does not apply to cases where a franchising authority has been found by a final order of a court of binding jurisdiction to have violated a cable operator's First Amendment rights and repeats or continues the violation.

*House amendment*

Section 17(a) of the House amendment amends part IV of title VI of the Communications Act of 1934 to include a new section 635A. Subsection (a) exempts local franchising authorities from liability for damages in cases arising from regulation of cable service or from a decision of approval or disapproval with respect to a grant, renewal, transfer, or amendment of a franchise. Subsection (b) creates an exception to the exemption for liability set forth in subsection (a) for actions already determined by a final order of a court of binding jurisdiction, no longer subject to appeal, to be in violation of a cable operators rights.

Subsection (c) clarifies that this section does not limit the relief authorized with respect to any claim against a franchising authority which involves discrimination on the basis of race, color, sex, age, religion, national origin, or handicap.

Subsection (d) clarifies that this section does not create or authorize liability of any kind, under any law, for any action or failure to act relating to cable service or the granting of a franchise by any franchising authority.

Section 17(b) of the House amendment is a conforming amendment.

*Conference agreement*

The Conference agreement adopts the House provision.

SECTION 25—DIRECT BROADCAST SATELLITE  
SERVICE OBLIGATIONS*Senate bill*

Section 22 of the Senate bill directs the Commission, within one year after enactment, to submit to Congress a report analyzing the need for and most appropriate public interest obligations to be imposed upon direct broadcast satellite services in addition to those required below. The Commission is directed to require any DBS provider to reserve between four and seven percent of its channel capacity exclusively for nonduplicated, non-commercial, educational, and informational programming. In complying with this requirement, a DBS provider shall lease its capacity to national educational programming suppliers on reasonable prices, terms, and conditions, and shall not exercise any editorial control over this programming. This section also establishes a study panel, comprised of representatives of the Corporation for Public Broadcasting, the National Telecommunications and Information Administration, and the Office of Technology Assessment. This study panel shall submit a report to Congress within two years after enactment containing recommendations on ways to promote the development of such programming, methods of selecting program-

ming that avoids conflict of interest and editorial control, programming funding sources, and what are reasonable prices, terms, and conditions.

*House amendment*

Section 21(a)(3) of the House amendment requires the Commission to initiate a rule-making proceeding, within 180 days, to impose public interest or other requirements on any DBS provider that is not regulated as a common carrier. Such regulations shall, at a minimum, apply the access to broadcast time requirement of section 312(a)(7) of the Communications act and the use of facilities requirements of section 315 of such Act to DBS systems. The proceeding shall also examine regulations by which DBS systems can further the principle of localism.

Subsection (a)(4) directs the Commission to require DBS providers to reserve between four and seven percent of their channel capacity exclusively for noncommercial public service uses. The DBS provider may recover only the direct costs of transmitting such public service programming. The House amendment includes a similar provision to establish a study panel as the Senate bill, but does not direct the panel to examine what constitute reasonable prices, terms, and conditions for the provision of satellite space for public use channels. The House amendment defines "public service uses" to include (i) programming produced by public telecommunications entities, including independent production services; (ii) programming produced for educational, instructional, or cultural purposes; and (iii) programming produced by any entity to serve the disparate needs of specific communities of interest, including linguistically, distinct groups, minority and ethnic groups, and other groups.

*Conference agreement*

The conference agreement adopts the House amendment with amendments. The purpose of this section is to define the obligation of direct broadcast satellite service providers to provide a minimum level of educational programming. The four to seven percent reserve gives the Commission the flexibility to determine the amount of capacity to be allotted. The pricing structure was devised to enable national educational programming suppliers to utilize this reserved channel capacity.

Subsection (b)(1) mandates that the Commission require, as a condition of any provision, initial authorization, or renewal, of a DBS system providing video programming, that the provider of such service reserve not less than four percent or more than seven percent of the channel capacity of such service exclusively for noncommercial public service uses. The conferees intend that the Commission consider the total channel capacity of a DBS system in establishing reservation requirements. Accordingly, the Commission may determine to subject DBS systems with relatively large total channel capacity to a greater reservation requirement than systems with relatively less total capacity.

Subsection (b)(2) permits a provider of such service to use any unused channel capacity designated pursuant to this subsection until the use of such channel capacity is obtained for public service use.

Subsection (b)(3) requires that a DBS provider make this channel capacity available to national educational program suppliers at reasonable prices, terms and conditions as determined by the Commission.

Subsection (b)(4) provides that, in determining reasonable prices, the Commission

shall consider the non-profit character of the programming provider and any Federal funds used to support the programming such as programming funded by the Corporation for Public Broadcasting or other Federal agencies. Prices to such national educational programming suppliers cannot exceed 50 percent of the total direct costs of making a channel available. Direct costs exclude marketing costs, general administrative costs and similar overhead as well as any costs associated with a lost opportunity for commercial profit.

SECTION 26—SPORTS PROGRAMMING MIGRATION  
STUDY AND REPORT*Senate bill*

No provision.

*House amendment*

Section 21(b) of the House amendment requires the Commission to study carriage of local, regional, and national sports programming by broadcast stations and cable programming networks and pay-per-view services. The study shall investigate and analyze, on a sport-by-sport basis, trends regarding the migration of such programming from carriage by broadcast stations to carriage over cable programming networks and pay-per-view systems, including the economic causes and the economic and social consequences of such trends. This subsection further requires the Commission, on or before July 1, 1993 and July 1, 1994, to submit an interim and final report, respectively, on the results of such study to the House Committee on Energy and Commerce and the Senate Committee on Commerce, Science, and Transportation. Such reports shall include a statement of the results, on a sport-by-sport basis, of the analysis of the trends evaluated by the Commission and any appropriate legislative or regulatory recommendations.

Subsection (b)(3) requires the Commission, in conducting the study required by Subsection (b)(4), to analyze the extent to which preclusive contracts between college athletic conferences and video programming vendors have artificially and unfairly restricted the supply of sporting events of local colleges for broadcast on local television stations. Subsection (b)(3) directs the Commission, in conducting such analysis, to consult with the Attorney General to determine whether, and to what extent, such preclusive contracts are prohibited by existing statutes. Under this subsection the Commission is directed to include in the reports required under Subsection (b)(2) the results of the analysis required under Subsection (b)(3) along with any legislative recommendations the Commission considers necessary and appropriate.

Under this subsection, the term "preclusive contract" is defined to include any contract that prohibits: (1) the live broadcast of a sporting event of a local college team that is not carried, on a live basis, by any cable system within the local community served by such local television station; or (2) the delayed broadcast by a local television station of a sporting event of a local college team that is not carried, on a live or delayed basis, by any cable system within the local community served by such local television station.

*Conference agreement*

The conference agreement adopts the House provision.

## SECTION 27—APPLICABILITY OF ANTITRUST LAWS

*Senate bill*

The Senate bill, in Section 31, provides that nothing in this Act shall be construed

to alter or restrict in any manner the applicability of any Federal or State antitrust law.

#### House amendment

The House amendment, in Section 22, includes a similar provision that states that nothing in the Act shall be construed to create any immunity to any civil or criminal action under any Federal or state antitrust law, or to alter or restrict in any manner the applicability of any Federal or state antitrust law.

#### Conference agreement

The conference agreement adopts the Senate provision, with a technical amendment to conform the title of the section to be "Applicability of Antitrust Laws." It is the intent of the conferees that the term "antitrust law" as used in this section include Federal and state unfair competition laws.

#### SECTION 28—EFFECTIVE DATE

#### Senate bill

The Senate bill provides that, except as otherwise specified in the legislation, the requirements of the legislation shall be effective 60 days after the date of enactment.

#### House amendment

The House amendment contains a similar provision.

#### Conference agreement

The conference agreement adopts the House provision.

#### REQUIREMENT FOR CERTAIN EQUIPMENT ON TELEVISION SETS

#### Senate bill

Section 12 of the Senate bill gives the FCC the authority to require that television sets have electronic switches permitting users to change readily among video distributors, provided that the FCC determines that such switches are technically and economically feasible.

#### House amendment

No provision.

#### Conference agreement

The conference agreement adopts the House position.

#### FOREIGN OWNERSHIP

#### Senate bill

No provision.

#### House amendment

Section 16 of the House amendment establishes restrictions on the ownership by foreign persons or entities of cable systems and other telecommunications properties. Section 16(a) enumerates the findings made by the Congress regarding foreign ownership of cable systems.

The Congress finds that:

(1) Restrictions on alien or foreign ownership of broadcasting and common carriers first were enacted by Congress in the Radio Act of 1912.

(2) Cable television service currently is available to more than 90 percent of American households, more than 62 percent of American households subscribe to such services, and the majority of viewers rely on cable as the conduit through which they receive terrestrial broadcast signals.

(3) Many Americans receive a significant portion of their daily news, information, and entertainment programming from cable television systems, and such systems should not be controlled by foreign entities.

(4) The policy justifications underlying restrictions on alien ownership of broadcast or common carrier licenses have equal application to alien ownership of cable television

systems, DBS systems, and multipoint distribution services.

Subsection (b) amends section 310(b) of the Communications Act and provides that no cable system in the U.S. shall be owned or otherwise controlled by any alien, representative, or corporation as described in section 310(b) of the Communications Act. Subsection (b) also provides that no such alien, representative, or corporation shall be required to sell or dispose of any ownership interest held or contracted for on June 1, 1990 and that no such alien, representative, or corporation that owns, has contracted on or before June 1, 1990 to acquire ownership, or otherwise controls two or more cable systems shall be prohibited from acquiring ownership or control of additional cable systems if the total number of households passed by all the cable systems that such alien, representative, or corporation would, as a result of such acquisition, own or control does not exceed 2,000,000.

Subsection (b) defines, for purposes of such restrictions, broadcast station licenses to include licenses or authorizations for: (1) cable auxiliary relay services; (2) multipoint distribution services; (3) DBS services; and (4) other services with licensed facilities that may be devoted substantially toward providing programming or other information services within the editorial control of the licensee.

#### Conference agreement

The conference agreement adopts the Senate position.

#### EXPANSION OF THE RURAL EXEMPTION TO THE CABLE TELEVISION CROSSOWNERSHIP PROHIBITION

#### Senate bill

Section 32 of the Senate bill amends Section 613(b)(3) of the Communications Act of 1934 to revise the definition of rural area to mean an area that has fewer than 10,000 inhabitants or any territory as defined by the Bureau of Census.

#### House amendment

No provision.

#### Conference agreement

The conference agreement adopts the House position. The conferees recognize that currently the Federal Communications Commission has the authority to define a "rural area" for purposes of this section of the Act and is conducting a proceeding to determine if this definition should be expanded from 2,500 persons to 10,000. The conferees do not want to prejudice the outcome of this pending proceeding, nor do they want to limit the authority of the Commission should it be determined that the public interest would be served by a broader or narrower definition of rural area.

#### LEASE/BUY-BACK AUTHORITY

#### Senate bill

No provision.

#### House amendment

Section 4(d) of the House amendment amends Section 613(b)(2) of the Communications Act of 1934 and clarifies that common carriers are not prohibited from providing multiple channels of communication to an entity pursuant to a lease agreement under which the carrier retains, consistent with section 616, the option to purchase such entity upon the taking effect of a future amendment that would permit common carriers generally to provide video programming directly to subscribers in such carrier's telephone service area.

#### Conference agreement

The conference agreement adopts the Senate position.

JOHN D. DINGELL,  
EDWARD J. MARKEY,  
BILLY TAUZIN,  
DENNIS E. ECKART,  
THOMAS J. MANTON,  
RALPH M. HALL,  
CLAUDE HARRIS,

Provided that Mr. Ritter is appointed in place of Mr. Fields for consideration of so much of section 16 of the Senate bill as would add a new section 614(g) to the Communications Act of 1934 and so much of section 5 of the House amendment as would add a new section 614(f) to the Communications Act of 1934.

#### Managers on the part of the House.

ERNEST F. HOLLINGS,  
DANIEL K. INOUE,  
WENDELL FORD,  
JOHN C. DANFORTH,

#### Managers on the Part of the Senate.

#### APPOINTMENT AS MEMBERS OF JOINT COMMITTEE ON ORGANIZATION OF THE CONGRESS

The SPEAKER pro tempore laid before the House the following communication from the Republican leader:

HOUSE OF REPRESENTATIVES,  
Washington, DC, August 10, 1992.

Hon. THOMAS S. FOLEY,

Speaker of the House, House of Representatives,  
Washington, DC.

DEAR MR. SPEAKER: Pursuant to Section 1(a)(2)(B) of H. Con. Res. 192, I hereby appoint the following Republican Members of the House to serve with me on the Joint Committee on the Organization of the Congress:

Mr. Gradison of Ohio, Vice Chairman,  
Mr. Walker of Pennsylvania,  
Mr. Solomon of New York,  
Mr. Dreier of California,  
Mr. Emerson of Missouri, and  
Mr. Allard of Colorado.

Sincerely,

BOB MICHEL,  
Republican Leader.

#### APPOINTMENT AS MEMBER OF NATIONAL COMMISSION ON DEFENSE AND NATIONAL SECURITY

The SPEAKER pro tempore laid before the House the following communication from the Republican leader:

HOUSE OF REPRESENTATIVES,  
Washington, DC, September 11, 1992.

Hon. THOMAS S. FOLEY,

Speaker of the House, House of Representatives,  
Washington, DC.

DEAR MR. SPEAKER: Pursuant to the provisions of Section 8104 of Public Law 101-511, I hereby appoint the following member of the National Commission on Defense and National Security:

Robert E. Pursley of Stamford, Connecticut.

Sincerely,

BOB MICHEL,  
Republican Leader.

#### REGARDING THE WORK OF THE U.S. MILITARY IN THE RECENT DISASTER AREAS

(Mr. HUTTO asked and was given permission to address the House for 1

minute and to revise and extend his remarks.)

Mr. HUTTO. Mr. Speaker, there have been a number of tragedies around the world in recent years, and the United States has had its share. Just in recent weeks, Americans have experienced Hurricane Andrew, that was devastating to Florida and Louisiana, and typhoon Omar in Guam. Then, this weekend Hurricane Iniki struck Kauai, HI.

On Saturday, my colleagues SONNY MONTGOMERY, BEVERLY BYRON, CLAUDE HARRIS, BEN BLAZ, and I visited south Dade County and Homestead Air Force Base. Although Andrew inflicted incredible damage to the people and property, it was good to see the outpouring of support by Americans in the aftermath of this disaster. And I want to particularly commend our Armed Forces, both Active and Guard and Reserve for the fine job they are doing to ease the suffering in all these disaster areas. Another job well done by our military.

#### THE REAL ENDANGERED SPECIES

(Mr. VENTO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. VENTO. Mr. Speaker, today, President Bush and Vice President QUAYLE are speaking out against the Endangered Species Act. The American voter should realize that the purpose of this media blitz is to save a political endangered species—the Bush-Quayle Republican species.

It is easy to recognize the Bush-Quayle species. It is a rare species. It is only seen in this country every 4 years and then only on golf courses and in the well-to-do neighborhoods of Kennebunkport, ME. When faced with problems, it buries its head in the sand like an ostrich. As the problems mount, it runs around in circles, does not come up with new ideas, and bellows out its call "don't blame me."

The President wants to blame the loss of jobs on the Endangered Species Act. He is right—the endangered Bush-Quayle species is cause for the loss of 1.3 million American manufacturing jobs alone in the past 4 years.

Mr. Speaker, I support the Endangered Species Act, which has successfully worked to address 27,000 different flora and fauna. I do not favor sacrificing the Endangered Species Act to save the one species that does not deserve protection. It is time to permit the extinction of the Bush-Quayle species at the hands of the voters on November 3.

#### PRESIDENT SHOULD SIGN FAMILY AND MEDICAL LEAVE ACT

(Mr. SCHEUER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SCHEUER. Mr. Speaker, I come here to urge, almost to beg, the President to sign the Family and Medical Leave Act that is coming before him as proof that he does identify with the problems of America, that he does identify with the hurt in the families of America when the stress and strains of life particularly beset them.

There have been some evidences recently that the President is disconnected from American life. He did not know that there is an electronic counter at the merchandise checkout at supermarkets around the country.

Mr. Speaker, it has been said that the President does not know about the hurt that is out there; that he talks about family values in the abstract, but when it comes to the specifics of the family in pain, where there is a sick child, where there is an ailing parent, he does not seem to comprehend that this is part of a family problem where there is hurt and that family values include recognizing that families occasionally have the need for a worker to take leave and be at home, taking leave without pay.

Mr. Speaker, I hope that his heart, his compassion, will tell him that this is necessary. Most major corporations around the world, both at home and abroad, have these policies. Others do not.

We know how to compel corporations to maintain minimum standards of civility. It was a half century ago that we passed the minimum wage law and half a century ago that we passed the child labor legislation. Surely this is no less urgent than child labor legislation and the minimum wage legislation.

Mr. Speaker, I urge President Bush, I appeal to President Bush, to sign this legislation.

#### INCLUDE OVERSIGHT OF CONGRESS IN INDEPENDENT COUNSEL REAUTHORIZATION

(Mr. GEKAS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GEKAS. Mr. Speaker, very soon now, perhaps this week or next, we will be debating the independent counsel reauthorization bill which will be before us. There will be some major agreements to be reached by the parties, all those involved, on how to limit and make the process more accountable to the taxpayers and to Congress itself. But there might be strong disagreement, and this is what I wish to warn the Members that we will be facing, about whether or not to include Members of Congress as proper targets for investigation for wrongdoing, just as members of the executive are now subject to the gun of the independent counsel in investigations conducted at the authorization of Congress.

Mr. Speaker, I ask Members to make up their minds. Should we include Members of Congress? We believe to have the public have full faith in the institution in which we work, that Members of Congress ought to be included in the aegis of the independent counsel statute.

□ 1210

#### THE IMPACT OF HIGHER COLLEGE COSTS

(Mrs. SCHROEDER asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. SCHROEDER. Mr. Speaker, the Select Committee on Children, Youth, and Families just finished a very interesting hearing. Many of America's families and many of America's students are feeling that they are being fleeced for their sheepskin. And indeed, we had the GAO come forward with an excellent report showing how the cost of college tuition and the cost of college has risen way, way, way beyond the cost of inflation.

What we are trying to do is educate parents and educate students so they can help the State legislators stand up and ask the very tough questions about, are we getting value for our tuition dollar. We have got to carry that dialog on in an open debate rather than have people stand up and say, "You are institution bashing."

No, we are not institution bashing, but we certainly can be a consumer and make sure that we do not keep seeing more and more and more administrative slots being added and fewer and fewer teaching slots with most young people only getting teaching assistance and not getting the kind of guidance we need to be competitive in this world.

So we are paying more and getting less, and we started today in trying to give people the kind of criteria they need to begin turning that around and get our institutions back to where they are focusing on our young people.

#### THE LATE HONORABLE TED WEISS, A REPRESENTATIVE FROM NEW YORK

Mr. SCHEUER. Mr. Speaker, I offer a privileged resolution (H. Res. 564) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 564

*Resolved*, That the House has heard with profound sorrow of the death of the Honorable Ted Weiss, a Representative from the State of New York.

*Resolved*, That a committee of such Members of the House as the Speaker may designate, together with such Members of the Senate as may be joined, be appointed to attend the funeral.

*Resolved*, That the Sergeant at Arms of the House be authorized and directed to take

such steps as may be necessary for carrying out the provisions of these resolutions and that the necessary expenses in connection therewith be paid out of the contingent fund of the House.

*Resolved*, That the Clerk communicate these resolutions to the Senate and transmit a copy thereof to the family of the deceased.

*Resolved*, That when the House adjourns today, it adjourn as a further mark of respect to the memory of the deceased.

The SPEAKER pro tempore. The gentleman from New York [Mr. SCHEUER] is recognized for 1 hour.

Mr. SCHEUER. Mr. Speaker, this is a sad day for the House. It always is when any Member departs the scene, but it is especially sad to see TED WEISS disappear from the floor. TED WEISS was a man of enormous compassion, an almost infinite capacity to feel hurt, to feel sorrow, to feel pain in the citizenry, both that he represented as well as 250 million Americans.

He had the unlimited ability to see the problems that provided pain, that provided inequality, that produced poverty, that produced a lack of education and lack of training. And he had a marvelous capacity to come up with creative answers.

He represented one of the very few districts in our country that would have supported a Member with such imaginative and, to some perhaps, way out means of meeting national needs.

I honor TEDDY WEISS for his intrepid spirit. He was an unassuming person, a quiet person, a person of infinite dignity, but when he was facing the enemy, so to speak, he lashed out in anger and in passion with a deep intellect, with knowledge in depth of the subject, always answering what he felt was a compassionate need for people to be treated better by their fellows and to be treated better by their government.

When it came to education or health or housing or simply unfairness, inequity, intolerance, TEDDY could be relied on to raise the battle cry, raise the standard of decency and justice and liberty to which all of us could adhere.

We honor him. And I ask again that when we adjourn today, we adjourn in honor of TED WEISS.

The resolution was agreed to.

A motion to reconsider was laid on the table.

#### COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

HOUSE OF REPRESENTATIVES,  
Washington, DC, September 11, 1992.

HON. THOMAS S. FOLEY,  
Speaker, U.S. House of Representatives, Washington, DC.

DEAR MR. SPEAKER: Pursuant to the permission granted in clause 5 of rule III of the Rules of the U.S. House of Representatives, I have the honor to transmit a sealed envelope

received from the White House on Friday, September 11, 1992 at 4:40 p.m. and said to contain a message from President whereby the reports on a waiver of certain restrictions with regard to the export to the People's Republic of China, of U.S.-origin satellites and Munitions List articles, and an attached justification thereon.

With great respect, I am

Sincerely yours,  
DONNALD K. ANDERSON,  
Clerk, House of Representatives.  
(By) DALLAS L. DENDY, JR.,  
Assistant to the Clerk.

#### WAIVING RESTRICTIONS ON EXPORT TO PEOPLE'S REPUBLIC OF CHINA—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 102-385)

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on Foreign Affairs and the Committee on Appropriations and ordered to be printed:

To the Congress of the United States:

Pursuant to the authority vested in me by section 902(b)(2) of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991 (Public Law 101-246), and section 608(a) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1992 (Public Law 102-140), I hereby report to the Congress that it is in the national interest of the United States to waive the restrictions contained in those acts on the export to the People's Republic of China of U.S.-origin satellites and Munitions List articles insofar as such restrictions pertain to the APSAT, Asiasat 2, Intelsat VIIA, STARSAT, AfriSat, and Dong Fang Hong 3 projects.

Attached is my justification for the aforesaid actions.

GEORGE BUSH,  
THE WHITE HOUSE, September 11, 1992.

#### ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of clause 5 of rule I, the Chair announces that he will postpone further proceedings today on both motions to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 4 of rule XV.

Such rollcall votes, if postponed, will be taken tomorrow, Tuesday, September 15, 1992.

#### COLORADO WILDERNESS ACT OF 1992

Mr. VENTO. Mr. Speaker, I move to suspend the rules and pass the Senate

bill (S. 1029) to designate certain lands in the State of Colorado as components of the National Wilderness Preservation System, and for other purposes, as amended.

The Clerk read as follows:

S. 1029

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Colorado Wilderness Act of 1992".

#### SEC. 2. ADDITIONS TO THE WILDERNESS PRESERVATION SYSTEM.

(a) ADDITIONS.—The following lands in the State of Colorado are hereby designated as wilderness and, therefore, as components of the National Wilderness Preservation System:

(1) Certain lands in the Gunnison Basin Resource Area administered by the Bureau of Land Management which comprise approximately 3,800 acres, as generally depicted on a map entitled "American Flats Additions to the Big Blue Wilderness—Proposal", dated June 1992, and which are hereby incorporated in and shall be deemed to be a part of the wilderness area designated by Public Law 96-560 and renamed "Uncompahgre Wilderness" by section 3(f) of this Act.

(2) Certain lands in the Gunnison Resource Area administered by the Bureau of Land Management which comprise approximately 600 acres, as generally depicted on a map entitled "Bill Hare Gulch and Larson Creek Addition to the Big Blue Wilderness—Proposal", dated June 1992, and which are hereby incorporated in and shall be deemed to be a part of the wilderness area designated by Public Law 96-560 and renamed "Uncompahgre Wilderness" by section 3(f) of this Act.

(3) Certain lands in the Pike and San Isabel National Forests which comprise approximately 46,910 acres, as generally depicted on a map entitled "Buffalo Peaks Wilderness—Proposal", dated June 1992, and which shall be known as the Buffalo Peaks Wilderness.

(4) Certain lands in the Gunnison National Forest (renamed as the Ute National Forest by section 3(f) of this Act) and in the Bureau of Land Management Powderhorn Primitive Area which comprise approximately 60,100 acres as generally depicted on a map entitled "Powderhorn Wilderness—Proposal", dated June 1992, and which shall be known as the Powderhorn Wilderness.

(5) Certain lands in the Routt National Forest which comprise approximately 20,020 acres, as generally depicted on a map entitled "Davis Peak Additions to the Mount Zirkel Wilderness Proposal", dated June 1992, and which are hereby incorporated in and shall be deemed to be a part of the Mount Zirkel Wilderness designated by Public Law 88-555.

(6) Certain lands in the Grand Mesa, Uncompahgre, and Gunnison National Forests (renamed the Ute National Forest by section 3(f) of this Act) which comprise approximately 30,700 acres as generally depicted on a map entitled "Fossil Ridge Wilderness Proposal", dated June 1992, and which shall be known as the Fossil Ridge Wilderness Area.

(7) Certain lands in the San Isabel National Forest which comprise approximately 22,040 acres as generally depicted on a map entitled "Greenhorn Mountain Wilderness—Proposal", dated June 1992, and which shall be known as the Greenhorn Mountain Wilderness.

(8) Certain lands within the Pike and San Isabel National Forests which comprise approximately 13,830 acres, as generally depicted on a map entitled "Lost Creek Wilderness Proposal", dated June 1992, which are hereby incorporated in and shall be deemed to be a part of the Lost Creek Wilderness designated by Public Law 96-560: *Provided*, That the Secretary of Agriculture (hereinafter in this Act referred to as the "Secretary") is authorized to acquire, only by donation or exchange, various mineral reservations held by the State of Colorado within the boundaries of the Lost Creek Wilderness additions designated by this Act.

(9) Certain lands in the Grand Mesa, Uncompahgre, and Gunnison National Forests (renamed the Ute National Forest by section 3(f) of this Act) which comprise approximately 5,500 acres, as generally depicted on a map entitled "Oh-Be-Joyful Addition to the Raggeds Wilderness—Proposal", dated June 1992, and which are hereby incorporated in and shall be deemed to be a part of the Raggeds Wilderness designated by Public Law 96-560.

(10) Certain lands in the Grand Mesa, Uncompahgre, and Gunnison National Forests (renamed the Ute National Forest by section 3(f) of this Act) which comprise approximately 28,262 acres, as generally depicted on a map entitled "Roubideau Wilderness—Proposal", dated June 1992, and which shall be known as the Roubideau Wilderness.

(11) Certain lands in the Rio Grande National Forest which comprise approximately 212,360 acres, as generally depicted on a map entitled "Sangre de Cristo Wilderness—Proposal", dated June 1992, and which shall be known as the Sangre de Cristo Wilderness. Any non-Federal lands or interests therein within the Como Lake and Blanca Peak areas, as generally depicted on a map entitled "Como Lake and Blanca Peak Areas", dated June 1992, which hereafter may be acquired by the United States shall be added to the Sangre de Cristo Wilderness and managed accordingly, and if all such lands and interests are so acquired, such areas shall be so added and managed in their entirety.

(12) Certain lands in the Routt National Forest which comprise approximately 47,690 acres, as generally depicted on a map entitled "Service Creek Wilderness Proposal", dated June 1992, which shall be known as the Sarvis Creek Wilderness.

(13) Certain lands in the San Juan National Forest which comprise approximately 32,800 acres as generally depicted on a map entitled "South San Juan Expansion Wilderness—Proposal", (V-Rock Trail and Montezuma Peak), dated June 1992, and which are hereby incorporated in and shall be deemed to be a part of the South San Juan Wilderness designated by Public Law 96-560.

(14) Certain lands in the San Isabel National Forest which comprise approximately 18,130 acres as generally depicted on a map entitled "Spanish Peaks Wilderness—Proposal", dated June 1992, and which shall be known as the Spanish Peaks Wilderness.

(15) Certain lands in the White River National Forest which comprise approximately 8,330 acres, as generally depicted on a map entitled "Spruce Creek Additions to the Hunter-Fryingpan Wilderness—Proposal", dated June 1992, and which are hereby incorporated in and shall be deemed to be a part of the Hunter-Fryingpan Wilderness designated by Public Law 96-327: *Provided*, That no right, or claim of right, to the diversion and use of the waters of Hunter Creek, the Fryingpan or Roaring Fork Rivers, or any tributaries of said creeks or rivers, by the

Fryingpan-Arkansas Project, Public Law 87-590, and the reauthorization thereof by Public Law 93-493, as modified as proposed in the September 1959 report of the Bureau of Reclamation entitled "Ruedi Dam and Reservoir, Colorado", and as further modified and described in the description of the proposal contained in the final environmental statement for said project, dated April 16, 1975, under the laws of the State of Colorado, shall be prejudiced, expanded, diminished, altered, or affected by this Act. Nothing in this Act shall be construed to expand, abate, impair, impede, or interfere with the construction, maintenance, or repair of said Fryingpan-Arkansas Project facilities, nor the operation thereof, pursuant to the Operating Principles, House Document 187, Eighty-third Congress, and pursuant to the water laws of the State of Colorado: *Provided further*, That nothing in this Act shall be construed to impede, limit, or prevent the use of the Fryingpan-Arkansas Project of its diversion systems to their full extent.

(16) Certain lands in the Arapaho National Forest which comprise approximately 24,250 acres, as generally depicted on a map entitled "Byers Peak Wilderness—Proposal", dated June 1992, and which shall be known as Byers Peak Wilderness.

(17) Certain lands in the Grand Mesa, Uncompahgre, and Gunnison National Forests (renamed the Ute National Forest by section 3(f) of this Act) and in the Bureau of Land Management Montrose District which comprise approximately 17,000 acres, as generally depicted on a map entitled "Tabeguache Wilderness—Proposal", dated June 1992, and which shall be known as the Tabeguache Wilderness.

(18) Certain lands in the San Juan National Forest which comprise approximately 28,740 acres, as generally depicted on a map entitled "Weminuche Wilderness Additions—Proposed", dated June 1992, and which are hereby incorporated in and shall be deemed to be a part of the Weminuche Wilderness designated by Public Law 93-632.

(19) Certain lands in the Rio Grande National Forest which comprise approximately 23,800 acres, as generally depicted on a map entitled "Wheeler Additions to the La Garita Wilderness—Proposal", dated June 1992, and which shall be incorporated into and shall be deemed to be a part of the La Garita Wilderness.

(20) Certain lands in the Arapaho National Forest which comprise approximately 16,580 acres, as generally depicted on a map entitled "Williams Fork Wilderness—Proposal", dated September 1992, and which shall be known as the Williams Fork Wilderness.

(21) Certain lands in the Arapaho National Forest which comprise approximately 6,400 acres, as generally depicted on a map entitled "Bowen Gulch Additions to Never Summer Wilderness—Proposal", dated June 1992, which are hereby incorporated into and shall be deemed to be a part of the Never Summer Wilderness.

(b) MAPS AND DESCRIPTIONS.—As soon as practicable after the date of enactment of this Act, the appropriate Secretary shall file a map and a legal description of each area designated as wilderness by this Act with the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives. Each map and description shall have the same force and effect as if included in this Act, except that the Secretary is authorized to correct clerical and typographical errors in such legal descriptions and maps. Such

maps and legal descriptions shall be on file and available for public inspection in the Office of the Chief of the Forest Service, Department of Agriculture and the Office of the Director of the Bureau of Land Management, Department of the Interior, as appropriate.

### SEC. 3. ADMINISTRATIVE PROVISIONS.

(a) IN GENERAL.—(1) Subject to valid existing rights, lands designated as wilderness by this Act shall be managed by the Secretary of Agriculture or the Secretary of the Interior (in the case of the portion of Powderhorn Wilderness managed by the Bureau of Land Management) in accordance with the Wilderness Act (16 U.S.C. 1131 et seq.) and this Act, except that, with respect to any wilderness areas designated by this Act, any reference in the Wilderness Act to the effective date of the Wilderness Act shall be deemed to be a reference to the date of enactment of this Act.

(2) Administrative jurisdiction over those lands designated as wilderness pursuant to paragraphs (1), (2), and (11) of section 2(a) of this Act, and which, as of the date of enactment of this Act, are administered by the Bureau of Land Management, is hereby transferred to the Forest Service.

(b) GRAZING.—Grazing of livestock in wilderness areas designated by this Act, where established prior to the date of enactment of this Act, shall be administered in accordance with the provisions of section 4(d)(4) of the Wilderness Act (16 U.S.C. 1133(d)(4)), as further interpreted by section 108 of Public Law 96-560, and, as regards wilderness managed by the Bureau of Land Management, the guidelines set forth in Appendix A of House Report 101-405 of the 101st Congress.

(c) STATE JURISDICTION.—As provided in section 4(d)(7) of the Wilderness Act (16 U.S.C. 1133(d)(7)), nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of the State of Colorado with respect to wildlife and fish in Colorado.

(d) CONFORMING AMENDMENT.—Section 2(e) of the Endangered American Wilderness Act of 1978 (92 Stat. 41) is amended by striking "Subject to" and all that follows through "System."

(e) BUFFER ZONES.—Congress does not intend that the designation by this Act of wilderness area areas in the State of Colorado creates or implies the creation of protective perimeters or buffer zones around any wilderness area. The fact that non-wilderness activities or uses can be seen or heard from within a wilderness area shall not, of itself, preclude such activities or uses up to the boundary of the wilderness area.

(f) WILDERNESS NAME CHANGE.—The wilderness area designated as "Big Blue Wilderness" by section 102(a)(1) of Public Law 96-560, and the additions thereto made by paragraphs (1) and (2) of section 2(a) of this Act, shall hereafter be known as the Uncompahgre Wilderness. Any reference to the Big Blue Wilderness in any law, regulation, map, document, record, or other paper of the United States shall be considered to be a reference to the Uncompahgre Wilderness.

(g) NATIONAL FOREST ADDITIONS.—(1) Except for lands within the Powderhorn Wilderness, any lands designated as wilderness by this Act which as of the date of enactment of this Act were managed by the Secretary of the Interior as public lands (as defined in the Federal Land Policy and Management Act of 1976), are hereby transferred to the jurisdiction of the Secretary of Agriculture, and shall be added to and managed as part of the National Forest System, and the boundaries of the adjacent National Forests are hereby modified to include such lands.

(2) For the purposes of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-9), the boundaries of affected National Forests, as modified by this subsection, shall be considered to be the boundaries of such National Forests as of January 1, 1965.

(3) Nothing in this subsection shall affect valid existing rights of any person under any authority of law.

(4) Authorizations to use lands transferred by this subsection which were issued prior to the date of enactment of this Act, shall remain subject to the laws and regulations under which they were issued, to the extent consistent with this Act. Such authorizations shall be administered by the Secretary of Agriculture. Any renewal or extension of such authorizations shall be subject to the laws and regulations pertaining to the Forest Service, Department of Agriculture, and applicable law, including this Act. The change of administrative jurisdiction resulting from the enactment of this subsection shall not in itself constitute a basis for denying or approving the renewal or reissuance of any such authorization.

#### SEC. 4. WILDERNESS RELEASE.

(a) **REPEAL OF WILDERNESS STUDY PROVISIONS.**—Sections 105 and 106 of the Act of December 22, 1980 (P.L. 96-560), are hereby repealed.

(b) **INITIAL PLANS.**—Section 107(b)(2) of the Act of December 22, 1980 (P.L. 96-560) is amended by striking out “, except those lands remaining in further planning upon enactment of this Act, areas listed in sections 105 and 106 of this Act, or previously congressional designated wilderness study areas.”

#### SEC. 5. FOSSIL RIDGE RECREATION MANAGEMENT AREA.

(a) **ESTABLISHMENT.**—(1) In order to conserve, protect, and enhance the scenic, wildlife, recreational, and other natural resource values of the Fossil Ridge area, there is hereby established the Fossil Ridge Recreation Management Area (hereinafter referred to as the “recreation management area”).

(2) The recreation management area shall consist of certain lands in the Grand Mesa, Uncompahgre, and Gunnison National Forests, Colorado, (renamed the Ute National Forest by section 3(f) of this Act) which comprise approximately 43,900 acres as generally depicted as “Area A” on a map entitled “Fossil Ridge Wilderness Proposal”, dated June 1992.

(b) **ADMINISTRATION.**—The Secretary of Agriculture shall administer the recreation management area in accordance with this section and the laws and regulations generally applicable to the National Forest System.

(c) **WITHDRAWAL.**—Subject to valid existing rights, all lands within the recreation management area are hereby withdrawn from all forms of entry, appropriation, or disposal under the public land laws, from location, entry, and patent under the mining laws, and from disposition under the mineral and geothermal leasing laws, including all amendments thereto.

(d) **TIMBER HARVESTING.**—No timber harvesting shall be allowed within the recreation management area except for any minimum necessary to protect the forest from insects and disease, and for public safety.

(e) **LIVESTOCK GRAZING.**—The designation of the recreation management area shall not be construed to prohibit, or change the administration of, the grazing of livestock within the recreation management area.

(f) **DEVELOPMENT.**—No developed campgrounds shall be constructed within the

recreation management area. After the date of enactment of this Act, no new roads or trails may be constructed within the recreation management area.

(g) **OFF-ROAD RECREATION.**—Motorized travel shall be permitted within the recreation management area only on those designated trails and routes existing as of July 1, 1991.

#### SEC. 6. BOWEN GULCH PROTECTION AREA.

(a) **ESTABLISHMENT.**—(1) There is hereby established in the Arapaho National Forest, Colorado, the Bowen Gulch Protection Area (hereinafter in this Act referred to as the “protection area”).

(2) The protection area shall consist of certain lands in the Arapaho National Forest, Colorado, which comprise approximately 11,600 acres as generally depicted as “Area A” and “Area B” on a map entitled “Bowen Gulch Additions to Never Summer Wilderness Proposal”, dated September 1992.

(b) **ADMINISTRATION.**—The Secretary shall administer the protection area in accordance with this section and the laws and regulations generally applicable to the National Forest System.

(c) **WITHDRAWAL.**—Subject to valid existing rights, all lands within the protection area are hereby withdrawn from all forms of entry, appropriation, or disposal under the public land laws, from location, entry, and patent under the mining laws, and from disposition under the mineral and geothermal leasing laws, including all amendments thereto.

(d) **DEVELOPMENT.**—No developed campgrounds shall be constructed within the protection area. After the date of enactment of this Act, no new roads or trails may be constructed within the protection area.

(e) **TIMBER HARVESTING.**—No timber harvesting shall be allowed within the protection area except for any minimum necessary to protect the forest from insects and disease, and for public safety.

(f) **MOTORIZED TRAVEL.**—Motorized travel shall be permitted within the protection area only on those designated trails and routes existing as of July 1, 1991, and only during periods of adequate snow cover. At all other times, mechanized, non-motorized travel shall be permitted within the protection area.

(g) **MANAGEMENT PLAN.**—During the preparation of the revision of the Land and Resource Management Plan for the Arapaho National Forest, the Forest Service shall develop a management plan for the protection area, after providing for public consultation.

#### SEC. 7. PIEDRA AREA.

Subject to valid existing rights, the area of approximately 56,000 acres in the San Juan National Forest, as generally depicted on a map entitled “Piedra Area” dated June 1992, is hereby withdrawn from all forms of entry, appropriation, or disposal under the public land laws; from location, entry, and patent under the mining laws; and from disposition under the mineral and geothermal leasing laws, including all amendments thereto. Until Congress determines otherwise, such area shall be managed by the Secretary of Agriculture so as to maintain its presently existing wilderness character and potential for inclusion in the National Wilderness Preservation System. Livestock grazing in such area shall be permitted and managed to the same extent and in the same manner as on the date of enactment of this Act. Mechanized travel within such area shall be permitted only on those designated trails and routes existing on July 1, 1991. No motorized travel shall be permitted on Forest Service

trail number 535 except during periods of adequate snow cover.

#### SEC. 8. OTHER LANDS.

Nothing in this Act shall affect ownership or use of lands or interests therein not owned by the United States or access to such lands available under other applicable law.

#### SEC. 9. WATER.

(a) **RESERVATION.**—With respect to each wilderness area designated by this Act, Congress hereby reserves a quantity of water sufficient to fulfill the purposes for which such area is designated. The priority date of such reserved rights shall be the date of enactment of this Act.

(b) **IMPLEMENTATION.**—The Secretary of Agriculture, the Secretary of the Interior, and all other officers of the United States shall take all steps necessary to protect the rights reserved by subsection (a), including the filing of claims for quantification of such rights in any present or future appropriate stream adjudication in the courts of the State of Colorado in which the United States has been or is hereafter properly joined in accordance with section 208 of the Act of July 10, 1952 (66 Stat. 5460; 43 U.S.C. 666), commonly referred to as the “McCarran Amendment”.

(c) **CONSTRUCTION.**—(1) Nothing in this Act shall be construed as a relinquishment or reduction of any water rights reserved, appropriated, or otherwise secured by the United States in the State of Colorado on or before the date of enactment of this Act.

(2) Nothing in this Act or in any previous Act designating any lands as wilderness shall be construed as limiting, altering, modifying, or amending any of the interstate compacts or equitable apportionment decrees that allocate water among and between the State of Colorado and other States.

(3) Nothing in this Act shall be construed as establishing a precedent with regard to any future designations, including designations of wilderness, or as constituting an interpretation of any other Act or designations made pursuant thereto.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Minnesota [Mr. VENTO] will be recognized for 20 minutes, and the gentleman from Arizona [Mr. RHODES] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Minnesota [Mr. VENTO].

#### GENERAL LEAVE

Mr. VENTO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the measure presently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. VENTO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, S. 1029, passed by the Senate last year, is a bill for designation of wilderness on national forest lands and certain other Federal lands in Colorado.

Mr. Speaker, the Interior Committee favorably reported S. 1029 after adopting an amendment in the nature of a substitute. Its provisions are explained in the committee's report on the bill. In brief, the bill, as amended, would designate new wilderness areas or addi-

tions to existing wilderness areas amounting to about 670,960 acres that include a very diverse array of landforms—mountain peaks, alpine tundra, forests, meadows, lakes, and streams—with extraordinary environmental, wildlife, and recreation values.

In addition, the bill would provide for protection of more than 110,000 additional acres of unique Colorado lands that would not be designated as wilderness but would be protected against adverse impacts from timber harvesting and other activities.

The areas dealt with in this bill are noteworthy and deserving of the special consideration and careful management that would be provided under this bill.

Many of the important attributes of these areas derive from the fact that they are relatively well watered. The mountain ranges of Colorado catch the snows of winter and rains of summer, and wring the moisture from the winds, so that unlike many parts of the arid West, they have the water to support many forms of life. Protection of these water resources is an indispensable part of the proper management of these wilderness areas.

In other wilderness bills, Congress has acted to assure such protection by reserving a Federal water right for each wilderness area. Such reserve water rights are an efficient and effective way to give the land-managing agencies the tools they need to properly do their jobs of preserving the natural attributes of areas designated as wilderness.

However, the bill, as reported from committee, was silent about the subject of wilderness water rights. This silence was the result of a procedural compromise that reflected the fact that in the Interior Committee proposals to reserve Federal water rights have been very divisive, but there is little or no controversy about any other aspect of the bill as reported.

At the suggestion of the gentleman from Colorado [Mr. CAMPBELL], it was agreed to leave the question of water rights for resolution here on the floor. This made it possible for the committee to bring the bill before the House in an expeditious way.

To further expedite matters, in these last days of the session, we are bringing to the floor a revised substitute that includes water rights provisions, so that the House could resolve this water rights issue—the only real issue associated with this bill—through a single vote.

Thus, the bill now before the House is not identical to the versions approved by the Interior and Agriculture Committees. There are two chief differences: First, the bill does not include provisions for renaming three existing national forests. Second, it does include, as section 9, an express reservation of a Federal water right for

each of the areas that would be designated as wilderness.

Mr. Speaker, as the Interior Committee has considered this bill, we have been reminded of John Gunther's observation, in his book, "Inside USA," that "Water is blood in Colorado. \* \* \* About water the State is as sensitive as a carbuncle."

That was written in 1947. Since then, many things have changed, but in Colorado there is still no more sensitive issue than the allocation and use of the water that flows down from the State's mountain ranges and into the great rivers—the Rio Grande, the Arkansas, the North Platte, the South Platte, and the Colorado itself—that are so important to so many people in Colorado and nearly a score of other States.

Today, decisions about that water have become even more complicated. Colorado has many more people now—primarily concentrated in the front range area at the eastern edge of the mountains—and the population of downstream States, especially California and Arizona, has also greatly increased.

And, just as important, the Nation has adopted new policies and new priorities for the management of the national forests and other Federal public lands in Colorado and other States.

One of the most significant changes in those priorities was the enactment of the Wilderness Act in 1964. Since then, Congress has acted to protect millions of acres throughout the Nation as part of the national wilderness preservation system, including lands managed by the National Park Service, the Fish and Wildlife Service, and the Bureau of Land Management in addition to national forest areas.

In 1980, responding to proposals by President Carter, Congress designated as wilderness 20 areas in Colorado's national forests, but decided to defer any wilderness decision about some other areas. There was an expectation that those decisions would be made a couple of years later, through a followup bill.

The bill before us is exactly that followup bill, but instead of a couple of years, it has taken more than a decade to reach the point where we are today. The reason is that congressional decisions about wilderness in the West have come to involve explicit decisions about water and water law, which in Colorado means that wilderness decisions now are more controversial than they were in 1980 exactly to the extent that they involve water.

Of course, the importance of water for wilderness is not a new discovery. In fact, as noted in the Interior Committee's report about the Colorado wilderness areas designated in the 1980 bill, "Their national production of invaluable supplies of high quality water provide[s] a compelling reason for preserving them in their natural state."

Two things have changed since 1980. First, we have had two successive ad-

ministrations unwilling to take appropriate steps to protect wilderness water rights. Second, there has been a change in wilderness legislation because of the Senate's reaction to Federal court decisions, starting in Colorado in 1985, repudiating the administration's policy of effectively relinquishing any claims to water rights for wilderness areas that were designated by legislation with no explicit water rights provisions.

It long was the view of the Interior Committee and the House that no such provisions were necessary. However, in response to the court decisions, the Senate has consistently insisted on including in wilderness legislation provisions to specify whether designation of a wilderness area involved a reservation of water by the national Government.

Therefore, to assure that wilderness water will receive the protection so important in the arid States of the West, the Interior Committee has consistently included in wilderness bills for Western national forests and public lands provisions similar to those that this amendment would add to this Colorado wilderness bill. This policy has been strongly supported by the House of Representatives and accepted by the Senate as well.

As a result, since 1986, laws designating wilderness on Western national forest or BLM-managed public lands have included an explicit reservation of a water right. Examples include Public Law 100-225, related to the El Malpais National Monument, national conservation area, and wilderness areas; the Nevada Wilderness Protection Act of 1989; the Arizona Desert Wilderness Act of 1990; and the Los Padres Condor Range and River Protection Act, signed into law on June 19 of this year.

Like the corresponding provisions of those laws, with respect to each designated wilderness area—but not other areas otherwise designated by the bill—this bill would reserve a quantity of water sufficient to fulfill the purpose of wilderness designation.

It is important to note that the bill does not attempt to quantify these reserved water rights, which will date from the bill's date of enactment—so that they will be junior to all other rights in existence when the bill becomes law. Instead, the question of quantification is left for further action by the Forest Service and the Bureau of Land Management.

Section 9 of the bill directs the national administration, including the land-managing agencies, to take whatever steps may be necessary to protect these new reserved water rights. One of these steps would be the filing of claims for the quantification of the rights, in any present or future adjudication in the courts of the State of Colorado to which the United States is properly made a party.

The bill leaves intact existing law that governs such adjudications, including the statute commonly known as the McCarran amendment, by which the United States has waived its sovereign immunity and has consented to be joined as a party in certain State proceedings for adjudication and administration of water rights.

The part of the bill referring to the McCarran amendment are intended to have the same significance and effect as the similar references in the Arizona Desert Wilderness Act and other wilderness acts I have cited. Because some have expressed uncertainty about what was meant by references in those bills to proceedings "in accordance with" the McCarran amendment, S. 1029, as amended, does not use those words. Instead, there is a reference to Colorado State proceedings "in which the United States has been or is hereafter properly joined." The term "properly joined," like the term "in accordance with" is intended to signify a proceeding within the scope of the McCarran amendment's waiver of sovereign immunity, which does not extend to all possible actions related to water in State courts or agencies.

As explained by Prof. David H. Getches, of the University of Colorado, in "Water Law in a Nutshell," 2d edition, 1990, on pages 335 and following—

The McCarran amendment does not authorize private suits to decide priorities between the United States and particular claimants, only suits to adjudicate the rights of all claimants on a stream. \* \* \* It applies to lawsuits, not proceedings before administrative agencies. The Supreme Court has rejected a Federal claim that the amendment does not apply to reserved water rights. \* \* \* The McCarran amendment's consent to joinder of the United States applies to suits in State or Federal court, but as a practical matter, it is only used in State court proceedings because Federal court jurisdiction would not encompass water rights claims of private parties against one another. Federal court jurisdiction does exist if the United States initiates suit, and the McCarran amendment does not preclude adjudication of the Government's water rights in that forum. \* \* \* Once the Government is joined, it must adhere to State procedural requirements. [Citations omitted.]

That describes the law as it stands today and as it will remain after this bill is enacted.

In short, section 9 of S. 1029 is a conservative measure that provides Federal land managers with the legal basis for proper protection of wilderness without disrupting the adjudication or administration of water rights under State law.

In conclusion, Mr. Speaker, I want to thank the Colorado delegation for their diligence and cooperation in enabling us to bring this bill to the floor.

In particular, Mr. Campbell is to be commended for his hard work and persistence in connection with this important bill, which has been a very long time in coming—more than a decade,

as a matter of fact—and another gentleman from Colorado, Mr. SKAGGS, also deserves our thanks, particularly for emphasizing the importance of the Bowen Gulch and Williams Fork areas, and for his support of sound management provisions.

I also want to thank Chairmen DE LA GARZA and VOLKMER of the Committee on Agriculture for their cooperation and assistance.

I urge the House to approve the motion to suspend the rules and pass S. 1029, as amended, with its water rights provisions.

□ 1220

Mr. Speaker, I reserve the balance of my time.

Mr. RHODES. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of S. 1029, the Colorado Wilderness Act.

In 1980, Congress passed the first statewide RARE II Forest Service wilderness bill. It was for the State of Colorado. That bill designated 1.4 million acres of Forest Service wilderness areas; at the time doubling Federal wilderness area designations in Colorado.

That 1980 bill also designated some 11 areas totaling nearly 500,000 acres as congressional wilderness study areas, and about 160,000 acres remained under administrative further planning status.

The legislation before us today, 12 years later, essentially completes the Forest Service wilderness designations in Colorado by, for the most part, dealing with the study areas which remained following passage of the 1980 Colorado RARE II wilderness bill.

The 1980 Colorado wilderness bill was important in other respects as well. Through intensive negotiations, it established important land-use and wilderness management policy regarding grazing in wilderness areas; release language, and antibuffer zone language, all of which are now routinely included directly or by reference in virtually every western wilderness bill on which the Congress acts.

The entire Colorado congressional delegation, especially Senators HANK BROWN and TIM WIRTH, and our colleagues on the Interior Committee, Congressmen BEN CAMPBELL, JOEL HEFLEY, and WAYNE ALLARD, are to be commended for their leadership and concentrated efforts to move this legislation and finish the work begun in 1980.

Probably the major hurdle that has held up action on the Colorado wilderness bill all these years has been the issue of wilderness water rights.

In 1990, under the leadership of the former chairman of the Interior Committee, Mo Udall, the Arizona congressional delegation brought to this House the final version of the first statewide wilderness bill for Bureau of Land Management lands.

In that bill, we dealt with the wilderness water rights issue for BLM lands. It was at times a difficult and tortured process. Nonetheless, I am pleased we eventually found a consensus on wilderness water rights language which we believe protects the sovereign rights and laws of the State of Arizona.

We concluded that that language was the best we could achieve for the particular needs of the State of Arizona. In the language itself, and during the debate on the legislation, we indicated our intent that the wilderness water language we developed was not necessarily the approach that would work best for the differing water laws and adjudication processes in other Western States.

The statutory language itself says in part: "Nothing in this title related to reserved Federal water rights shall be construed as establishing a precedent \* \* \* nor shall it constitute an interpretation of any other Act \* \* \*"

As I stated at the time, it certainly was not my intent that the water rights language in the Arizona desert wilderness bill would meet the needs of other Western States.

However, what we have witnessed since 1990 is that the Arizona desert wilderness water rights language appears to have become a precedent.

Essentially identical language was included in the House-passed California wilderness bill; the same language is included in Montana wilderness bill that was reported from subcommittee last week and is scheduled for full committee action this week; and now we find the language in the Colorado wilderness bill as it will be amended by the chairman on the floor today.

To play on an old saying \* \* \* If it is often repeated like a precedent; looks like a precedent; and smells like a precedent, it apparently soon becomes a precedent, even when we say it isn't.

I understand why this is happening today. I respect and support the desires of the Colorado congressional delegation to move this legislation along to either further negotiations with the Senate or to a formal conference.

However, that doesn't mean I have to like the use of this language in this bill or the procedural manner in which that language is being inserted in the bill today.

Although they will speak for themselves, I know many in the Colorado delegation are not overly enamored with the language we worked out for Arizona, to say the least.

As it came to the House, the Senate-passed Colorado wilderness bill included exactly opposite wilderness water rights language. Frankly, since most of the Colorado wilderness designations are high-country Forest Service lands, I am not convinced the Arizona language is appropriate or necessary in this bill.

My further concern is with the manner in which this is being done. It was

my understanding that as the bill left the Interior Committee, with no water rights language, assurances were given that there would be a full and open opportunity to address this issue through possible amendments on the House floor.

The fact is, bringing this bill to the floor under suspension does not allow the offering of any contrary or perfecting amendments—if any Member wanted to—to what the chairman will be offering.

I find that regrettable.

However, having expressed those personal concerns, I defer, as I usually do when there is consensus, to the State congressional delegations for guidance on these land use issues in their States. I support S. 1029 and respect the desires of the Colorado congressional delegation to move this bill through the process to hopefully deal with this difficult issue before adjournment.

I ask my colleagues to support it as well.

□ 1230

Mr. Speaker, I reserve the balance of my time.

Mr. VENTO. Mr. Speaker, I yield 10 minutes to the gentleman from Colorado [Mr. CAMPBELL].

Mr. CAMPBELL of Colorado. Mr. Speaker, I thank the gentleman from Minnesota for yielding time to me.

I rise in support of H.R. 1029 but cannot support the water rights language contained in the committee amendment. I will not ask for a recorded vote on the issue because it is vital that the bill be passed so we can begin working with our colleagues from the other body to resolve the differences between the House and Senate passed versions of the bill. Moving this committee bill through the House has the support of the entire Colorado delegation.

In fact, the Colorado delegation first developed a compromise wilderness bill in 1984. The bill passed the House, but before action could be taken by the Senate, Judge Kane issued a decision in the case of the Sierra Club versus Block, which started the wilderness water rights controversy.

The delegation had already worked for more than 4 years to resolve the management controversies surrounding the lands which remained undesignated in the 1980 bill.

Obviously, if wilderness were simply a land management issue it would be an easy matter to separate the areas that have conflicts from those that do not. Wilderness, however, is a complicated issue requiring Members of Congress to make tough choices. Representatives from every State have the opportunity to judge the work we have done and to add areas within my congressional district that they have heard have "outstanding wilderness values."

Passing a Colorado wilderness bill is important to me and my Colorado con-

stituents, and indeed, to all Americans. Designating more high-country lands in Colorado as wilderness has been a goal of many people, including Senators WIRTH and BROWN, and their predecessors, Senators Hart and Armstrong, and of my predecessor, former Third District Congressman Ray Kogvsek.

None of us has succeeded so far, unfortunately, but as I prepared for this day, I way looking through an inspiring book called "Colorado, Our Wilderness Future," that describes the incomparable areas proposed for inclusion in the wilderness system, and I thought, "We have to try harder. Somehow, we have to figure out a way to preserve these incredible treasures for all of us, for our children, and their children."

Therefore, with the cooperation of the Colorado congressional delegation I offered a substitute for the Senate—passed wilderness bill in the Interior Committee. The majority of that substitute is before us now. It is generally a combination of the areas within the Senate-passed bill, my own bill, H.R. 762 and a bill by my colleague Representative SKAGGS. The substitute designates 21 wilderness areas comprising 670,962 acres.

The most significant differences in wilderness designations are the designation of a Spanish Peaks wilderness, which was not in the Senate bill, and the designation of the Fossil Ridge and Bowen Gulch areas which were not in my original bill.

The Senate bill terms the protected nonwilderness near Fossil Ridge as a national conservation area. I have called it a recreation management area to avoid confusing it with a BLM area. In both versions, the area is closed to mineral activities, timber harvest, developed campgrounds, and motorized vehicles are restricted to designated roads and trails in existence on July 1, 1991.

The Senate bill designated the Piedra area as wilderness, but I have elected to protect it in another way. As it is a downstream area, my substitute would withdraw it from mining and mineral leasing, and require it to be managed to preserve wilderness characteristics and potential for inclusion in the National Wilderness Preservation System. The substitute also restricts mechanized travel to designated trails and routes in existence on July 1, 1991, and incorporates the Senate bill's restrictions on motorized travel on a specific Forest Service trail.

The majority of differences in acreage in the areas in actually due to a formal recalculation of the acreage that I asked the Forest Service to conduct.

The substitute would rename the existing Big Blue Wilderness Area as Uncompahgre Wilderness in recognition of the original name of the Forest

Service primitive area. The bill did rename the Grand Mesa, Uncompahgre, and Gunnison National Forests, but I have asked that the provisions be removed from the bill.

The substitute simplifies the issue of releasing areas not designated as wilderness by repealing the "release language" provisions of the 1980 Colorado Wilderness Act.

The substitute was also silent on the issue of wilderness water rights. That silence will be broken today because the committee amendment will include language that has been approved three times by the House and has already been included in the soon to be passed Montana wilderness bill.

Although the so-called Arizona water language does defer water rights adjudication to the States pursuant to the McCarran Act, it contains a Federal reserve water right for wilderness. Most Coloradoans fear that this reservation will make the Forest Service the dominant player in terms of State water matters. Fortunately, the Colorado delegation, lead by our colleagues in the other body, have drafted language to protect these new wilderness areas and ensure that Colorado retains primal in Colorado water issues.

Our Senator's agreement resolves the controversy surrounding water rights language, and I respect that agreement. But, although the agreement between the Senators was a major step, that does not make it any easier to pass the bill in the House of Representatives.

It is my sincere belief, however, that the eventual compromise will closely resemble the Senate bill that a majority of people in the State of Colorado support.

I certainly hope we can maintain the basis of this fragile process and get on with what we—most of us—really want: an expanded wilderness system. I also include in the RECORD a resolution of support from the Colorado Water Congress for the process I established.

COLORADO WATER CONGRESS  
Denver, CO, March 24, 1992.

HON. HANK BROWN,  
U.S. Senate,  
HON. TIM WIRTH,  
U.S. Senate,  
HON. WAYNE ALLARD,  
U.S. House of Representatives,  
HON. BEN NIGHTHORSE CAMPBELL,  
U.S. House of Representatives,  
HON. JOEL HEFLEY,  
U.S. House of Representatives,  
HON. DAN SCHAEFER,  
U.S. House of Representatives,  
HON. PATRICIA SCHROEDER,  
U.S. House of Representatives,  
HON. DAVID SKAGGS,  
U.S. House of Representatives,  
Washington, DC.

DEAR SENATOR BROWN, SENATOR WIRTH, CONGRESSMAN ALLARD, CONGRESSMAN CAMPBELL, CONGRESSMAN HEFLEY, CONGRESSMAN SCHAEFER, CONGRESSWOMAN SCHROEDER AND CONGRESSMAN SKAGGS: Please be advised that the Colorado Water Congress (CWC) Board of Directors, CWC Federal Affairs

Committee and CWC Special Committee on Colorado Wilderness met on March 23, 1992, in Denver and adopted unanimously the following motion (Miskel Motion, Hobbs Second):

(1) CWC is firmly in support of "The Colorado Wilderness Act of 1991" (S. 1029) as it was passed by the U.S. Senate;

(2) CWC is in strong support of Colorado's Congressional Delegation—particularly Congressman Campbell, in whose District ninety-five percent of the lands to be designated as wilderness are located—in the effort to secure passage of S. 1029 through the U.S. House of Representatives;

(3) The Colorado Water Congress believes that the process to pass S. 1029 should move forward. If attempts to amend S. 1029 are made in the House, CWC urges Colorado's House delegation to do everything in its power to prevent such amendment attempts; and

(4) If the "Colorado Wilderness Act of 1991" (S. 1029) is adopted by the House of Representatives in a form that is different from the Senate version of S. 1029, then CWC requests Colorado's two U.S. Senators to restore S. 1029 to the form that they so carefully crafted in the Senate and sent to the House.

If there are any questions, please do not hesitate to contact us.

Sincerely yours,

ED POKORNEY  
President.

#### SENATE JOINT RESOLUTION 92-9

Whereas, There is currently pending before the United States Congress legislation to establish wilderness areas in Colorado; and

Whereas, The benefits of designating wilderness areas must be balanced against the consequences of such designation upon the economic and social welfare of the citizens of Colorado; and

Whereas, The designation of wilderness areas may significantly affect the economic health of this state by adversely impacting private and public property interests and rights in land, water, and mineral resources, by establishing barriers to access to such property interests, by preempting existing private property rights, and in other ways; and

Whereas, Readily available and reliable water supplies are absolutely vital to the health and economic development of the people of this state; and

Whereas, Uncertainty relative to the existence of implied federal reserved water rights for existing and new wilderness areas clouds property titles, discourages natural resource management and development, and disrupts the State's water rights administration system, resulting in economic stagnation and unproductive litigation; and

Whereas, Federal reserved water rights for wilderness areas in Colorado are inconsistent with the right and ability of Colorado to effectively manage and fully utilize the valuable water resources allocated to it by interstate compacts and equitable apportionment decrees; and

Whereas, The laws of Colorado and the instream flow program of the Colorado Water Conservation Board are adequate to protect water resource values in wilderness areas in Colorado; and

Whereas, National forest lands are foreclosed from multiple use while they retain wilderness study status, resulting in loss of economic and recreational opportunities, and sufficient time has passed for study of the suitability of such lands for wilderness designation; and

Whereas, Congress is considering S. 1029 which represents a legitimate and good-faith balancing of the issues involved in the designation of wilderness, and the compromise inherent in S. 1029 cannot and should not be changed without destroying the consensus which supports this legislation; and

Whereas, S. 1029 will result in the designation of an area larger than the entire state of Rhode Island as wilderness; and

Whereas, The opposition to S. 1029 by extremists on both sides of the issue should not be allowed to jeopardize this unique opportunity for a resolution of this important issue; now, therefore,

*Be It Resolved by the Senate of the Fifty-eighth General Assembly of the State of Colorado, the House of Representatives concurring herein:*

That Congress is urged to adopt only such wilderness legislation as embodies the following principles:

(1) Wilderness legislation must fully protect private property rights;

(2) Boundaries for wilderness areas must be drawn so as to include only those areas which are suitable for such designation, while excluding conflicting uses within such boundaries to the extent possible;

(3) Reasonable rights of access for private property must be reconfirmed and maintained;

(4) Federal reserved water rights for all existing and new wilderness areas must be expressly disclaimed;

(5) Water resource values in wilderness areas in this state should be protected through the Colorado instream flow program;

(6) The designation of wilderness areas should not interfere with state water allocation and administration, or limit existing or future development and use of Colorado's interstate water allocations; and

(7) Public lands which have been studied for possible designation as wilderness areas and which are not being designated as wilderness areas at this time should be released from study status and returned to multiple use.

*Be It Further Resolved,* That copies of this resolution be transmitted to the Speaker of the United States House of Representatives, the President of the United States Senate, each Member of Congress from the State of Colorado, the Chairman of the United States Senate Energy and Natural Resources Committee, and the Chairman of the Committee on Interior and Insular Affairs of the United States House of Representatives.

Mr. VENTO. Mr. Speaker, I yield 2 minutes to the gentlewoman from Colorado [Mrs. SCHROEDER].

Mrs. SCHROEDER. Mr. Speaker, I thank the gentleman from Minnesota for yielding the time, and just wanted to congratulate both the gentleman from Minnesota and the gentleman from Colorado for bringing this to the floor.

One of the great mysteries in this place is how something can only take 40 minutes. This bill has taken about 12 years. I think we have spent more time talking about the wilderness. We in Colorado feel it is very important, because we view ourselves as the lungs of the Nation, where people come to breathe.

Most of this is in the district of the gentleman from Colorado who just spoke before me, and yet, everybody

has wanted to get in, and play, and there has been all sorts of problems. We have had more maps on the wall in this body than we have almost had walls. So the boundaries of this have been discussed over and over again, in many, many forms. Everybody has talked about it, but the bottom line became the very delicate issue the gentleman talked about, and that is the issue of water.

In our State, water is golden. And the fear that the Federal Government might somehow interfere with that has been a very delicate compromise that we think has now been worked out.

I really and truly want to thank Congressman CAMPBELL. I do not think anybody could have worked harder than he has on this. To see 14 years of work compressed into these few minutes on the floor does not quite give the flavor for how many caucuses, meetings, and maps have been drafted around this, and discussions and language and all sorts of different drafts that have floated around about this. But I think for our entire country this wilderness area is indeed a great treasure.

□ 1240

Today, to be able to act on it and hopefully conclude it in this session after all of these years, would be a terrific, terrific conclusion, because basically the American people will win.

If we do not put this land away, it will get nibbled away, and that is what it is all about, so I thank everybody for working so hard to make sure that this hopefully comes to a conclusion this year, and especially the gentleman from California [Mr. CAMPBELL] for his sweat equity that he put into this wilderness. Believe me he has done an awful lot of work on it.

Mr. RHODES. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, let me just say, in closing, having gone through this process in Arizona, I know how agonizingly difficult this has been for Colorado. I know how contentious that it has been.

I want to congratulate all of the Members of the delegation for getting to this point. We recognize that what we are doing today is simply moving the process another step, but it is a huge step. It is not over until it is over. But the best of luck to my colleagues from Colorado to get legislation passed and before the President before the end of this Congress.

I wish you my best.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. VENTO. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, I will say that this is a bill that has, as I said 700,000 acres of wilderness, 100,000 acres of other conservation lands, and it is obviously important.

Obviously, the issue of water began in some of the Colorado courts, and it continues. We hope that we can resolve that, these problems, with the members of the Colorado delegation and the Senate and present this bill to the President for enactment before the conclusion of this session.

I urge Members to support the bill.

Mr. HEFLEY. Mr. Speaker, I hope today's action marks the beginning of the end for debate on new Colorado wilderness areas that has lasted for more than a decade. In general, the boundary corrections suggested by the chairman, Mr. VENTO, appear worthwhile and should be considered in this Chamber's consultations with the other body.

Still, I would be remiss if I did not restate my grave reservations concerning the assertion of the Federal reserved water right in the manager's amendment to today's bill. Neither I nor any of the Republican members of this delegation can support such a water right and are today withholding our objections only on the assurance the Senate will not allow such an assertion to stand.

As I have previously stated, Colorado's water laws are among the oldest in the West and have evolved to reflect the needs of a high desert area of moderate population that receives less than a foot of precipitation each year in many places. The laws that govern Colorado's six major rivers reflect not only its own needs but the needs of other Western States, by compact, and of another nation, Mexico, under treaty.

In place of this carefully nurtured body of laws, the chairman proposes to insert a Federal reserved water right for wilderness areas. Even if we set aside the need to assert such rights in a headwaters area, even if we dismiss the argument of States, rights versus Federal preemption, even if we ignore the fact that the S. 1029 language does all a reserved water right does—and more—the most its supporters can say is that a Federal reserved water right stretches to fit all situations. This is too uncertain a theory on which to base the water needs—and the future—of the American West.

In this, I would agree with remarks made Thursday by another member of the Subcommittee on Parks and Public Lands. We westerners want ironclad guarantees on this issue, because water is not a legal theory in the West. It is the source of life. And for that reason, I cannot support the inclusion of a Federal reserved water right in this bill.

Mr. ALLARD. Mr. Speaker, it is clear that Coloradans want more wilderness and I, personally, want to see more wilderness. It is for this reason that Congressman SCHAEFER and myself were the first to put a wilderness bill out on the table.

It is no secret that I have had some serious reservations about the language of the House substitute to S. 1029. Unlike the Senate version, so carefully crafted by Senators BROWN and WIRTH, the bill reported out of two House Committees, Interior and Agriculture, remained silent with respect to water rights so that the legislative process could move forward in the House committees. Undoubtedly, water rights will be one of the main issues to be resolved in conference.

I am not actively opposing the House version of this bill only because of my belief that ensuring negotiations will codify the Senate agreement, which expressly disclaims Federal reserve water rights. Should this bill come back to the House in its present form or any other which strays from protection of private property rights and disclaims the existence of Federal reserve water rights, then I will vigorously work against its passage.

The challenge I see in designating Colorado wilderness is finding that delicate balance, a balance which offers more wilderness without taking away the property rights or water rights. S. 1029, as reported out of the Senate, comes the closest to achieving this balance. S. 1029 broke the stalemate that has existed for more than a decade with Colorado wilderness.

Although S. 1029 may not be the perfect wilderness bill, the main reason it has galvanized so much support stems from its bipartisan input and the fact that there is no preemption of Colorado water law. It is a compromise bill that reflects the interests of a wide spectrum of parties. I am committed to the notion of maintaining Colorado's ability to control its own water, and will therefore vehemently oppose any attempt to create a Federal reserve water right on the final Colorado wilderness bill.

I wish Senators WIRTH and BROWN good luck in their furtherance of this bill, but trust their resolve to abide by the critical elements of their original compromise.

Mr. SKAGGS. Mr. Speaker, I am delighted that we finally have a Colorado wilderness bill before the House of Representatives, for the first time since 1980.

This bill represents several important breakthroughs, including agreements on most boundary matters and, for the time being, an agreement to disagree on water.

Hanging in the balance is some of the most spectacular land in all of America, ranging from mountains more than 14,000 feet high to dramatic river canyons, from sweeping expanses of alpine tundra to enchanting stands of old-growth forests. We who are now alive have been entrusted with these marvelous lands as their temporary stewards. It is our responsibility to ensure that they remain part of the natural heritage that we leave for future generations.

It would be impossible to identify all the work that has gone into preparing this bill for floor action today. I would like to single out for particular appreciation the work of Representative BRUCE VENTO, the chairman of the subcommittee, and Representative BEN NIGHTHORSE CAMPBELL, in whose district most of these lands lie, for their leadership and cooperation in preparing this bill. Both have given me every consideration and every courtesy in listening to my many suggestions, drawn from the Bowen Gulch Wilderness Act—which Representative PAT SCHROEDER and I first introduced in October 1990, and re-introduced in March 1991—and from the comprehensive suggestions I made in May 1991, when I recommended wilderness designation for 1,073,070 acres in Colorado, and wilderness study for another 147,950 acres.

Although this bill does not include protection for all these lands, it would add about 670,000 acres in Colorado to the National Wilderness

Preservation System. This would increase from 4 percent to 5 percent the amount of Colorado's land that's been set aside for permanent preservation in its natural state.

The new wilderness areas are spectacular lands that will stir the soul of anybody who sees them. The flagship area of this bill is the Sangre de Cristo Wilderness, to include about one-third of the total acreage in the bill. The Bowen Gulch additions to the Never Summer Wilderness will include major stands of old-growth trees. The new Williams Fork Wilderness will include a portion of the continental divide in the congressional district I represent.

One area, however, that I think deserves additional consideration by the conferees to be appointed on this bill is the Piedra area. In the Senate bill, this would be a new wilderness area; in the House bill, it would remain a wilderness study area. When the conferees consider the boundaries for this area, I urge them to pay particular attention to the spectacular old-growth timber stands in this area, to include as much of these irreplaceable trees as possible in the protected area.

Rather than boundary questions, though, it has been the question of water that has delayed agreement on a new Colorado wilderness bill. The water question has been whether to explicitly create new water rights for these lands to protect their wilderness values.

As we are going to pass this bill today, we will answer that question in the affirmative—we are going to reserve additional water rights for these lands arising from their new wilderness status. This is what Congress has done in every case in recent years when passing new wilderness bills for Western States, and I believe it is an appropriate thing to do today. I have long said, and I still believe, that wilderness needs water. By explicitly reserving water for the wilderness areas, we will ensure that the new wilderness cannot be dried up. By including some important provisions, we will protect western water law and other water users. Those provisions include:

A provision specifying that the extent of the wilderness water rights shall be the amount of water necessary to fulfill the purposes of the wilderness designation—and therefore not necessarily all the water flowing through the wilderness area.

A requirement that the wilderness water rights be adjudicated in State water courts.

A clarification that the seniority of the wilderness water rights is determined by the date of the wilderness designation, not by the date of the creation of an underlying national forest or other land reservation.

Adopting this language would be a good way to settle the water controversy. It is a well-balanced way to ensure that wilderness gets the water it needs and that western water law and water users are protected. And, because it is the language that has been included in other wilderness bills, it avoids balkanizing the national wilderness preservation system—splitting it up into different subsystems, each with its own rules and policies.

We are all aware, of course, that the Senate version of this bill includes different water provisions, and that this will be a matter of some controversy in the conference committee. Because the new areas are almost entirely just headwaters areas—with very little or no oppor-

tunity for upstream diversions outside the wilderness areas—this is perhaps more important because of the principles and precedents involved than because of any actual resource conflicts in the areas involved. Because this is so, I think this controversy can be settled in other ways besides finally adopting the explicit reserved water rights language the House is passing today. As I've suggested in testimony to both House and Senate committees, it would be acceptable to me to remain silent on the issue, and continue to leave it to the courts, which, after all, created the reserved water rights doctrine.

The decisions Congress must make about these lands are, literally, decisions for all time. If, for example, the old-growth trees in Bowen Gulch or the Sandbench area are cut, we may not see their kind again in our State for a long, long time. On the other hand, if Congress sets these areas aside as wilderness, that is the best guarantee of protection that has ever been devised by any government. Because no land designated as wilderness has ever been removed from the wilderness preservation system. And, according to the basic Wilderness Act of 1964:

A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain.

Nowhere else in the United States Code is there another passage of statutory language with such poetry. That's understandable. Even Congress can have its emotions stirred when it passes a wilderness act. I hope that, after a conference committee meets to resolve the differences between the House and Senate versions of this bill, that this again will be a year when Congress passes a Colorado wilderness act.

Mr. SCHAEFER. Mr. Speaker, I rise today to comment on the legislation now before us, the Colorado Wilderness Act of 1991. S. 1029 is the culmination of over a decade of attempts to create additional wilderness acreage in Colorado.

I fully support efforts to move forward toward a final resolution to the longstanding disputes we have faced in this debate. Throughout the process, I have fought for two goals: The protection of private property rights, and the guarantee that Colorado maintain control of the water resources flowing through our State.

S. 1029, as passed by the Senate, accomplishes these two goals. Boundary lines and water language were carefully drafted to ensure that result and I am supportive of this carefully constructed compromise. With the changes the House has produced, however, it is clear that these outcomes are now in jeopardy.

The House has ignored the wishes of Colorado's delegation by inserting a Federal reserved right to the water in these newly created wilderness areas. My position on this matter is quite clear: I am firmly opposed to granting the Federal Government such a water right. It is senseless for the purposes of this legislation and is poor public policy. Additionally, there are many private inholdings in some of the areas which will create a burden for

both the Federal Government and the property owners for years to come.

I am not enamored with these developments. However, Colorado's two Senators, Messrs. BROWN and WIRTH, have requested that we move ahead. The bill we are considering right now is a bad one. I reluctantly allow this process to move forward only at the Senators' request and with their steadfast assurances that the final product emerging from this Congress will wholly reflect the hard-fought compromise passed by the Senate.

Colorado is a beautiful State and has many areas worthy of the wilderness designation. I look forward to accomplishing this result in a responsible manner and remain hopeful that this can be accomplished prior to our adjournment this year.

Mr. VENTO. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. DOOLEY). The question is on the motion offered by the gentleman from Minnesota [Mr. VENTO] that the House suspend the rules and pass the Senate bill, S. 1029, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended, and the Senate bill, as amended, was passed.

A motion to reconsider was laid on the table.

#### CIVIL LIBERTIES ACT AMENDMENTS OF 1992

Mr. FRANK of Massachusetts. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4551) to amend the Civil Liberties Act of 1988 to increase the authorization for the Trust Fund under that Act, and for other purposes, as amended.

The Clerk read as follows:

H.R. 4551

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

##### SECTION 1. SHORT TITLE.

This Act may be cited as the "Civil Liberties Act Amendments of 1992".

##### SEC. 2. AUTHORIZATION FOR TRUST FUND.

Section 104(e) of the Civil Liberties Act of 1988 (50 U.S.C. App. 1989b-3(e)) is amended by striking "\$1,250,000,000" and inserting "\$1,650,000,000".

##### SEC. 3. DEFINITIONS.

Section 108(2) of the Civil Liberties Act of 1988 (50 U.S.C. App. 1989b-7(2)) is amended in the matter preceding subparagraph (A) by inserting ", or the spouse or a parent of an individual of Japanese ancestry," after "Japanese ancestry".

##### SEC. 4. BENEFIT OF THE DOUBT; JUDICIAL REVIEW.

(a) BENEFIT OF THE DOUBT.—Section 105(a) of the Civil Liberties Act of 1988 (50 U.S.C. App. 1989b-4(a)) is amended—

(1) by redesignating paragraphs (3) through (7) as paragraphs (4) through (8), respectively; and

(2) by inserting after paragraph (2) the following:

"(3) BENEFIT OF THE DOUBT.—When, after consideration of all evidence and relevant material for determining whether an individ-

ual is an eligible individual, there is an appropriate balance of positive and negative evidence regarding the merits of an issue material to the determination of eligibility, the benefit of the doubt in resolving each such issue shall be given to such individual."

(b) JUDICIAL REVIEW.—Section 105 of such Act is amended by adding at the end the following:

"(h) JUDICIAL REVIEW.—

"(1) REVIEW BY THE CLAIMS COURT.—A claimant may seek judicial review of a denial of compensation under this section solely in the United States Claims Court, which shall review the denial upon the administrative record and shall hold unlawful and set aside the denial if it is found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

"(2) APPLICABILITY.—This subsection shall apply only to any claim filed in court on or after the date of the enactment of this subsection."

(c) CONFORMING AMENDMENTS.—Section 105 of such Act is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) by striking "(6)" and inserting "(7)"; and

(ii) by striking "(4)" and inserting "(5)";

(B) in subparagraph (B) of paragraph (4) (as redesignated by subsection (a)(1) of this section)—

(i) by striking "(4)" and inserting "(5)"; and

(ii) by striking "(5)" and inserting "(6)";

(C) in paragraph (6) (as redesignated by subsection (a)(1) of this section)—

(i) by striking "(4)" and inserting "(5)"; and

(ii) by striking "(3)" and inserting "(4)"; and

(D) in paragraph (7) (as redesignated by subsection (a)(1) of this section) by striking "(6)" and inserting "(8)"; and

(2) in subsection (b) by striking "(6)" and inserting "(8)".

##### SEC. 5. TERMINATION OF DUTIES OF ATTORNEY GENERAL.

Section 105(e) of the Civil Liberties Act of 1988 (50 U.S.C. App. 1989b-4(e)) is amended by striking "when the Fund terminates." and inserting "180 days after the Fund terminates."

##### SEC. 6. EXCLUSION OF PAYMENTS AS INCOME FOR VETERANS BENEFITS.

(a) EXCLUSION.—Section 105(f)(2) of the Civil Liberties Act of 1988 (50 U.S.C. App. 1989b-4(f)(2)) is amended by striking out ", or the" and inserting "or available under any other law administered by the Secretary of Veterans Affairs, or for purposes of determining the".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective as of August 10, 1988.

##### SEC. 7. COMPLIANCE WITH BUDGET ACT.

Section 110 of the Civil Liberties Act of 1988 (50 App. 1989b-9) is amended—

(1) by inserting "(a) IN GENERAL.—" before "Subject to";

(2) in subsection (a) (as so designated by paragraph (1))—

(A) in the first sentence, by inserting "and except as provided in subsection (b)" after "105(g) of this title"; and

(B) by striking the second sentence; and

(3) by adding at the end the following new subsections:

"(b) PAYMENTS FROM DISCRETIONARY APPROPRIATIONS.—

"(1) PAYMENTS.—Any such payment made to an individual who is not of Japanese an-

cestry and who is an eligible individual on the basis of the amendment made by section 3 of the Civil Liberties Act Amendments of 1992 shall not be an entitlement and shall be made from discretionary appropriations.

"(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for fiscal year 1993 and each subsequent fiscal year such sums as may be necessary for the payments from discretionary appropriations described in paragraph (1).

"(c) DEFINITIONS.—As used in this section—  
"(1) the term 'discretionary appropriations' has the meaning given that term in section 250(c)(7) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 900(c)(7)); and

"(2) the term 'entitlement' means 'spending authority' as defined in section 401(c)(2)(C) of the Congressional Budget Act of 1974 (2 U.S.C. 651(c)(2)(C))."

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Massachusetts [Mr. FRANK] will be recognized for 20 minutes, and the gentleman from Pennsylvania [Mr. GEKAS] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK of Massachusetts. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I thank the ranking minority Member for his cooperation in bringing this bill forward.

Mr. Speaker, we passed some time ago, I believe 1988, in the House, in the full Congress, a bill which recognizes the error that was made when innocent people were interned during World War II. We had a procedure set forward at that time to do what we could to undo that error. We could not, of course, totally undo it, but we could do the best that was possible 40-some-odd years later.

I want to commend the Justice Department under this current administration. They have done an excellent job in administering this. You often hear about problems. You hear about money misspent. Here we have had a significant sum of money well spent, well administered. The Justice Department has, in fact, done a better job than we thought they were going to do, and they have, working with the community, effectively the Japanese-Americans, identified a significant number of people we were legally eligible under this bill.

We had a cap on it which now turns out to be an interference with the appropriate administration of the legislation.

We also want to make it clear that spouses not of Japanese ancestry who chose to accompany their spouses when their spouses were incarcerated should be treated in a similar fashion. I should certainly think, with all the emphasis on family, that we would feel that this decision not to have a family split up but to share the fate with one's spouse is a decision that ought to be fully recognized.

These are in the nature of technical amendments. They do not change the

decision we made 5 years ago. They simply give effect to it, and I hope that the legislation will be passed.

Mr. Speaker, I reserve the balance of my time.

Mr. GEKAS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I offer to compliment the gentleman from Massachusetts for the speedy consideration of this piece of legislation.

The Congress may have had a division of opinion back in the late 1980's when we first debated this particular issue, and there was heated and proper debate, as I recall. But the ultimate decision of the Congress then was to make sure that every individual illegally interned during that bad period in American history should be placed on the list to later be compensated by the Government which acted so blatantly illegally against that individual, and so we come to a point today where the issue, as far as we are concerned, is moot.

We want to provide the proper remedy for those persons interned. The debate of the past as to whether or not we should do it no longer appears on the horizon, no longer is a part of the debate. The only thing that remains to do is to make sure we complete the job that the original legislation offered to do, namely, to compensate those interned.

The numbers having been now expanded to include people not first contemplated is the right thing to do for the Congress. And so we offer complete and unanimous support for the legislation.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. FRANK of Massachusetts. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. EDWARDS], a very distinguished senior member of the subcommittee.

Mr. EDWARDS of California. Mr. Speaker, I thank the chairman of the subcommittee for yielding me this time and congratulate him and the gentleman from Pennsylvania [Mr. GEKAS] for the splendid work in bringing this bill to the floor.

Mr. Speaker, I rise today in support of H.R. 4551, the Civil Liberties Act Amendments of 1992. I want to commend my colleagues on the Judiciary Committee for their work in bringing this measure to the floor. I also want to express my deep appreciation for the work of my friend and fellow Californian, NORM MINETA, for his consistent leadership on this issue. Without his persistence, the United States Government may never have issued its long-awaited apology to the Japanese-Americans interned during World War II.

Mr. Speaker, today we are not breaking new ground. We are merely taking the next necessary steps to honor a

commitment Congress and the President made to Japanese-Americans in 1988.

During World War II, the United States Government ordered Japanese-Americans from their homes and into internment camps. Practically overnight, these Americans lost much of what they had worked for and what they thought the United States Government would protect.

The experience of Japanese-Americans during World War II shows in painful detail that the protections and rights provided by the Constitution are meaningless unless we as citizens are prepared to make certain they are upheld. In 1942, too many Americans were willing to ignore the Constitution and give in to the mistaken belief that Japanese-Americans would not be loyal to the United States.

All Americans, not just those interned in resettlement camps, were diminished by the arbitrary denial of civil liberties of Japanese-Americans. These rights are meaningless unless everyone enjoys them.

Congress reaffirmed its commitment to individual rights by passing the Civil Liberties Act of 1988. Under this bill, the United States Government issued a formal apology for the internment policy and began making reparations payments to the survivors.

Because original estimates of the number of eligible reparations recipients were low, Congress now needs to authorize additional funds for the program. By passing H.R. 4551 we can ensure that everyone entitled to reparations under the 1988 act will receive them. Not only will the Federal Government's apology then be complete, but we will have also shown that there is meaning behind the words in the Constitution.

#### GENERAL LEAVE

Mr. FRANK of Massachusetts. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 4551, the bill now under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. MATSUI. Mr. Speaker, I rise today in strong support of H.R. 4551, the Civil Liberties Act Amendments of 1992. Today we will vote to finish the work which we began in 1988 when we passed the original Civil Liberties Act. That act promised to help America come to grips with one of its darkest moments: the forced internment of Japanese-Americans, citizens of the United States, who were victims of racism and mass hysteria. H.R. 4551 assures that a mere technicality will not prevent eligible and deserving former internees from receiving just compensation, and also provides compensation for deserving individuals who were inadvertently overlooked by the original legislation.

This issue transcends the narrow interests of providing redress to those who were in-

turned during World War II, and symbolizes an affirmation of the Constitution of the United States of America. The Civil Liberties Act of 1988 affirmed one of the fundamental, inalienable rights upon which this country was founded: the right to freedom from unconstitutional interference with liberty of the citizens of the United States of America.

Some historians continue to debate whether there were significant losses when Japanese-Americans were relocated from their homes, or whether the camps provided an idyllic experience. Yet those who merely look at the property and business losses of those who were interned overlook the highest cost of all—individual pride and trust in the American system. This debate has never been about money. The issue cuts to the heart of the foundation of freedom and liberty in American society.

Today we are seeking to fulfill the congressional intent of the redress law and to complete the healing process that is so important to Americans of Japanese ancestry. I wish the original legislation was sufficient, but we are confronted by the fact that the original redress funding request was inadequate. The Office of Redress Administration at the Department of Justice estimates that redress funding will expire before nearly 15,000 eligible recipients receive their payments. If the funding is exhausted, we would be left with an inequity where most would have received payments, but others, whose birthdates came later, would still be awaiting payments.

H.R. 4551 will increase the authorization to provide adequate funding for all eligible recipients. The new authorization would cover the payments for all the surviving recipients and maintain a fund created by Congress to educate the public about the internment history. We have an obligation to make good on reparations for those who were removed from their homes and interned 50 years ago. This legislation will bring that obligation to its fruition and relieve the pains that have not been healed by time. The legislation also incorporates provisions originally introduced in my bill, H.R. 4553, which protects benefits due to veterans and survivors. Without this clarifying language, those veterans and survivors who also receive redress payments would lose their eligibility for VA pension benefits, which is a stark departure from the intent of Congress.

H.R. 4551 is extremely important legislation which will send a signal to the American people that the American system works and that Americans can believe in the safeguards of our Constitution. I ask all Members of Congress to join me in supporting this legislation.

Mr. GEPHARDT. Mr. Speaker, I rise today in strong support of H.R. 4551, additional authorization for the Civil Liberties Act. The passage of the Civil Liberties Act of 1988 represented a courageous and necessary step toward making amends for the harm done to American citizens during World War II. I would like to recognize Representative MINETA for his tireless work and dedication on behalf of this effort.

Fifty years ago our Government issued directives ordering the evacuation and internment of 120,000 persons of Japanese ancestry from the west coast of the United States. Some were forced from their homes with just

a few hours' notice. Families could take with them only what could be carried, and they were taken by train to internment camps where they were held for up to 4 years.

Two-thirds of those relocated to the internment camps were U.S. citizens. The others were permanent resident aliens who were ineligible for citizenship because of their race. These acts of injustice were committed on the basis of security reasons although not one act of sabotage or espionage has ever been documented.

The losses incurred by the victims of these events are incalculable. Their deprivations go far beyond the homes, farms and businesses that were left behind or sold for a fraction of their worth. Careers and children's educations suffered irreparable damage. Their basic constitutional rights of due process and equal protection under the law went ignored. They suffered terrible humiliation and shame as they were regarded as disloyal and dangerous to their own country.

Conditions in the internment camps were difficult. Located inland in desolate areas of Wyoming, Colorado, California, Idaho, Utah, Arkansas, and Arizona, the camps offered little or no privacy, a poor diet, and inadequate medical care. The living quarters were cramped, housing an average family of six in one room.

Ironically, while family and loved ones were being held in barbed-wire camps, thousands of Japanese-Americans were serving in the United States military. To prove their loyalty to their country, many joined the military right from the internment camps. The 442d Regimental Combat Team, made up of second generation Japanese-Americans, was one of the most decorated combat teams in World War II.

The 100th Congress took an historic step in adopting the Civil Liberties Act of 1988, which officially apologized for the internment and authorized reparations payments to the survivors. Through this act, Congress acknowledged that those in power at the time failed to uphold the Constitution. We owe it to every American citizen to follow through on the commitment to correcting that miscarriage.

To date, 50,000 individuals have received their redress payments. The Office of Redress Administration in the Department of Justice has identified 95 percent of those eligible for payment. The program is well under way and is achieving the objectives of the legislation. To complete all redress payments, however, an additional authorization is needed.

Congressman MINETA and I have introduced legislation, the Civil Liberties Act Amendments of 1992, to provide the additional authorization that will enable the Department of Justice to fulfill the mandates of the law. Our legislation authorizes an additional \$400 million for the civil liberties public education fund, which was created in 1988 by the original act.

One purpose of the fund is to make redress payments of \$20,000 to each eligible individual. Earlier it was estimated that 60,000 individual were eligible for payment. The Department of Justice now estimates that the original figure of 60,000 eligible individuals was too low, and has issued its final estimate that a total of 80,000 redress payments will be needed to complete the program.

Once the payments to individuals have been completed, a board of directors of the fund will be named. At that point, moneys in the fund will be used for historical research and public education, with the purpose of ensuring that the internment is remembered and that similar violations of civil liberties never occur again.

Unfortunately, the attitudes that led to the internment have not disappeared. Hate crimes have recently increased dramatically against Asian-Americans and other citizens; suspicion fell on Arab-Americans during the Persian Gulf war, including a troubling program operated by the FBI to interview Arab-Americans about terrorist activity. We cannot afford to relax our efforts to prevent prejudice, discrimination, the abrogation of civil rights, and the violation of civil liberties.

In order to complete the payments to individuals and fulfill the educational purpose of the Civil Liberties Act, I urge support for passage of H.R. 4551 today.

Mr. MINETA. Mr. Speaker, I rise today in strong support of H.R. 4551 and I urge my colleagues to join me in moving for its quick adoption.

Mr. Speaker, the forcible removal and internment of Japanese-Americans during World War II is a stain on our national honor. Thanks to the passage of the Civil Liberties Act of 1988 in the 100th Congress, that stain is finally being erased.

The legislation before us today will complete that process. H.R. 4551, the Civil Liberties Act Amendments of 1992, will authorize the funding necessary to fully implement that act, and will ensure that our Nation lives up to its commitment to redress the wrongs of the internment and evacuation.

As the Commission on Wartime Relocation and Internment of Civilians documented in its report, "Personal Justice Denied," the removal of Japanese-Americans from the west coast was carried out despite the fact that there was not one documented instance of espionage, sabotage or fifth-column activity committed by an American of Japanese ancestry or Japanese resident alien on the west coast.

Without any shred of proof of disloyalty, more than 120,000 Americans of Japanese ancestry were forced from their homes and businesses and into internment camps scattered throughout the country.

When the racial hysteria that followed the attack on Pearl Harbor began to seek out targets, it settled very quickly on Americans of Japanese ancestry. The interviews and arrests were just the beginning. Between December 1941 and February 1942, we were excluded from a growing list of security areas. As we quickly learned, even American citizenship meant nothing if your parents or grandparents happened to have come from Japan.

President Roosevelt's signing of Executive Order 9066 on February 19, 1942, was soon followed by orders from the Army that declared the western halves of the States of California, Oregon, and Washington, and the southern half of Arizona as security zones where Americans of Japanese ancestry would be excluded.

Mr. Speaker, I remember one night in February 1942, when my father called our family together. He told us that he did not know what would happen to him or my mother, since they

were resident aliens. Although my father had been in this country for almost 40 years, the oriental exclusion law prevented my parents from becoming U.S. citizens.

But my father was sure that the Constitution of this Nation would protect his children, all of whom were American citizens. For as long as I live, I will never forget my father's shame and disillusionment when he discovered that he was wrong.

On March 2, 1942, Gen. John L. DeWitt issued his Proclamation No. 2, announcing that all individuals of Japanese ancestry alien and nonalien would be excluded from the west coast.

I was no longer recognized as a U.S. citizen. I had become a nonalien.

Mr. Speaker, it was 50 years ago this year that General DeWitt issued his Proclamation No. 4, instituting the mass relocation and internment.

Many were given just a few days, sometimes only hours, to dispose of their possessions and to leave for the assembly centers. We were allowed to take only what we could carry, and none of us knew whether we would ever see our homes again.

We were told that our loyalty this country was in doubt simply because of our ancestry. As General DeWitt said:

The Japanese race is an enemy race and while many second and third generation Japanese born on United States soil, possessed of United States citizenship, have become "Americanized," the racial strains are undiluted \* \* \*. That Japan is allied with Germany and Italy in this struggle is no ground for assuming that any Japanese, barred from assimilation by convention as he is, though born and raised in the United States, will not turn against this nation when the final test of loyalty comes.

Or, as General DeWitt put it the next day, "a Jap is a Jap."

When we were forced from our homes and into the camps, we were told that we couldn't be trusted. Later, we were told that the evacuation and the internment were being done for our own protection.

Even as a child of 10 years old, I knew this for the lie that it was. If we were being protected, then why did the guards on the train and the guards on the watchtowers have their guns pointed in at us, instead of out?

For up to 4 years, Japanese-Americans were held in the camps, stripped of our most basic rights as Americans. The shame of the internment and the knowledge that our country judged us disloyal remains with us to this day.

But, Mr. Speaker, the story of Japanese-Americans is ultimately one of enduring and unshakable faith in this country. That faith, and our commitment to this Nation, were demonstrated time and again throughout the war.

By the thousands, Japanese-American men and women volunteered from the camps to serve in the United States military. In all, 33,000 Americans of Japanese ancestry served in the Armed Forces during World War II.

They served in the Military Intelligence Service, they served as medics and teachers, they served in the WAC's, and in the Air Corps.

Their most celebrated contributions were in the Army, where the all-Nisei 100th Battalion and 442d Regimental Combat Team became

two of the most decorated units in American military history.

The 100th Battalion, originally a part of the Hawaii National Guard, left for the European theater in September 1943. Fighting as part of the Allied campaign in Italy, the 1,400 men of the 100th suffered an extraordinary level of casualties.

In just the first month and a half of fighting, the 100th had 78 killed and 239 wounded or injured. During that campaign the 100th ultimately earned 900 Purple Hearts, earning the nickname "The Purple Heart Battalion."

In June 1944, the 100th merged with the 442d Regimental Combat Team, which was composed of Japanese-American volunteers from Hawaii and the United States mainland.

The 442d suffered 9,486 casualties during the 7 major campaigns it carried out in the European theater. By the war's end the 442d had earned 18,143 individual decorations including one Congressional Medal of Honor, 47 Distinguished Service Crosses, 350 Silver Stars, 810 Bronze Stars, and over 3,600 Purple Hearts.

The unit was cited seven times by President Roosevelt and Truman with the Presidential Distinguished Unit Citation.

Americans of Japanese ancestry also played a pivotal role in fighting the war in the Pacific. The volunteers of the Military Intelligence Service provided vital support in translating captured documents and interrogating prisoners.

Among their most notable accomplishments were translations of captured documents revealing the call signs and code names for the entire Japanese Imperial Navy, its air squadrons, and bases. They also translated documents revealing the entire Japanese naval battle plan for the Philippines.

But as these men and women were giving their all to defend this country and its freedoms, they carried with them the pain of knowing that many of their friends and families sat locked behind barbed wire fences in the United States.

We had always believed that these sacrifices would one day be recognized, and that one day our country would realize how unjust our internment had been. In contrast to the tragic disillusionment of 1942, today we know that our faith in this Nation was not misplaced.

Mr. Speaker, I have served in the House for more than 17 years. I can honestly say that I have never felt such pride in this Congress or in this country than on the day the 100th Congress finally passed H.R. 442, the Civil Liberties Act of 1988. With the passage of the Civil Liberties Act, this Nation firmly rededicated itself to the principles and protections of our Constitution, offering the promise of redress to those who had been wronged by the internment.

The legislation before us today is vitally necessary to ensure the fulfillment of that promise.

H.R. 4551, the Civil Liberties Act Amendments of 1992, introduced by my good friends the House majority leader RICHARD GEPHARDT and the Republican whip NEWT GINGRICH, will provide the \$400 million in additional authorization needed to complete the original purposes of the Civil Liberties Act of 1988.

The act authorized \$1.25 billion, based on the estimate that 60,000 internees and evacu-

ees were still surviving at the time the Civil Liberties Act of 1988 was signed into law by Ronald Reagan.

As the Department of Justice's Office of Redress Administration [ORA] has verified individual cases, however, it has become clear that the 60,000 estimate was too low. ORA now expects to verify 80,000 redress claims, requiring an additional \$400 million.

H.R. 4551 would provide the additional \$250 million requested by the President for redress payments in fiscal year 1993. It will authorize \$100 million in fiscal year 1994 to make the final 5,000 redress payments.

H.R. 4551 will also expand the Civil Liberties Act to include individuals not of Japanese ancestry who were interned or evacuated along with their Japanese-American spouses and children.

Mr. Speaker, I was tremendously pleased to see that the Justice Department made this request. It affects a relatively small number, currently estimated to be no more than 40 people, but it is an important group nonetheless.

Since they were not themselves Japanese-Americans, these individuals were not directly affected by the orders that excluded and interned Americans of Japanese ancestry. But because they were the wives and husbands, and mothers and fathers of Japanese-Americans, they faced a horrible choice: Either retain their freedom or preserve their families by following their spouses and children into the internment camps.

Many were women with small children, some only infants when the internment orders came. Those orders were not concerned with whether individuals represented a threat to this country. They cared only about race, and struck even at American children of partial Japanese ancestry.

These parents were told that their children must be taken to an internment camp, but that they themselves could remain free. Those who chose to keep their families together by evacuating or entering the camps were no less affected, and to call their internment voluntary would be ludicrous.

H.R. 4551 will at long last recognize and attempt to redress the injustice and the indignity they suffered.

In addition, H.R. 4551 makes administrative and technical changes to the Civil Liberties Act that were requested by the administration, extending the authority of the Attorney General under the program and clarifying the procedure for judicial review for those whose redress claims have been denied.

Finally, Mr. Speaker, H.R. 4551 will preserve the education function of the civil liberties public education fund. The education program is one of the two key goals of the Civil Liberties Act: To help ensure that such a violation of civil liberties never happens again.

In the wake of our current trade frictions with Japan, hate crimes have dramatically increased against Asian-Americans. Especially in my home State of California, the increase has been disturbing.

On December 7, last year in San Francisco, a gasoline bomb was thrown at a Japanese couple. Last November, a Japanese-American community center in Norwalk, CA, was vandalized and racial slurs painted on the walls. In January of this year, a cross was burned in

front of an Asian restaurant in Los Angeles. Earlier this year, a bomb threat was made against the Los Angeles office of the Japanese-American Citizens League in connection with the day of Remembrance, the Japanese-American community's annual observance of the anniversary of President Roosevelt's signing of Executive Order 9066.

These are not isolated incidents, Mr. Speaker. A recent report by the United States Civil Rights Commission dramatically demonstrated continued violence and prejudice against Americans of Japanese ancestry and all of Asian-American ancestry.

The education function authorized by the Civil Liberties Act will serve a crucial role in disseminating an understanding of the internment, and its place in American history.

If there were any remaining doubts that the search for scapegoats, and the tendency toward unfounded suspicion remain with us today, they were certainly removed for me by the experience of Arab-Americans during the Persian Gulf war.

In late 1990, my office began hearing reports of interviews of Arab-Americans by agents of the Federal Bureau of Investigation and the Secret Service. Loyal Americans found themselves being asked about terrorist activity in the United States, and about their political views on the war.

These people had no information about terrorist activity. Their political views on the war were none of anybody else's business, and certainly not the government's. It was clear to them, and to me, that they were suddenly under suspicion simply because of their ancestry.

For me, Mr. Speaker, and for every American of Japanese ancestry, those questions were chillingly familiar. Once again, a group of Americans were having their loyalty thrown into doubt because we found ourselves at war and conveniently forgot the difference between ancestry and citizenship.

With the leadership of my good friend, Mr. EDWARDS of California, a meeting was arranged with the FBI to discuss these interviews, and I will never forget that meeting.

In that meeting an official of the FBI told us that the interviews were being conducted with Arab-Americans for their own protection. I probably should not have been surprised. But somehow I thought that over the last 50 years they would at least have thought up a new way to word the excuse.

Has the situation improved in 50 years, Mr. Speaker? Certainly.

Today we have political leaders like DON EDWARDS, MERV DYMALLY, BOB MATSUI, NICK RAHALL, and BARNEY FRANK who stood up and said "no." And there is no doubt in my mind that a heightened awareness of what happened to Japanese-Americans during World War II was a powerful weapon in fighting discrimination against Arab-Americans this time.

But it is clear that the attitudes and the prejudices that led to the internment are still with us, Mr. Speaker. We have a duty and an obligation to do everything within our power to see that the story of the internment is known, understood, and remembered.

The education component of the civil Liberties Act is no less important today than it was in 1988, or in 1941.

Finally, Mr. Speaker, I would like to express my gratitude to Chairman JACK BROOKS for moving this legislation forward today; to Speaker TOM FOLEY, who was the lead sponsor of the Civil Liberties Act during his tenure as majority leader; our current majority leader, my good friend RICHARD GEPHARDT, for introducing H.R. 4551; the distinguished Republican whip NEWT GINGRICH, the Judiciary Committee's ranking Republican, HAMILTON FISH, Representatives HENRY HYDE, DON EDWARDS, BOB MATSUI, PATSY MINK, NANCY PELOSI, and all the Members and staff on both sides of the aisle who have helped in the effort to bring this bill forward today. This has truly been a bipartisan effort.

But I must say a special thanks to the gentleman from Massachusetts [Mr. FRANK] for his continued leadership on this program. He and his dedicated staff are owed a debt of gratitude not only by Americans of Japanese ancestry, but by all Americans who treasure the rights and freedoms guaranteed by our great Constitution.

Mr. Speaker, in passing the Civil Liberties Act of 1988 the Congress made a firm commitment to redressing the injustice of the internment, and this Nation rededicated itself to the protections guaranteed to all Americans by our Constitution. H.R. 4551, the Civil Liberties Act Amendments of 1992, will ensure that we live up to that commitment and live up to the promise of redress for those who were interned. I urge my colleagues to support it and the full implementation of the Civil Liberties Act of 1988.

Ms. PELOSI. Mr. Speaker, I rise in support of H.R. 4551, the Civil Liberties Act Amendments of 1992. This bill, of which I am an original cosponsor, seeks to fulfill the promise of the Civil Liberties Act of 1988. The Civil Liberties Act of 1988 authorizes compensation of \$20,000 to eligible persons of Japanese ancestry who were evacuated, relocated, or interned during World War II. H.R. 4551 would ensure that sufficient funds are available to provide compensation to the more than 75,000 individuals eligible to receive payment.

The act included a specific provision that the redress funding would receive entitlement designation, which would free the program from having to compete against so many other programs and ensure that the internees would receive their long-overdue redress. Now that an additional 20,000 internment survivors have been identified by the Office of Redress Administration, passage of H.R. 4551 is needed to guarantee the successful completion of redress compensation.

Mr. Speaker, in California this week, a group of Japanese-Americans, who were seniors in college when they were forced into internment camps in 1942, will return to the University of California at Berkeley to participate in the commencement ceremonies denied them for over 50 years. I was particularly moved by the story of one student who received her diploma from Berkeley while living in horse stalls at Santa Anita racetrack, awaiting the order that would send her family to a permanent internment camp. I offer my special commendation to Chancellor Chang-Lin Tien for his special efforts in organizing this event.

As our Nation continues the healing process from that terrible time in our history, we must

ensure that the promise of redress is met. I urge my colleagues to support H.R. 4551 with the entitlement designation, and urge the President to do so as well.

Mr. FRANK of Massachusetts. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Massachusetts [Mr. FRANK] that the House suspend the rules and pass the bill, H.R. 4551, as amended.

The question was taken: and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

#### JACK ALLEN: THANKS FROM THE CITY OF SAN LEANDRO

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California [Mr. STARK] is recognized for 5 minutes.

Mr. STARK. Mr. Speaker, recently, I commented on one of the hardest working community activists and volunteers I know, Mr. Jack Allen of Hayward, CA. He has been an example of civic contribution to countless East Bay residents.

Jack was largely responsible for the development and approval of the Juan Cabrillo—Joaquim Cabrilho is the Portuguese spelling—stamp that will be issued September 29, in San Diego. Jack, who lives in Hayward, CA, was recently thanked by the mayor of San Leandro, Dave Karp, for all the special work he has done on behalf of Portuguese-American clubs and for the Cabrillo festivals in the city of San Leandro.

I would like to include at this point in the RECORD information on this commemorative stamp and the commendation that Jack received from the city of San Leandro:

CABRILLO STAMP TO BE ISSUED SEPT. 28  
COMMEMORATIVE HONORS EXPLORER WHO  
DISCOVERED SAN DIEGO

Four hundred fifty years after landing in San Diego Bay, explorer Juan Rodriguez Cabrillo will be honored with a 29-cent commemorative stamp to be issued there on Sept. 29.

On Sept. 28, 1542, Cabrillo stepped ashore at a harbor he named San Miguel, the site of modern-day San Diego. His landing on the west coast marked the culmination of a journey which began on June 27, 1542, when he set sail from the Mexican port of Navidad with two ships and a small crew. After discovering San Diego, he continued his expedition, ultimately exploring most of the California coast. In his quest, Cabrillo was injured, and according to a ship's log, died on Jan. 3, 1543.

Though he sailed under the Spanish flag, some historians believe Cabrillo was born in Portugal. This is noted with a marginal inscription which reads, "If he was Portuguese as many believe, his name would be spelled Joao Rodrigues Cabrillo."

Since no portraits of him are known to exist, the stamp image is based on an artist's

conception. The Cabrillo stamp features a large picture of the bearded conquistador against the backdrop of the sea, with a tall ship in view over his shoulder. The words "Explorer of California 1542" are printed in black type in the upper left corner, with "29 USA" printed in black in the upper right corner. "Juan Rodriguez" is printed in black type, with "Cabrillo" printed in large red capital letters below his picture.

The Cabrillo commemorative stamp was designed by Ren Wicks of Los Angeles, designer of the William Piper and William Saroyan (1991) stamps, and the Igor Sikorsky airmail stamp (1988).

#### COMMENDATION

Whereas, Jack Allen worked relentlessly for 12 years to realize his dream—to mark the 450th anniversary of the Discovery of California by Juan Rodriguez Cabrillo with a commemorative postage stamp; and

Whereas, during that time, he personally authored over 400 letters to Postal Service officials and elected officials in Washington, D.C. He befriended Frank Thomas, a veteran Postal Service official in charge of the commemorative stamp program. This year, Mr. Thomas rewarded Mr. Allen's persistent efforts; and

Whereas, Jack Allen will finally realize his dream at the official West Coast unveiling of the stamp in San Leandro on Friday, June 12, 1992.

Now, therefore, I, Dave Karp, Mayor of the City of San Leandro, on behalf of our City Council, do hereby congratulate and commend Jack Allen for his tireless efforts in obtaining his dream, and, in so doing, honoring our City. The City of San Leandro, particularly the members of the local Portuguese community, extends a heartfelt "thank you" to Jack and his wife, Elsie.

In witness whereof, I have hereunto set my hand and caused the Seal of the City of San Leandro to be affixed this 12th day of June, nineteen hundred and ninety-two.

DAVE KARP,  
Mayor, City of Leandro, California.

□ 1250

#### THE BANCA NAZIONALE DEL LAVORO SCANDAL: HIGH-LEVEL POLITICS TRY TO HIDE THE EVIDENCE

The SPEAKER pro tempore (Mr. DOOLEY). Under a previous order of the House, the gentleman from Texas [Mr. GONZALEZ] is recognized for 60 minutes.

Mr. GONZALEZ. Mr. Speaker, as we know, President Bush wanted to make a friend of Saddam Hussein, and he vigorously pursued that policy right up until the eve of the Iraqi invasion of Kuwait. We also know that while the public part of that policy was to use the CCC Program, in the Department of Agriculture, to sell food to Iraq, there was another, a secret layer to the policy, and that aspect was to allow Saddam Hussein to operate a clandestine military procurement network in this country.

Mr. Speaker, I have made reference to this distinction before because there was some confusion even reflected by the deputy Secretary of State, then, now the acting Secretary of State, saying that the CCC Program was it. It

was not. You had commercial, financial transactions also financed through the Banco Nazionale del Lavoro. And this aspect, the commercial, I brought out in detail, so I will not allude to it in detail other than to say that it was this really secret operation that should be of concern particularly to those great guardians of security, all of the vast apparatus of the intelligence that this country has erected, plus the financial institution regulatory network, which we really do not have in our country, to protect our national interest, should be aware that made it possible, this commercial/financial banking access, to procure such things as a .155 artillery shell casing manufactured by an American corporation but into which some Iraqi interests bought the required percentage in order to have access to blueprints and everything else.

So that when our soldiers went to the sands of Araby with their .155 military artillery shells, they had the same shells fired back at them. It is still going on. This is the reason for my concern. Iraq, actually, in all truth, has been one of the minor plans in this very canny, very astute, very knowledgeable way of working through the crevices and the gaps in our international banking regulatory system in America.

The administration, last summer, was willing to admit that its public policy was a mistake: "Oh, made a mistake." But they do not take responsibility for the mistake. It used to be, and it still is in other countries, like in England, Great Britain, when the Foreign Secretary Harrington, later an associate of Henry Kissinger & Associates, and still later recently the envoy to Yugoslavia, supposed to be the peace envoy, when Lord Carrington fouled up in the case of the Malvinas, as the Argentines called them, or the Falklands, as the British call it, he resigned. We used to do that in our country. We used to have members of the Cabinet, when they could not stomach something, they quit, and they say, "Look, we don't go along with that." Not now, not since the ideological compulsion and the takeoff on an ideological basis of our governmental leaders since the President Reagan's advent, and Reagan/Bush, and now Bush. So that they make mistakes and they, "Oh, well, yes, sure, but we will admit now that you brought this out," and they resisted stoutly bringing anything out, but, "Yes, it was a mistake, in retrospect it looks like a mistake, but at that time it was our policy to see how," in the words of the President, "we could bring Saddam Hussein and Iraq into the confraternity of the civilized nations."

You are going to bring that kind of pattern of behavior by a leader of a country and his regime by arming them? It is ridiculous.

So, it still goes to the greatest lengths to prevent anyone from knowing about the secret policy that allowed Iraq to pursue the development of nuclear arms and other aspects and weapons of mass destruction, by means of its clandestine procurement network in Europe and here in the United States. And I say not only Europe, but China, North Korea.

Both the publicly known food policy and the secret weapons procurement network were largely financed through the Atlanta branch or agency, as they call it, chartered by the State of Georgia, of the BNL, or the Banco Nazionale del Lavoro, government-owned, headquartered in Rome, by the Italian Government. Thus, when BNL-Atlanta offices were raided by the FBI almost exactly a year before the Iraqi invasion of Kuwait, alarm bells sounded all over. As the BNL case unraveled, the Bush administration engaged in a concerted effort to control the political damage. For years, the administration had used the CCC Program as a foundation of United States-Iraq policies and relations. The BNL scandal threatened to halt that program, and the administration was quite fearful of losing the most important tool that it was using to engage the government of Saddam Hussein.

In addition, if anybody learned that our Government was permitting Iraq to operate its secret procurement network, this would severely embarrass Washington as well.

On the Italian side, not only were there billions of dollars in potential losses to worry about at BNL and the Italian taxpayer—that is, the Government-owned bank—lost about almost the same amount of money as the American taxpayers have through its operations. That is in excess of \$2 billion of taxpayers' money. Here we have, oh, all of these alarms and outcries about appropriating maybe \$4 million for an education program. Here we are blowing away that amount of money with the consequences, that are still yet to be fully measured and only time and the future, of the folly of the expedition into the sands of Araby.

So that on the Italian side, not only was there this lost potential but the scandal also had the potential to damage the Government in Italy politically, if BNL's headquarters in Rome were shown to be part of the conspiracy.

From the very beginning, the Justice Department of the United States of America pursued the theory that BNL-Atlanta was a rogue operation that defrauded BNL/Rome, though they knew very different, very well.

As it happens, this was a politically, very convenient theory. It excuses Federal bank regulators who had a completely passive, in fact I will say criminally negligent, approach to regulating foreign banks and left the job to ill-

equipped State regulators. It excuses the government back in Rome, which allowed its branch in Atlanta to carry out a multi-billion-dollar criminal enterprise, and the rogue bank theory also makes it easier for government to deny the true extent of its knowledge about this scandalous affair.

□ 1300

But the problem with the rogue bank theory is that it seems highly improbable, in fact it is improbable, and I will say, given my knowledge of the workings of the operations of the state-owned institutions in other countries, not only Italy, it is more than just improbable, it is impossible for them not to have had known that an agency or branch, call it what you will, in Atlanta would be involved in more than \$6 billion just in transactions involving Iraq without some level of knowledge or assent or consent from higher authority—namely, DNL headquarters in Rome. So the critically important question arises, what did the higher levels of BNL know about these massive loans to Iraq? Nothing, as they are maintaining, and as I am fighting the Justice Department, the CIA, or rather they are fighting me, the State Department and the Treasury, because I am trying to save the taxpayers more than \$395 million that they are being sued for by the BNL bank on the basis that they had no knowledge of these machinations and conspiracies.

How ridiculous and how just absolutely insidious that men and women in power in our government, sworn under oath to uphold the processes and the Constitution, would be so ready because of their overweening exercise of usurped power to expose the taxpayers to this continued drain of the resources now that are so desperately needed in our country.

A little over a year ago, I asked the Central Intelligence Agency [CIA] for any information it had on the BNL scandal. I received a report, still classified—it had not been—and a separate letter from the CIA, also classified, a separate letter.

Late last July, I asked the CIA to provide declassified versions of those documents. We are still waiting.

However, I can say that the analysis in those documents confirms that more senior BNL officials in Rome in fact, knew what its Atlanta office had been doing—that is, financing important Iraqi military procurement, including the Condor II missile project.

A CIA report says:

The reports on Iraq and the BNL scandal in general did not add much to our knowledge of the scandal. Most of the reports repeated information available in the press or contained sources' opinion of speculation about the scandal which, although interesting and useful, was not critical. The exceptions are that BNL financing helped pay for the Condor II missile project, and confirmation of press allegations that more senior BNL offi-

cials in Rome had been witting of BNL-Atlanta's activities.

The CIA report reveals that the Iraqis originally had accepted loans signed by an Atlanta BNL official, but that later during the relationship as the loans increased in value, the Iraqis wanted authorization from higher level BNL officials in Rome rather than from Atlanta branch officials. The CIA report states: "BNL agreed to this request and the loans were then signed by bank officers in Rome."

I cannot report the exact extent of knowledge of these higher level BNL officials, because vital evidence has been denied to me since the Attorney General decided to claim that national security interests require him to prevent the Congress from seeing so-called classified documents. Among that evidence is a number of intercepted communications between the BNL-Atlanta and its Rome headquarters.

A bank committee investigator had an opportunity and an appointment, he thought, to see those documents in May, but the visit was canceled at the behest of Nicholas Rostow, of the infamous Rostow gang that I have referred to before, the so-called legal adviser of President Bush's National Security Council and the Attorney General, who seem to occupy the position of stonewallers in chief.

In any event, it is clear that the BNL case stirred up a huge political storm, since all sides—Iraq, Rome, and Washington, DC had embarrassing secrets that they wanted to keep. Iraq wanted to keep things cozy with Washington—so they were willing, according to one Federal Reserve memo, to sacrifice one person to United States prosecution in early 1990. The Government of Italy wanted "some kind of damage control" according to a cable from the United States Ambassador, dated October 26, 1989—only a few weeks after the FBI raided BNL's Atlanta office. This cable is worth quoting at greater length:

The Chairman and the Director General called on the Ambassador (October 19) to express their concerns about developments in the BNL-Atlanta affair. They suggested that the matter should be raised to a political level and indicated their desire to cooperate fully with the U.S. Government authorities while at the same time making it fairly clear they want to achieve some kind of damage control.

It is also worth noting that the cable was not only sent to the State Department; it was also sent from Rome to the Justice Department in Washington. In fact, all the cables from the U.S. Embassy in Rome that contained references to damage control were routed to the Justice Department in Washington.

A few weeks before the October 26 cable, a snippet of information from a source close to the U.S. Embassy in Baghdad reported that the stress of the BNL scandal might have caused the Italian Ambassador in Iraq to collapse.

This same source stated that the suicide of the former Italian military attache to Iraq was tied to the BNL scandal. The cable reporting all this clearly shows one reason why, a few weeks later, our Ambassador in Rome was asked to raise the BNL case to a political level and to suggest some kind of damage control.

Clearly, all sides had compelling political reasons to portray the activities of the Atlanta branch as a rogue operation. But the CIA report, which contradicts the rogue operation theory, raises many critical questions:

When did the CIA obtain this information and who at the CIA was aware of it?

Was this information forwarded to the Justice Department and the U.S. attorney's office in Atlanta? If the answer is yes, has the information been thoroughly investigated?

If the information is authentic, why did the Justice Department stick with the rogue bank theory of prosecution?

Was the White House or State Department aware of this information?

Those questions, though I have herein before answered some and in fact put documentation in since February, still need to be further answered. We must find out whether a corrupt and a failed policy toward Iraq also corrupted the criminal investigation of the BNL. We must find out whether or not the fits and starts in the prosecution of the BNL case has anything to do with our Government's or the Italian Government's desire to achieve "some sort of damage control."

□ 1310

From the start of the BNL scandal in August 1989, officials from BNL's Rome headquarters repeatedly contacted the U.S. officials and made it clear that they did not want to be the subject of U.S. law enforcement investigations. In light of today's revelation that BNL's management was indeed aware of the Atlanta office loans to Iraq, it is not surprising that top BNL officials were nervous about becoming the subject of a criminal investigation.

Fallout from the scandal did not limit itself to BNL officials. The Atlanta scandal rocked the highest levels of the Italian Government. A November 1989, CIA report states:

The BNL affair, in combination with other scandals, has cast a shadow on Prime Minister Andreotti's three month old government.

Since BNL is owned by the Italian Government, the top officials of the bank are political appointees. Any wrongdoing on the part of the top political appointees of BNL could cause considerable embarrassment for the political party that made the appointments. It is reasonable to assume that avoiding personal liability and embarrassing the political apparatus could be prime motivations for BNL officials in

Rome to deny knowledge of the BNL-Atlanta scandal.

It is also reasonable to conclude that fear of political disaster could push BNL officials to the point of approaching U.S. officials to achieve "some sort of damage control." In fact, on numerous occasions BNL officials approached U.S. officials to discuss the BNL scandal.

The scandal forced BNL Chairman Nerio Nesi and Vice Chairman Giacomo Pedde to resign soon after public disclosure of the debacle. Mr. Nesi's replacement was a man named Giampiero Cantoni. Mr. Cantoni had close ties to the Socialist Party and was a close ally of former Prime Minister Craxi. A State Department cable indicates that Cantoni's ties to Craxi were a prerequisite for his selection to replace the discredited Mr. Nesi.

On numerous occasions Mr. Cantoni approached United States Ambassador to Italy, Peter Secchia, about achieving damage control in the BNL investigations. Given the political nature of his appointment, it is not surprising that Mr. Cantoni would approach the U.S. Government to ask for damage control. Mr. Cantoni did not act alone; other BNL officials also approached the United States asking for similar consideration. The United States Government appears to have acquiesced to the Italian requests, and coincidentally, has secrets of its own to keep buried, and, in fact, by now some, if not all, might have been—what do they call it—shredded?

I mentioned earlier Ambassador Secchia's cable of October 26, 1989, in which Mr. Cantoni was portrayed as asking for damage control in the BNL case. Damage control may be just what he got when you consider that less than 10 days after his request, the White House called the Atlanta prosecutor in charge in the BNL case in order to discuss the case. Was this just a coincidence that happened to come less than 10 days after this call? Well, if you believe that, my colleagues, I am sure you believe in the tooth fairy.

Mr. Cantoni's requests for damage control continued well into 1990. Just days before the invasion of Kuwait, a July 25, 1990, cable from Ambassador Secchia to the State Department contains the following passage:

Professor Cantoni, the Chairman of BNL, and the Ambassador had a long discussion at a local event last week in northern Italy. He (Cantoni) expressed once more his concern over the ongoing investigation of the BNL-Atlanta branch's Iraq loans. Cantoni has spoken to the Ambassador on several occasions about his concerns regarding the BNL Atlanta branch affair. Cantoni did not ask for any intervention . . . Yet, he made a pitch for the U.S. government to go slowly before making indictments.

Evidently Mr. Cantoni was not aware that the case had been delayed by the U.S. attorney's office in Atlanta who had reassigned the lead prosecutor to

another case for the entire summer of 1990. This reassignment is most mysterious given that the BNL case was the largest, and arguably, the most important case ever at the U.S. attorney's office in Atlanta.

The reassignment of the lead prosecutor is also arguably the most obvious sign that the BNL indictment was delayed for political purposes. At the time of the reassignment in May 1990, United States-Iraq relations were at a critical juncture. An indictment of BNL or an aggressive investigation of the Italians or Iraqis involved in the scandal at that juncture would certainly have complicated United States-Iraq relations.

In fact, I have placed in the RECORD numerous documents showing exactly that that is what our top level officials were saying, and in fact Secretary Baker himself, and I placed a document in the RECORD saying, he did not want to have anything disturb the United States-Iraqi relations.

In fact, the indictment was not even redrafted until well after the Iraqi invasion of Kuwait and it was not handed down until late February 1991.

The Justice Department in Washington apparently heard loud and clear Cantoni's repeated appeals for damage control and this could have led to a go-slow approach to the BNL investigation. There are several memos that make it crystal clear that when the Justice Department in Washington, DC, took control of the BNL case inexplicable delays and complications occurred.

Transferring control of the case to Washington enabled Bush administration political appointees at the Justice Department to play a direct role in handling the BNL case. This ultimately led to the BNL indictment being delayed and the quashing of any serious investigation of BNL officials in Rome as well as Iraqis involved in the scandal. In other words, by taking control of the case, the Attorney General was in a position to grant the Italians their wish for damage control. He was also able to accommodate White House and State Department concerns about revelations of the administration's own role and participation.

Another CIA memo demonstrates that the United States had granted the Italians, and themselves, some kind of damage control. Regarding the impact of the BNL scandal on United States-Italian relations, the report states:

Rome appears satisfied to date with cooperation of the U.S. investigating agencies and appreciates the low key manner in which Washington has reacted.

Another memo supporting the assertion that the Justice Department in Washington interfered with the case is a Federal Reserve memo of April 5, 1990, which states:

The resignation of the U.S. Attorney in Atlanta has led to a number of difficulties in

that investigation. These difficulties are compounded by what is perceived as interference from the Justice Department in Washington.

□ 1320

Justice corrupting its own self, corrupting and abdicating and frustrating the very oath of office and constitutional responsibilities inherent in those officials and in those positions.

The committee has additional documents providing evidence that political considerations were translated into damage control. Former investigators assigned to the BNL case in Atlanta have voiced frustration at their inability to vigorously pursue the Iraqis, the Turks, and BNL officials in Rome that were involved in the scandal.

A February 6, 1990, Federal Reserve Bank of New York memo shows how politics influenced events.

The Federal Reserve Bank of New York is the No. 1 in our country, the one that really runs the show for our banking system. I want to remind my colleagues that the Federal Reserve Board is not a Federal agency. It is a creature and a hand maiden of the private commercial banking system of the United States, even though the Congress created them, like it did the CIA.

The Congress created the CIA in the 1947 National Security Act, but it has been used as a tool for personal either vindictiveness or political combat by Presidents.

Presidents have taken over, so the CIA, like the Federal Reserve Board, does not think they have any accountability to the Congress. That means the people.

Oh, my colleagues, our Congresses since 1913 have abdicated their grave responsibilities through the years to the point today of no return, where our country is imperiled as it never has been since our founding, as far as its financial and economic freedom, not to speak of the standard of living, is concerned. It is in grievous peril, and my frustration is that there has been heedless regard of some of us that have spoken out for more than 26 years.

The committee has additional documents providing evidence that political considerations were translated into damage control. I repeat, we know the former investigators have been so frustrated because they were impeded in their obligation to pursue all involved, both Atlanta officials, Turks, Iraqis, and Italians.

A February 6, 1990, Federal Reserve Bank of New York memo shows how politics did and has influenced events.

The memo states, "A planned trip to Italy by criminal investigators was put off because of BNL-asserted concerns regarding the Italian press."

Now, let me say something for the benefit of my colleagues and fellow Americans. The Italian press, particularly in Rome, has been most indefatigable

gable, and the investigating committee of the Roman Senate and its chairman, Senator Carta, with whom I met here in the United States and some of his colleagues, and they have had as a matter of public revelation what the CIA does not want the American people to know, and has written, though they have not come forth, to charge that somehow, somewhere, in some manner, some nebulous manner, amorphous, shapeless, I have violated the national security.

Well, I stand before the bar of judgment of my colleagues, the representatives of the people. I have placed in the RECORD—what? What the Congress is not supposed to know? Documents that should not be available to the Congress, even though Supreme Court decision after Supreme Court decision has upheld the absolute and supreme power of the Congress to know?

The question then remains why should they not feel in that secret basement, dark and dank areas of the CIA and the other so-called security agencies, not to believe they can do everything, from mayhem and murder, not just to foreign officials, but here in the United States? Even though their charter, the 1947 Security Act, limits the CIA to offshore, they have involved themselves, going back to the famous plumbers and some of the apparatchiks belonging to the CIA and still belonging to the CIA and responsive to them, plotting such things as around the clock surveillance—of whom? Jack Anderson, the columnist, because he had written something that looked like somebody had leaked.

See, in my case they accuse me of having leaked something. You cannot say I leaked. I put it in the RECORD.

Now, what I say is, gosh, just think how much I have done in behalf of stimulating the subscription to the CONGRESSIONAL RECORD. If for nothing else I think we ought to be glad that there is interest in reading the CONGRESSIONAL RECORD nowadays.

But going back to this other, you had plotters accustomed to having been involved in offshore hit operations for the CIA not finding it easy to dispense with that domestically. So there was even comments then about how are you going to get this guy?

So they had round the clock surveillance, 24-hour surveillance, on Jack Anderson for a month. One of them, one of the kooks that had crept up, guys like G. Gordon Lilly—Liddy—who used to say look, and he would get a match and would burn his own hand and would not win.

You had E. Howard Hunt. The only thing I know about E. Howard Hunt was 2 years ago in July, in fact July 14, I go back to my district every weekend, and I came in that Saturday morning. I arrived at the San Antonio Airport, and there was a couple there that used to be in my district and

moved to a small town up in what we call the hill country.

They recognized me and said, "Oh, Congressman. How are you? We are so glad to see you."

I saluted them and addressed them. I was leaving when this individual comes up. I had never met him before, but from his pictures and all I could tell that what he said was true.

He said, "You are Congressman GONZALEZ?"

I said, yes. He said, "Well, I am E. Howard Hunt, and you are nothing but a—" and then he used a bad word.

Well, I had two little bags I was carrying, very small, so I just dropped them. I noticed he had a shoulder holster with a pistol. It was obvious.

So I said, "Mister, since you want to use sailors' language, here is what I think of you." And then I used some choice words.

I said, "Let me tell you something else. You take one step forward closer to me or you make a move for the gun in your shoulder holster, and I will swear to you I will take it from you and in self defense I will kill you with it."

He looked at me startled, turned around, and walked away. I picked up my bags and walked out of the airport.

That is all I know. Now, was he E. Howard Hunt? Well, he sure looked like him. What was his beef? I do not know. What was he doing in San Antonio? I do not know. Why does he still have a shoulder holster and pistol? I do not know. He is ex-CIA. They say ex, but there ain't no such thing.

□ 1330

Given that, all I can say is that we have reached a point in our country where our people are no longer citizens. Our constituents are not citizens any more. They are subjects, like the subjects of the majesties of the King of England and the others have been. And that is what we were supposed to be all about in America, that we were going to get away from that.

We were going to be citizens, sovereign, and the source of all power, as the Constitution says right in its Preamble: "We, the people of the United States," not the President, not the Congress, not the judges or the courts, we, the people, in order to establish, do ordain and establish, we, the people.

We have gotten away from that. We have forgotten it, and even our citizens think that, my gosh, here are these men running for the Presidency, "Elect me, I will solve all problems," as if it was not a tripartite government where the lawmaking, judiciary is coequal, just as sovereign, separate and independent as the executive branch. But there is not anybody, and by the way, I hear some of the minority, ex-administration employers, by their own proclamation, you would think the Presidency is omnipotent.

If we reach that point, we are doomed. We have no Constitution, and once that break is made from our shore mooring, we will be flopping up and down in these heavy waters of distress. And our people will no longer be citizens, as they are not now. They are subjects.

The President is not the President. He is a potentate. He is a Caesar.

Now incidentally, anybody thinks that I am saying that about present Presidents, I inveigh all against, even before I got to this Congress, against the President having the power to compel an unwilling American to go outside of the continental United States and risk his life in an undeclared war, a Presidential.

Our country was made up of people and subsequent influx of people who wanted to get away from the king-made wars.

Why, my colleagues, do you think the makers of the Constitution placed inexorably, undividingly, unqualifying the power to declare war in the Congress? That is all I have been saying since even before I came to this Congress, and I have said that with Presidents in between, Democrat, Republican, what have you.

Now, as I have said, Chairman Cantoni was not the only BNL employee that approached the Embassy about achieving damage control. A cable from Ambassador Secchia, that is our Ambassador in Rome, Ambassador Secchia to the State Department, March 19, 1990, states:

Executive Vice President DeVito of BNL called on econ officer March 16 to register concern that BNL might be soon indicted in the U.S. for corporate vicarious criminal liability in connection loans by its Atlanta branch to Iraq. DeVito said matter was urgent. The Justice Department he thought has taken the investigation out of the hands of the U.S. Attorney in Atlanta who had regarded BNL as a victim of its own employees in Atlanta. The Justice Department took a different view partly for political reasons.

The DeVito cable went on:

\*\*\* from the current (BNL) managements point of view \*\*\* an indictment would add insult to injury. The Government of Italy he implied, would be terribly unhappy with such a development. The Government could not stand by idly while the largest bank in Italy—controlled by the Treasury Ministry—suffer such an indignity.

The unmistakable message of DeVito's conversation with the Ambassador is that BNL was fully aware that the Justice Department was calling the shots in the BNL case and that BNL would not tolerate being the subject of the criminal investigation. Of course, Mr. DeVito knew that a BNL indictment would be damaging to Mr. Andreotti's government and it appears he was sent to Ambassador Secchia to get that message across.

Not surprisingly, according to Mr. Barr, the man sitting in the Attorney General's chair today, an August 10,

1992, Special Prosecutor report, it was about this time that the Justice Department found a "lack of culpability" by BNL-Rome.

Here is our Attorney General already saying, look, taxpayers, this suit BNL has, let them collect it, because I say they did not know.

This was August 10, last month.

Since BNL-Rome was never vigorously pursued by the Justice Department, it is safe to conclude that the U.S. Government got the message. How convenient.

As I mentioned, investigators in the BNL case felt frustrated at not being able to vigorously pursue the Iraqis involved in the BNL case. Attorney General Barr addressed this issue in his August 10 Iraqgate report which states:

The Atlanta prosecutors did not seek any other foreign travel: they believed that the Iraqis would be evasive and uncooperative \* \* \*

That is contradicted by memoranda that I have inserted in the RECORD since February showing clearly that the diplomatic officials wanted to protect and keep any Iraqi and even a Jordanian from getting indicted in the United States. This is quite puzzling, that is, Barr's statement here, given that the fact that on March 15, 1990, the Justice Department wrote the State Department asking to interview a half dozen Iraqis involved in the BNL scandal. The prosecutors in Atlanta were never allowed to talk to the Iraqi targets. Could it be that Mr. DeVito's calls for damage control were heard loud and clear by the State Department and Justice Department? And could it be that the White House didn't want to offend Saddam Hussein, or embarrass itself, which is more likely?

In past reports I have provided overwhelming evidence that shows the U.S. Attorney in Atlanta expected to bring the BNL indictment in early 1990 and that it never materialized after the indictment was sent to the Justice Department in Washington, DC for review. I have quoted from over a half dozen documents that support that fact.

A February 1990 Federal Reserve memo shows how high level politics influenced events. The memo states:

\* \* \* Entrade is willing to pay a \$1 million penalty provided no individual from the firm is convicted. The Iraqis are willing to sacrifice one individual to the vagaries of the U.S. criminal judicial system.

This memo shows that the BNL case was far enough along in early 1990 to have negotiations for a plea agreement with Entrade and the Iraqis related to their role in the BNL case. Regarding the investigation of Entrade for its role in the BNL scandal, the February 1990 Federal Reserve memo goes on to state: "A trip to Istanbul was put off at the request of Attorney General Thornburgh."

The memo says the reason Thornburgh delayed the investigative

trip of the U.S. Attorney to investigate Entrade was the stinging criticism of the BCCI criminal settlement.

□ 1340

The memo states, and I quote,

The criticism of the BCCI criminal settlement has motivated the Attorney General to have the BNL matter reviewed by main Justice in Washington before any settlement is agreed to by the U.S. Attorney.

This information is in direct conflict with Barr. I just cannot find myself, even though he sits in that position, identifying him as an Attorney General. He has traduced that office. He has traduced his oath of office. He has betrayed a trust, and I cannot respect that. I respect the office of Attorney General, because that has been a traditional office since the first administration in our country, but not Barr.

The Iraqgate report of Barr's claiming the plea agreement was abandoned because of Entrade's change in plans, and it was in fact a political decision, which, of course, the Justice Department denies.

We may never know exactly what has happened in BNL-Atlanta. Much may come out, beginning today, when Christopher Drogoul and the other BNL employees make their statements in court or before our committee. I have signed a subpoena to be dated after sentencing.

Meanwhile, we already know that the government of Italy had plenty of reason not to want all the details of what BNL-Rome knew, to be revealed. We know also that the Italian government worked hard to gain damage control, and events here in the United States would lead a reasonable mind to conclude that they got what they wanted. After all, it was also very much in Washington's interest to keep the details quiet.

And so the Justice Department says in its whitewash report of August 10, that BNL management was more or less careless, but not involved. This is despite the CIA report that says BNL-Rome was asked to sign off on important deals BNL-Atlanta made with Iraq, and agreed to do so—a report that says clearly, Rome knew what was happening, and our Government is aware of that fact.

But then, it is not in our Government's political interest to let the world know just how much the White House and other agencies knew about Saddam Hussein's use of BNL loans to aid its military industrialization effort and the BNL-financed secret military procurement network operating in Europe and in our country.

Everyone, it seems, wanted damage control. That is why the Attorney General wanted to stop my committee's investigation even before it started in 1990. That is why the White House-led

Rostow gang set up snares and hurdles to stop anyone who asked questions. That is why the White House and numerous Government agencies today refuse to turn over BNL-related documents to the committee.

Why not? They cannot say that it is an ongoing national security matter, so why? I just ask that question elliptically, because I leave it to the judgment of my colleagues.

That is also why the Attorney General spent months and months reviewing the BNL indictment, which by the way, was not handed down until the day after fighting in the gulf stopped. That same damage control is what undoubtedly accounts for the stonewalling that continues to this day. Mr. Barr, a loyal political appointee, is more interested in damage control than in justice. Clearly his masters have much to fear if all the facts are ever fully disclosed.

What panjandrum in the White House, after all, is willing to acknowledge that it was United States Government policy to provide Iraq with militarily useful technology—even technology for Iraq nuclear weapons program? Sadly, that is exactly what happened. It is too sorry a tale for the President and State Department to admit. One can only wonder: how many other foreign governments have been allowed—or may be allowed today—in fact, I know they are. Does anybody among my colleagues think the kind of crime we have in this country, particularly the mere \$1 trillion drug money laundering, would be possible without the deficiencies and if not witting or unwitting collaboration, of banks, regulators, government officials, low- and high-level State, local, and Federal? Of course not.

We get the kind of crime we deserve, because we as a people, I am sorry and sad to say, have been willing to forsake our inheritance for a mess of pottage.

The policy toward Iraq was cynical, unprincipled, and had a tragic outcome, and will continue to have, but the dense curtain of secrecy may forever hide the full extent of this disaster.

It is convenient for all parties to hide the facts. The White House no longer cares about Saddam Hussein, of course, but it surely is caring about burying its mistakes, and that is exactly what they are doing.

Mr. Speaker, I append to my statement the documentation which I mentioned for the references I have made:

COMMITTEE ON BANKING,  
FINANCE AND URBAN AFFAIRS,  
Washington, DC, August 20, 1991.

Hon. WILLIAM H. WEBSTER,  
Director of Central Intelligence, Central Intelligence Agency Washington, DC.

DEAR JUDGE WEBSTER: The Banking Committee is conducting an investigation into the operations of the Banca Nazionale del Lavoro (BNL). I ask for your cooperation with the Committee's investigation.

Between 1985 and 1990, BNL provided Iraq with over \$4 billion in unauthorized loans that were used to purchase agricultural products and industrial goods. Many of the individuals and beneficiaries of the BNL loans to Iraq are based in foreign countries. The Committee would like to learn more about the foreign beneficiaries of BNL loans to Iraq are based in foreign countries. The Committee would like to learn more about the foreign beneficiaries of BNL loans to Iraq, and respectfully asks the CIA to provide, if available, foreign intelligence information on the following:

1. Wafia Dajani (Jordanian Citizen) and his related companies: Amman Resources, Amman, Jordan; Amman Resources International, Georgetown, Grand Cayman; Araba Holdings, Inc. Panama; Aqaba Packing Co., Amman, Jordan.
  2. Technology and Development Group (TDG) London, England.
  3. TMG Engineering Limited, London, England.
  4. Matrix-Churchill Limited (MCL) Coventry, England.
  5. Tigris Trading Company, Baghdad, Iraq.
  6. Al-Arabi Trading Company, Ltd.
  7. Meed International, Ltd, England.
  8. Kintex, Sophia, Bulgaria (aka "Globus" or "Korekom").
  9. TechnoExport Foreign Trade Company, Ltd., Czechoslovakia.
  10. Bank for Foreign Economic Affairs of the USSR, Moscow, USSR.
  11. Exporthleib, Moscow, USSR.
- THE FOLLOWING IRAQI GOVERNMENT ENTITIES AND IRAQI INDIVIDUALS:
12. Ministry of Industry and Military Manufacturing, An Agency of the Republic of Iraq.
  13. Nassar State Establishment for Mechanical Industries, An Agency of Republic of Iraq.
  14. Central Bank of Iraq, Baghdad, Iraq; Sadik Taha.
  15. Rafidain Bank, Baghdad, Iraq.
  16. Ali Mutalib Ali, former commercial attache at Iraq's German Embassy.

Thank you for your time and cooperation. With best wishes.

Sincerely,

HENRY B. GONZALEZ,  
Chairman.

CENTRAL INTELLIGENCE AGENCY,  
Washington DC, November 12, 1991.

Hon. HENRY B. GONZALEZ,  
Chairman, Committee on Banking, Finance and Urban Affairs, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: In a letter dated 20 August 1991, the Banking Committee informed us of its investigation into the operations of Banca Nazionale del Lavoro (BNL). As a part of this investigation, the Banking Committee requested any foreign intelligence information this Agency may have on foreign beneficiaries of BNL loans to Iraq. As you are aware, we also are responding to a separate request from your Committee to review summaries of several raw, unevaluated reports on Iraq and BNL. Some of these summaries contain specific information on the Rafidain Bank (item 15 in your 20 August letter).

In addition to the information we are providing at this time, there are other documents, with the security classification TOP SECRET compartmented information, on the Iraq/BNL connection that we are prepared to provide directly to you and the other Committee members. The TOP SECRET compartmented documents also can be made

available to staff members when they have obtained the appropriate clearances.

In response to your request, an extensive search of the files and indices of the appropriate CIA offices produced the following results that are keyed to your letter.

[All portions classified secret]

In addition to providing information from our classified files, we also have included some unclassified material from other open source publications (TAB B), and from the Foreign Broadcast Information Service (FBIS) that may assist you in this investigation. (TAB C)

In the course of searching our records, we identified documents relating to this matter that were originated by the Defense Intelligence Agency, the National Security Agency, United States Information Agency, Department of Justice, and the Department of State. We are prepared to provide these agencies with specific document citations to facilitate their response to the Committee if you wish to obtain these documents from them.

Sincerely,

STANLEY M. MOSKOWITZ,  
Director of Congressional Affairs.

[Enclosures classified secret]

R 261517Z Oct 89  
Fm Amembassy Rome  
To SecState Wash DC 0695  
Treas Dept Wash DC  
Info Dept Justice Wash DC  
AMConsul Milan  
Amembassy Baghdad  
Confidential section 01 of 02 Rome 22656  
LIHDIS  
Please pass Federal Reserve Board and Dir

FBI  
E.O. 12356: Decl: OADR  
Tags: EFIN, ECON, IT  
Subject: Banca Nazionale Del Lavoro Concerns re Atlanta Branch  
Ref: Rome 22019  
1. Confidential—Entire Text.  
2. Summary: The chairman and the director general of Banca Nazionale Del Lavoro (BNL) called on ambassador to express their concerns about developments in the BNL-Atlanta affair. They suggested that the matter should be raised to a political level, and indicated their desire to cooperate fully with USG authorities while at the same time making it fairly clear they want to achieve some kind of damage control.

Confidential

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Ambassador said he would pass on their concerns but could not otherwise be helpful with or comment on a matter under criminal investigation. Separately, treasury minister Carli has blocked an effort by opposition Senators to conduct an investigation into the BNL-Atlanta affair, end summary.

3. The chairman of Banca Nazionale Del Lavoro, Giampiero Cantoni, and the director general, Paolo Savona, called on the ambassador on October 19. The meeting was at Cantoni's request, made during the return flight from the U.S. with President Cossiga. Both Cantoni and Savona had been in the U.S. with President Cossiga's delegation.

4. Contoni expressed concerns about prospective developments in the BNL-Atlanta affair. He said BNL's U.S. lawyers were urging him to raise the issue to a "political" level. He said that his U.S. lawyers thought that charges would be filed under the Rico Act and that BNL/or Iraqi assets could be frozen. Savona was concerned about losing

the CCC guarantee on roughly one billion dollars of BNL-Atlanta's three billion dollar exposure. The men alluded to legislation under consideration in congress providing for USG credits to Iraq being affected by the investigation/charges. Cantoni said FBI agents remained in the Atlanta branch, or had sealed the books. He also maintained that the ex-Atlanta branch manager Drogoul was available and willing to testify to appropriate officials.

5. Cantoni and Savona both made the point that they

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Were willing and anxious to cooperate with USG authorities. They also said their U.S. lawyers would be in Rome on October 25.

6. The ambassador said he would pass on the concerns of BNL and their willingness to cooperate to Washington, but that he was unable to comment or otherwise be helpful on a matter under criminal investigation.

7. On a separate note, treasury minister Carli responded negatively on October 24 to a request by opposition Senators to conduct an investigation into the BNL-Atlanta affair. Carli said that a number of investigations by Italian and U.S. officials were underway. He also noted that bank secrecy laws impeded the bank of Italy from providing information to the Senate.

8. Comment: The remarks on the need to raise this to a political level are interesting as the case has already become a political issue in Italy. The President has become involved as witnessed by the inclusion of Cantoni and Savona in his party in the U.S. Cantoni and Savona, while new to BNL, have close political connections, Cantoni to Craxi and the socialists, and Savona to Cossiga (a fellow Sardinian) and to Carli, his mentor at the Bank of Italy and later at Confindustria. The treasury is the majority shareholder of BNL.

BNL is an upstart bank by Italian standards, dating only to 1913 and owing its growth to its role as the key bank for the government in the 1920s and 30s. It continued to grow in the post-war period, but has been having problems in the past few years. The recently sacked Chairman, Nerio Nesi, had been engaged in an effort to pare down the staff of the bank and separate out some functions while at the same time increase the bank's capital. To achieve the latter, he worked out a deal whereby the state-owned insurance agency INA and the state pension system INPS would take the proceeds from the sale of shares in CREDIOP and invest them in BNL. The result will be a capital increase.

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That will reduce the treasury's ownership from 75 percent to 56 percent. INA is also making a subordinated loan. The capital increase was approved by the BNL board in mid-October, and is to be presented to the shareholders (treasury, INA, INPS plus a scattering of other, mostly public, institutions) on December 13.

BNL's reputation within the Italian banking community and even among its own staff has been suffering for some time. The BNL-Atlanta affair, even if contained, will aggravate BNL's problems. Not least of these are loan to Latin American countries. BNL is said to be one of the two largest lenders to Mexico and has been active in South America as well.

SECCHIA.

FEDERAL RESERVE BANK OF NEW YORK,  
February 6, 1990.

To: Legal Files,  
From: Ernest T. Patrikis.  
Subject: Recent Developments Regarding Banca Nazionale del Lavoro.

On February 6, I spoke with Ed Willingham, General Counsel of the Atlanta Reserve Bank, and among the topics we discussed was current developments regarding BNL. Obviously, the indictments that were expected to come down in January did not materialize. A planned trip to Italy by criminal investigators was put off because of BNL asserted concerns regarding the Italian press.

A trip to Istanbul was put off at the request of Attorney General Thornburg. The criticism of the BCCI criminal settlement has motivated the Attorney General to have the BNL matter reviewed by main Justice in Washington before any settlement is agreed to by the United States Attorney.

Ed reported that Entrade is willing to pay a \$1 million penalty provided no individual from that firm is convicted. The Iraqis are willing to sacrifice one individual to the vagaries of the United States criminal judicial system. Mr. Dragoul has retained high-powered defense counsel. All in all, Ed believes that we will hear little about this matter until some time late in March.

FEDERAL RESERVE BANK OF NEW YORK,  
April 5, 1990.

To: Mr. Corrigan.  
From: Thomas C. Baxter, Jr.  
Subject: Lavoro.

I followed up on your suggestion about a possible connection between Banca Nazionale del Lavoro ("BNL") and the nuclear triggers that were seized in London. As you suspected, there is a connection. Apparently, Von Wedel (a former officer of BNL who is now cooperating with the government) says that one of the transactions done with Rafidian Bank at some point referenced nuclear detonators. According to Von Wedel, this reference scared BNL away from this particular transaction, but it is possible that the lesson the Iraqis learned was to be generic in preparing the credit documentation. Thus, it is entirely possible that BNL financed some of this material.

At any rate, I have been assured that those conducting the criminal investigation in Atlanta are looking into these connections, with a view to developing additional criminal charges. The resignation of the United States Attorney in Atlanta has led to a number of difficulties in that investigation. These difficulties have been compounded by what is perceived as an interference from the Justice Department in Washington.

The press has also made a connection between BNL and the detonators. Attached you will find copies of two Financial Times articles doing just that.

OFFICE OF INTERNATIONAL AFFAIRS,  
Washington, DC, March 15, 1990.

Re request for meeting with Iraqis.

MICHAEL YOUNG,  
Deputy Legal Adviser, U.S. Department of State, Washington, DC.

DEAR MR. YOUNG: The United States Attorney's Office for the Northern District of Georgia is investigating the activities of the Atlanta office of the Banca Nazionale del Lavoro (BNL), an Italian concern. That investigation includes extensions of credit made by BNL to Iraq during the period from January, 1986 to August, 1989. The Government of Iraq is aware of the investigation

and has offered on a number of occasions to cooperate with the United States. The investigation is now at a point where the U.S. Attorney's Office wishes to accept the Iraqi offer and invite Iraq to have certain named individuals come to the United States for interviews.

Therefore, we request that the United States extend in an appropriate fashion, both in Washington and Baghdad, an invitation to Iraq to have the persons named on the attached list travel to the United States to meet with the U.S. authorities conducting the investigation.

In issuing this invitation you may tell Iraq that the investigation is for possible violations of U.S. law, including, 18 U.S.C. §§371, 1001, 1341, 1343, and 2314.

We would like to begin the meetings on March 26, 1990, or as soon thereafter as can be arranged. We expect that each of the persons invited will need to allow for a minimum of three days in the United States in connection with the U.S. Attorney's investigation. Further, the United States offers its assurances that for such time as these individuals are in the United States as our guests and cooperating with the U.S. Attorney's Office, that Office will not serve process upon them or otherwise seek to assert jurisdiction over them. In addition, and pursuant to our standard practice, the United States is prepared to make and pay for the travel arrangements and per diem of each of the persons invited.

Finally, the Commodity Credit Corporation (CCC) and the Department of Agriculture (USDA) are considering a request by Iraq to extend \$500 million in export credit guarantees under CCC's GSM-102 program for the remainder of fiscal year 1990. The USDA and CCC also need to meet with the persons named above in connection with their own investigation into alleged irregularities concerning extensions of credit by BNL to Iraq for commodity purchases under the GSM-102 program during the period from 1985 to 1988 in order to complete the processing of the Iraqi application. Therefore, and in order to accommodate all concerned, we propose that the USDA and CCC meetings with the Iraqis also be scheduled for the time while they are in the United States. In issuing the invitation for them to meet separately with the USDA and CCC, you may wish to inform them that the U.S. Attorney's Office is unable under our law to share the information it has developed with the USDA and the CCC, thus making it impossible to satisfy all U.S. interests in one meeting alone.

If you need further information, feel free to call me at 786-3500.

Sincerely,

DREW C. ARENA,  
Director.

#### LIST OF INVITEES

Abdul Hussein Sahib, Director General, State Company for Foodstuffs Trading.  
Harith Al-Barazanehi, Director General, State Enterprise for Tobacco and Cigarettes.  
Zuhair Daoud, Director General, State Company of Grain Trading and Processing.  
Sadik H. Taha, Director General for Agreements and Loans, Central Bank of Iraq.  
Ahmed Al-Dulaimi, Under Secretary, Ministry of Industry and Military Manufacturing.  
Raja Hassan Ali, Director General, Economic Department, Ministry of Industry.  
Dr. Fadel Jawad Kadhum, Legal Adviser.  
Dr. Safa Al-Habobi, Director General, Al-Nassar Complex Ministry of Industry, Presi-

dent, Chairman of TDG, President of Matrix-Churchill (England).

U.S. DEPARTMENT OF JUSTICE, U.S. ATTORNEY, NORTHERN DISTRICT OF GEORGIA, ATLANTA, GA, JANUARY 9, 1990.

Re: Assistance of Robert Kennedy.  
Mr. ZANE KELLY,

*Federal Reserve Bank, Atlanta, GA*

DEAR MR. KELLY: As you are aware Mr. Kennedy of your office has been providing essential assistance to this office in the BNL-Atlanta criminal investigation since late July 1989. In fact, without Mr. Kennedy's expertise this major case could not have progressed with the speed and depth accomplished to date. We certainly appreciate his efforts as well as those of yourself, Madeline Marsten and Ed Willingham.

Prior to anticipated indictment early next month, we request additional assistance from Mr. Kennedy, which involves a trip to Rome and Istanbul to interview essential non-grand jury witnesses. Travel may commence as early as January 19, 1990.

The stop in Rome is necessary to speak with a number of BNL-Rome employees, officers, and directors at whom Christopher Drogoul and other key subjects have leveled charges of complicity in their BNL-Atlanta scheme. A Rome setting is required for immediate access to all relevant records which may assist in defeating these spurious claims by subjects of our criminal investigation.

The Istanbul portion of the trip is necessary to interview Yavus Tezeller, a Turkish national who has essential knowledge and records regarding kickbacks to BNL-Atlanta's First Vice President, Christopher Drogoul, and his father Pierre Drogoul. Tezeller's attorneys also indicate he can provide information regarding "after sale services," unearned consulting fees, and other payments to the Iraqis, as well as kickbacks paid by United States and multinational companies to obtain Iraqi contracts. This is especially important information in light of the prevailing rumors regarding the Paris Club's intent to reschedule Iraqi debt, including a substantial portion of the \$1.7 billion guaranteed by the CCC. Other Entrado and Enka officials with their relevant documents should also be available for interview.

Thank you again for the support of your office in this most important investigation.

Sincerely,

ROBERT L. BARR, JR.,  
U.S. Attorney.  
GALE MCKENZIE,  
Assistant U.S. Attorney.

#### HON. TED WEISS OF NEW YORK

(Mr. GONZALEZ asked and was given permission to address the House for 1 minute.)

Mr. GONZALEZ. Mr. Speaker, I wish to allude for no more than 30 seconds to the sad and distressing event of today, the passing of a great friend and a great Congressman, the Honorable TED WEISS of New York.

It has been very little noted among us here, but during this last Congress he was assigned to the Committee on Banking, Finance and Urban Affairs, even though he has other official standing committee assignments and obligations. He was there when he was needed, and it was not easy.

Ted was a very principled man. I will just say that I endorse everything that

his colleague, the gentleman from New York, the Honorable JIM SCHEUER, said when he introduced the resolution this afternoon that when we adjourn today we do so in the honor and memory of TED WEISS.

COMMUNICATION FROM HON. CHARLIE ROSE, MEMBER OF CONGRESS

The SPEAKER pro tempore laid before the House the following communication from the Honorable CHARLIE ROSE, Member of Congress:

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON HOUSE ADMINISTRATION,  
Washington, DC, September 11, 1992.

Hon. TOM S. FOLEY,  
Speaker of the House, Washington, DC.

DEAR MR. SPEAKER: This is to formally notify you pursuant to Rule L (50) of the Rules of the House that a member of my staff has been served with a subpoena issued by the United States District Court for the District of Columbia.

After consultation with the General Counsel to the Clerk, we will determine if the compliance with the subpoena is consistent with the privileges and precedents of the House.

Sincerely,

CHARLIE ROSE,  
Chairman.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. GONZALEZ) to revise and extend their remarks and include extraneous material:)

Mr. FRANK of Massachusetts, for 5 minutes, today.

Mr. ANNUNZIO, for 5 minutes, today.

(The following Member (at the request of Mr. GONZALEZ) to revise and extend her remarks and include extraneous material:)

Ms. NORTON, for 60 minutes each day, on September 15, 16, 17, and 18.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. GEKAS) and to include extraneous matter:)

Mr. DUNCAN.

Mrs. ROUKEMA.

Mr. SOLOMON.

(The following Members (at the request of Mr. GONZALEZ) and to include extraneous matter:)

Mr. ANDERSON in 10 instances.

Mr. GONZALEZ in 10 instances.

Mr. BROWN in 10 instances.

Mr. ANNUNZIO in six instances.

Mr. LAFALCE.

Mr. SKELTON in two instances.

Mr. YATRON in two instances.

Mr. STARK in two instances.

Mr. VENTO.

Mr. RANGEL.

Mr. FORD of Michigan.

Mr. LANTOS in two instances.

SENATE BILLS REFERRED

Bills of the Senate of the following titles were taken from the Speaker's table and, under the rule, referred as follows:

S. 2507. An act to amend the Act of October 19, 1984 (Public Law 98-530; 98 Stat. 2698), to authorize certain uses of water by the Ak-Chin Indian Community, Arizona; to the Committee on Interior and Insular Affairs.

S. 2572. An act to authorize an exchange of lands in the States of Arkansas and Idaho; to the Committee on Interior and Insular Affairs, Agriculture, and Merchant Marine and Fisheries.

S. 2880. An act to authorize appropriations for fiscal years 1993 and 1994 for the Office of the United States Trade Representative, the United States International Trade Commission, and the United States Customs Service, and for other purposes; to the Committee on Ways and Means.

S. 3095. An act to restore and clarify the Federal relationship with the Jena Band of Choctaws of Louisiana; to the Committee on Interior and Insular Affairs.

S. 3224. An act to designate the United States Courthouse to be constructed in Fargo, North Dakota the Quentin N. Burdick United States Courthouse; to the Committee on Public Works and Transportation.

ADJOURNMENT

Mr. GONZALEZ. Mr. Speaker, pursuant to House Resolution 564, I move that the House do now adjourn in memory of the late Honorable TED WEISS.

The motion was agreed to; accordingly (at 1 o'clock and 48 minutes p.m.) pursuant to House Resolution 564, the House adjourned until tomorrow, Tuesday, September 15, 1992, at 12 noon, in memory of the late Honorable TED WEISS of New York.

EXECUTIVE COMMUNICATIONS,  
ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

4223. A letter from the Assistant Administrator, Environmental Protection Agency, transmitting a final rule which revises a number of existing regulations in the area of registration and classification procedures, pesticide policies, and data requirements for registration, pursuant to 7 U.S.C. 136w(a)(4); to the Committee on Agriculture.

4224. A communication from the President of the United States, transmitting revised fiscal year 1992 request for appropriations for the Small Business Administration, pursuant to 31 U.S.C. 1107 (H. Doc. No. 102-386); to the Committee on Appropriations and ordered to be printed.

4225. A letter from the Director, the Office of Management and Budget, transmitting the cumulative report on rescissions and deferrals of budget authority as of September

1, 1992, pursuant to 2 U.S.C. 685(e) (H. Doc. No. 102-387); to the Committee on Appropriations and ordered to be printed.

4226. A letter from the Deputy Secretary of Defense, transmitting a report on the status and cost of U.S. commitment to NATO as reflected in the DPQ Response and defense budget request, pursuant to 22 U.S.C. 1928 note; to the Committee on Armed Services.

4227. A letter from the Department of the Navy, transmitting notification of the proposed transfer of the obsolete vessel *Takelma* (ATF 113) to the Government of Argentina, pursuant to 10 U.S.C. 7308(c); to the Committee on Armed Services.

4228. A letter from the Secretary of Defense, transmitting a draft of proposed legislation to amend section 2031 of title 10, United States Code; to the Committee on Armed Services.

4229. A letter from the Secretary of Energy, transmitting the quarterly report on the Strategic Petroleum Reserve during the period April 1, 1992 through June 30, 1992, pursuant to 42 U.S.C. 6245(b); to the Committee on Energy and Commerce.

4230. A letter from the Department of Energy, transmitting a notice of meetings related to the International Energy Program; to the Committee on Energy and Commerce.

4231. A letter from the Advisory Panel on Alzheimer's Disease, Department of Health and Human Services, transmitting the third report on administrative and legislative actions to improve services for individuals with Alzheimer's disease and related dementias, pursuant to 42 U.S.C. 679; to the Committee on Energy and Commerce.

4232. A letter from the Acting Director, Defense Security Assistance Agency, transmitting notice of the Department of the Air Force's proposed Letter(s) of Offer and Acceptance [LOA] to the Coordination Council for North American Affairs for training (Transmittal No. 92-40), pursuant to 22 U.S.C. 2776(b); to the Committee on Foreign Affairs.

4233. A letter from the Assistant Secretary of State for Legislative Affairs, transmitting copies of the original report of political contributions of Alvin P. Adams, of Virginia, to be Ambassador to the Republic of Peru, and members of his family, pursuant to 22 U.S.C. 3944(b)(2); to the Committee on Foreign Affairs.

4234. A letter from the Acting Assistant Secretary for Legislative Affairs, Department of State, transmitting a copy of Presidential Determination 92-44, relative to the eligibility of the Organization of African Unity [OAU] to be furnished defense articles and services under the Foreign Assistance Act and the Arms Export Control Act, pursuant to 22 U.S.C. 2753(a)(1); to the Committee on Foreign Affairs.

4235. A letter from the Department of the Navy, transmitting the 1991 annual report for the Navy Nonappropriated Fund Retirement Plan of Employees of Civilian Morale, Welfare and Recreation, pursuant to 31 U.S.C. 9503(a)(1)(B); to the Committee on Government Operations.

4236. A letter from the Director, Office of Management and Budget, transmitting OMB's cost estimate for Pay-As-You-Go calculations as of August 31, 1992; to the Committee on Government Operations.

4237. A letter from the Director, Office of Management and Budget, transmitting OMB's cost estimate for Pay-As-You-Go calculations as of September 8, 1992; to the Committee on Government Operations.

4238. A letter from the Deputy Associate Director for Collection and Disbursement, Department of the Interior, transmitting no-

tice of proposed refunds of excess royalty payments in OCS areas, pursuant to 43 U.S.C. 1339(b); to the Committee on Interior and Insular Affairs.

4239. A letter from the Deputy Associate Director for Collection and Disbursement, Department of the Interior, transmitting notice of proposed refunds of excess royalty payments in OCS areas, pursuant to 43 U.S.C. 1339(b); to the Committee on Interior and Insular Affairs.

4240. A letter from the Deputy Associate Director for Collection and Disbursement, Department of the Interior, transmitting notice of proposed refunds of excess royalty payments in OCS areas, pursuant to 43 U.S.C. 1339(b); to the Committee on Interior and Insular Affairs.

4241. A letter from the Deputy Associate Director for Collection and Disbursement, Department of the Interior, transmitting notice of proposed refunds of excess royalty payments in OCS areas, pursuant to 43 U.S.C. 1339(b); to the Committee on Interior and Insular Affairs.

4242. A letter from the Deputy Associate Director for Collection and Disbursement, Department of the Interior, transmitting notice of proposed refunds of excess royalty payments in OCS areas, pursuant to 43 U.S.C. 1339(b); to the Committee on Interior and Insular Affairs.

4243. A letter from the Deputy Associate Director for Collection and Disbursement, Department of the Interior, transmitting notice of proposed refunds of excess royalty payments in OCS areas, pursuant to 43 U.S.C. 1339(b); to the Committee on Interior and Insular Affairs.

4244. A letter from the Chairman, Administrative Conference of the United States, transmitting the annual report on fees and other expenses awarded pursuant to 5 U.S.C. 504(e) covering the period from October 1, 1990 through September 30, 1991, pursuant to 5 U.S.C. 504(e); to the Committee on the Judiciary.

4245. A letter from the Secretary of Commerce, transmitting a copy of the cooperative program for the development of tuna and other latent fishery resources of the Central, Western, and South Pacific Ocean, pursuant to 16 U.S.C. 758e-1a; to the Committee on Merchant Marine and Fisheries.

4246. A letter from the Railroad Retirement Board, transmitting the Board's budget request for fiscal year 1994; jointly, to the Committee on Appropriations, Energy and Commerce, and Ways and Means.

4247. A letter from the Railroad Retirement Board, transmitting the Board's budget request for fiscal year 1994, pursuant to 45 U.S.C. 231f; jointly, to the Committees on Appropriations, Energy and Commerce, and Ways and Means.

#### REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. DINGELL: Committee on Energy and Commerce. H.R. 3591. A bill to amend the Public Health Service Act to provide protections from legal liability for certain health care professionals providing services pursuant to such act; with an amendment (Rept. 102-823, Pt. 2). Referred to the Committee of the Whole House on the State of the Union.

Mr. DINGELL: Committee on Energy and Commerce. Conference report on S. 12 (Rept. 102-862). Ordered to be printed.

Mr. BROOKS: Committee on the Judiciary. H.R. 4551. A bill to amend the Civil Liberties Act of 1988 to increase the authorization for the trust fund under that act, and for other purposes; with an amendment (Rept. 102-863). Referred to the Committee of the Whole House on the State of the Union.

Mr. MILLER of California: Committee on Interior and Insular Affairs. H.R. 5534. A bill to authorize the Secretary of the Interior to enter into a cooperative agreement with the William O. Douglas Outdoor Classroom; with amendments (Rept. 102-864). Referred to the Committee of the Whole House on the State of the Union.

Mr. MILLER of California: Committee on Interior and Insular Affairs. H.R. 2737. A bill to provide that a portion of the income derived from trust or restricted land held by an individual Indian shall not be considered as a resource or income in determining eligibility for assistance under any Federal or federally assisted program; with an amendment (Rept. 102-865, Pt. 1). Ordered to be printed.

#### REPORTED BILLS SEQUENTIALLY REFERRED

Under clause 5 of rule X, bills and reports were delivered to the Clerk for printing, and bills referred as follows:

[Submitted September 11, 1992]

Mr. DE LA GARZA: Committee on Agriculture. H.R. 918. A bill to modify the requirements applicable to locatable minerals on public domain lands, consistent with the principles of self-initiation of mining claims, and for other purposes; referred to the Committee on Merchant Marine and Fisheries for a period ending not later than September 14, 1992 for consideration of such provisions of the bill and amendment recommended by the Committee on the Interior and Insular Affairs as fall within the jurisdiction of that committee pursuant to clause 1(n), rule X. (Rept. 102-711 Pt. 2). Ordered to be printed.

#### SUBSEQUENT ACTION ON A REPORTED BILL SEQUENTIALLY REFERRED

Under clause 5 of rule X the following action was taken by the Speaker:

H.R. 918. Referral to the Committee on Merchant Marine and Fisheries extended for a period ending not later than September 15, 1992.

#### PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolu-

tions were introduced and severally referred as follows:

By Mr. HUGHES (for himself and Mr. MOORHEAD):

H.R. 5933. A bill to implement the recommendations of the Federal Courts Study Committee, and for other purposes; to the Committee on the Judiciary.

By Mr. JOHNSON of South Dakota (for himself, Mr. BEREUTER, Mr. SARPALIUS, Mr. MCCLOSKEY, Mr. LEACH, Mr. NUSSLE, Mr. PENNY, Mr. NAGLE, and Mr. DORGAN of North Dakota):

H.R. 5934. A bill to amend the Agricultural Act of 1949 to improve the Farmer-owned Reserve Program, and for other purposes; to the Committee on Agriculture.

By Mr. SCHEUER:

H. Res. 564. Resolution expressing the profound sorrow of the House of Representatives on the death of the Honorable Ted Weiss, a Representative from the State of New York; considered and agreed to.

#### ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

- H.R. 2880: Mr. POSHARD.  
 H.R. 3928: Mr. HEFLEY and Mr. FROST.  
 H.R. 4141: Mr. BLACKWELL, Mr. WAXMAN, Mr. HAYES of Illinois, and Mr. RANGEL.  
 H.R. 4385: Mr. FISH.  
 H.R. 4399: Mr. SHAYS.  
 H.R. 4414: Mr. MATSUI.  
 H.R. 4897: Mr. RITTER.  
 H.R. 5208: Mr. SKAGGS.  
 H.R. 5507: Mr. EMERSON, Mr. GILCREST, and Mrs. MORELLA.  
 H.R. 5542: Mr. SOLOMON.  
 H.R. 5610: Mr. ZELIFF.  
 H.R. 5783: Mrs. UNSOELD, Mr. OLIN, Mr. HENRY, Mrs. KENNELLY, Mr. LIPINSKI, Mr. RANGEL, and Ms. NORTON.  
 H.R. 5927: Mr. BATEMAN.  
 H.J. Res. 478: Mr. TAYLOR of North Carolina, Mr. MARTIN, Mr. ROWLAND, Mr. MORAN, Mr. WILLIAMS, Mr. THOMAS of Georgia, Mr. HATCHER, and Mr. BARNARD.  
 H.J. Res. 520: Mr. CARPER, Mr. FORD of Tennessee, Mr. PURSELL, Mr. SMITH of Texas, and Mr. WELDON.  
 H.J. Res. 522: Mr. RIGGS, Mr. ZELIFF, Mr. FAWELL, and Mr. BALLENGER.  
 H.J. Res. 530: Mr. MORAN, Mr. HOYER, Mr. RANGEL, Mr. BLILEY, Mr. BOUCHER, Mr. GEKAS, Mr. JONES of Georgia, Mr. LIVINGSTON, Mr. MACTLEY, Mr. TAUZIN, Ms. NORTON, Ms. HORN, Mr. RITTER, Mr. GOODLING, Mr. HOCHBRUECKNER, Mr. LANCASTER, Mr. HAYES of Louisiana, Mr. SCHUMER, Mr. GORDON, Mr. GUNDERSON, Mr. NAGLE, Mr. CARR, Mr. MOODY, Mr. BAKER, Mr. SABO, Mr. CALAHAN, Mr. GRANDY, and Mr. OBERSTAR.  
 H. Con. Res. 324: Mr. VANDER JAGT and Mr. CHANDLER.