

with which any money or any other thing of value is offered as a prize or prizes to be paid or presented by the program sponsor or by any other person or persons, as announced in the course of the broadcast.

(2) The term “the listening or viewing public” means those members of the public who, with the aid of radio receiving sets, listen to or view programs broadcast by radio stations.

(c) Penalties

Whoever violates subsection (a) of this section shall be fined not more than \$10,000 or imprisoned not more than one year, or both.

(June 19, 1934, ch. 652, title V, §508, formerly §509, as added Pub. L. 86-752, §9, Sept. 13, 1960, 74 Stat. 897; renumbered §508, Pub. L. 96-507, §1, Dec. 8, 1980, 94 Stat. 2747.)

PRIOR PROVISIONS

A prior section 508 of act June 19, 1934, ch. 652, was renumbered section 507 by section 1 of Pub. L. 96-507, and is classified to section 508 of this title.

§ 510. Forfeiture of communications devices

(a) Violation with willful and knowing intent

Any electronic, electromagnetic, radio frequency, or similar device, or component thereof, used, sent, carried, manufactured, assembled, possessed, offered for sale, sold, or advertised with willful and knowing intent to violate section 301 or 302a of this title, or rules prescribed by the Commission under such sections, may be seized and forfeited to the United States.

(b) Seizure

Any property subject to forfeiture to the United States under this section may be seized by the Attorney General of the United States upon process issued pursuant to the supplemental rules for certain admiralty and maritime claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made if the seizure is incident to a lawful arrest or search.

(c) Laws applicable to seizure and forfeiture

All provisions of law relating to—

- (1) the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws;
- (2) the disposition of such property or the proceeds from the sale thereof;
- (3) the remission or mitigation of such forfeitures; and
- (4) the compromise of claims with respect to such forfeitures;

shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions of this section, except that such seizures and forfeitures shall be limited to the communications device, devices, or components thereof.

(d) Disposition of forfeited property

Whenever property is forfeited under this section, the Attorney General of the United States may forward it to the Commission or sell any forfeited property which is not harmful to the

public. The proceeds from any such sale shall be deposited in the general fund of the Treasury of the United States.

(June 19, 1934, ch. 652, title V, §510, as added Pub. L. 97-259, title I, §125, Sept. 13, 1982, 96 Stat. 1098.)

PRIOR PROVISIONS

A prior section 510, act June 19, 1934, ch. 652, title V, §510, as added May 11, 1962, Pub. L. 87-448, §1, 76 Stat. 68, related to forfeitures for violations of rules and regulations by radio stations operating in common carrier, safety and special radio fields, prior to repeal effective the thirtieth day after Feb. 21, 1978, by Pub. L. 95-234, §§4, 7, Feb. 21, 1978, 92 Stat. 35.

SUBCHAPTER V-A—CABLE
COMMUNICATIONS

PART I—GENERAL PROVISIONS

§ 521. Purposes

The purposes of this subchapter are to—

- (1) establish a national policy concerning cable communications;
- (2) establish franchise procedures and standards which encourage the growth and development of cable systems and which assure that cable systems are responsive to the needs and interests of the local community;
- (3) establish guidelines for the exercise of Federal, State, and local authority with respect to the regulation of cable systems;
- (4) assure that cable communications provide and are encouraged to provide the widest possible diversity of information sources and services to the public;
- (5) establish an orderly process for franchise renewal which protects cable operators against unfair denials of renewal where the operator's past performance and proposal for future performance meet the standards established by this subchapter; and
- (6) promote competition in cable communications and minimize unnecessary regulation that would impose an undue economic burden on cable systems.

(June 19, 1934, ch. 652, title VI, §601, as added Pub. L. 98-549, §2, Oct. 30, 1984, 98 Stat. 2780.)

EFFECTIVE DATE

Pub. L. 98-549, §9(a), Oct. 30, 1984, 98 Stat. 2806, provided that: “Except where otherwise expressly provided, the provisions of this Act [enacting this subchapter and section 611 of this title, amending sections 152, 224, 309, and 605 of this title, section 2511 of Title 18, Crimes and Criminal Procedure, and section 1805 of Title 50, War and National Defense, and enacting provisions set out as notes under this section and sections 543, 605, and 609 of this title] and the amendments made thereby shall take effect 60 days after the date of enactment of this Act [Oct. 30, 1984].”

SHORT TITLE

For short title of Pub. L. 98-549 [enacting this subchapter] as the “Cable Communications Policy Act of 1984”, see section 1(a) of Pub. L. 98-549, set out as a Short Title of 1984 Amendment note under section 609 of this title.

CONGRESSIONAL FINDINGS AND POLICY FOR PUB. L.
102-385

Pub. L. 102-385, §2(a), (b), Oct. 5, 1992, 106 Stat. 1460, 1463, provided that:

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

“(1) Pursuant to the Cable Communications Policy Act of 1984 [Pub. L. 98-549, enacting this subchapter and section 611 of this title, amending sections 152, 224, 309, and 605 of this title, section 2511 of Title 18, Crimes and Criminal Procedure, and section 1805 of Title 50, War and National Defense, and enacting provisions set out as notes under this section and sections 543, 605, and 609 of this title], rates for cable television services have been deregulated in approximately 97 percent of all franchises since December 29, 1986. Since rate deregulation, monthly rates for the lowest priced basic cable service have increased by 40 percent or more for 28 percent of cable television subscribers. Although the average number of basic channels has increased from about 24 to 30, average monthly rates have increased by 29 percent during the same period. The average monthly cable rate has increased almost 3 times as much as the Consumer Price Index since rate deregulation.

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

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

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

“(5) The cable industry has become vertically integrated; cable operators and cable programmers often have common ownership. As a result, cable operators have the incentive and ability to favor their affiliated programmers. This could make it more difficult for noncable-affiliated programmers to secure carriage on cable systems. Vertically integrated program suppliers also have the incentive and ability to favor their affiliated cable operators over 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 [47 U.S.C. 396(a)(5)]. The distribution of unique non-commercial, educational programming services advances that interest.

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

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

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

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

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

“(9) The Federal Government has a substantial interest in having cable systems carry the signals of local commercial television stations because the carriage of such signals is necessary to serve the goals contained in section 307(b) of the Communications Act of 1934 [47 U.S.C. 307(b)] of providing a fair, efficient, and equitable distribution of broadcast services.

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

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

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

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

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

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

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

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

“(18) Cable television systems often are the single most efficient distribution system for television pro-

gramming. A Government mandate for a substantial societal investment in alternative distribution systems for cable subscribers, such as the 'A/B' input selector antenna system, is not an enduring or feasible method of distribution and is not in the public interest.

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

“(20) The Cable Communications Policy Act of 1984, in its amendments to the Communications Act of 1934 [47 U.S.C. 151 et seq.], limited the regulatory authority of franchising authorities over cable operators. Franchising authorities are finding it difficult under the current regulatory scheme to deny renewals to cable systems that are not adequately serving cable subscribers.

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

“(b) STATEMENT OF POLICY.—It is the policy of the Congress in this Act [enacting sections 334, 335, 534 to 537, 544a, 548, and 555a of this title, amending sections 325, 332, 522, 532, 533, 541 to 544, 546, 551 to 555, and 558 of this title, and enacting provisions set out as notes under this section and sections 325, 531, 543, and 554 of this title] to—

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

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

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

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

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

SPORTS PROGRAMMING MIGRATION STUDY AND REPORT

Pub. L. 102-385, §26, Oct. 5, 1992, 106 Stat. 1502, directed Federal Communications Commission to investigate and analyze, on a sport-by-sport basis, trends in migration of local, regional, and national sports programming from carriage by broadcast stations to carriage over cable programming networks and pay-per-view systems, including economic causes and consequences of such trends, and further directed Commission to submit to Congress interim and final reports of such study, no later than July 1, 1993, and July 1, 1994, respectively, along with recommendations for legislative or regulatory activity.

APPLICABILITY OF ANTITRUST LAWS TO PUB. L. 102-385

Pub. L. 102-385, §27, Oct. 5, 1992, 106 Stat. 1503, provided that: “Nothing in this Act [enacting sections 334, 335, 534 to 537, 544a, 548, and 555a of this title, amending

sections 325, 332, 522, 532, 533, 541 to 544, 546, 551 to 555, and 558 of this title, and enacting provisions set out as notes under this section and sections 325, 531, 543, and 554 of this title] or the amendments made by this Act shall be construed to alter or restrict in any manner the applicability of any Federal or State antitrust law.”

EFFECT OF CABLE COMMUNICATIONS POLICY ACT OF 1984 ON JURISDICTION OF FEDERAL COMMUNICATIONS COMMISSION RESPECTING WIRE OR RADIO COMMUNICATIONS THROUGH CABLE SYSTEMS

Pub. L. 98-549, §3(b), Oct. 30, 1984, 98 Stat. 2801, provided that: “The provisions of this Act [enacting this subchapter and section 611 of this title, amending sections 152, 224, 309, and 605 of this title, section 2511 of Title 18, Crimes and Criminal Procedure, and section 1805 of Title 50, War and National Defense, and enacting provisions set out as notes under this section and sections 543, 605, and 609 of this title] and amendments made by this Act shall not be construed to affect any jurisdiction the Federal Communications Commission may have under the Communications Act of 1934 [this chapter] with respect to any communication by wire or radio (other than cable service, as defined in section 602(5) of such Act [section 522(5) of this title]) which is provided through a cable system, or persons or facilities engaged in such communications.”

§ 522. Definitions

For purposes of this subchapter—

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

(2) the term “affiliate”, when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person;

(3) the term “basic cable service” means any service tier which includes the retransmission of local television broadcast signals;

(4) the term “cable channel” or “channel” means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by the Commission by regulation);

(5) the term “cable operator” means any person or group of persons (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system;

(6) the term “cable service” means—

(A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and

(B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service;

(7) the term “cable system” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed

to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of 1 or more television broadcast stations; (B) a facility that serves subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of subchapter II of this chapter, except that such facility shall be considered a cable system (other than for purposes of section 541(c) of this title) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with section 573 of this title; or (E) any facilities of any electric utility used solely for operating its electric utility system;

(8) the term “Federal agency” means any agency of the United States, including the Commission;

(9) the term “franchise” means an initial authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to section 546 of this title), issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system;

(10) the term “franchising authority” means any governmental entity empowered by Federal, State, or local law to grant a franchise;

(11) the term “grade B contour” means the field strength of a television broadcast station computed in accordance with regulations promulgated by the Commission;

(12) the term “interactive on-demand services” means a service providing video programming to subscribers over switched networks on an on-demand, point-to-point basis, but does not include services providing video programming prescheduled by the programming provider;

(13) the term “multichannel video programming distributor” means a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming;

(14) the term “other programming service” means information that a cable operator makes available to all subscribers generally;

(15) the term “person” means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity;

(16) the term “public, educational, or governmental access facilities” means—

(A) channel capacity designated for public, educational, or governmental use; and

(B) facilities and equipment for the use of such channel capacity;

(17) the term “service tier” means a category of cable service or other services provided by a cable operator and for which a separate rate is charged by the cable operator;

(18) the term “State” means any State, or political subdivision, or agency thereof;

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

(20) the term “video programming” means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

(June 19, 1934, ch. 652, title VI, §602, as added Pub. L. 98-549, §2, Oct. 30, 1984, 98 Stat. 2780; amended Pub. L. 102-385, §2(c), Oct. 5, 1992, 106 Stat. 1463; Pub. L. 104-104, title III, §§301(a), 302(b)(2), Feb. 8, 1996, 110 Stat. 114, 124.)

AMENDMENTS

1996—Par. (6)(B). Pub. L. 104-104, §301(a)(1), inserted “or use” after “the selection”.

Par. (7)(B). Pub. L. 104-104, §301(a)(2), added subpar. (B) and struck out former subpar. (B) which read as follows: “a facility that serves only subscribers in 1 or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities uses any public right-of-way;”.

Par. (7)(C) to (E). Pub. L. 104-104, §302(b)(2)(A), which directed substitution of “, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with section 573 of this title; or (E)” for “, or (D)”, was executed by making the substitution for “; or (D)” to reflect the probable intent of Congress.

Pars. (12) to (20). Pub. L. 104-104, §302(b)(2)(B), (C), added par. (12) and redesignated former pars. (12) to (19) as (13) to (20), respectively.

1992—Pub. L. 102-385 added pars. (1), (12), and (18) and redesignated former pars. (1) to (10) as (2) to (11), respectively, former pars. (11) to (15) as (13) to (17), respectively, and former par. (16) as (19).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-385 effective 60 days after Oct. 5, 1992, see section 28 of Pub. L. 102-385, set out as a note under section 325 of this title.

EFFECTIVE DATE

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

PART II—USE OF CABLE CHANNELS AND CABLE OWNERSHIP RESTRICTIONS

§ 531. Cable channels for public, educational, or governmental use

(a) Authority to establish requirements with respect to designation or use of channel capacity

A franchising authority may establish requirements in a franchise with respect to the designation or use of channel capacity for public, educational, or governmental use only to the extent provided in this section.

(b) Authority to require designation for public, educational, or governmental use

A franchising authority may in its request for proposals require as part of a franchise, and may require as part of a cable operator’s proposal for a franchise renewal, subject to section 546 of this title, that channel capacity be designated

for public, educational, or governmental use, and channel capacity on institutional networks be designated for educational or governmental use, and may require rules and procedures for the use of the channel capacity designated pursuant to this section.

(c) Enforcement authority

A franchising authority may enforce any requirement in any franchise regarding the providing or use of such channel capacity. Such enforcement authority includes the authority to enforce any provisions of the franchise for services, facilities, or equipment proposed by the cable operator which relate to public, educational, or governmental use of channel capacity, whether or not required by the franchising authority pursuant to subsection (b) of this section.

(d) Promulgation of rules and procedures

In the case of any franchise under which channel capacity is designated under subsection (b) of this section, the franchising authority shall prescribe—

(1) rules and procedures under which the cable operator is permitted to use such channel capacity for the provision of other services if such channel capacity is not being used for the purposes designated, and

(2) rules and procedures under which such permitted use shall cease.

(e) Editorial control by cable operator

Subject to section 544(d) of this title, a cable operator shall not exercise any editorial control over any public, educational, or governmental use of channel capacity provided pursuant to this section, except a cable operator may refuse to transmit any public access program or portion of a public access program which contains obscenity, indecency, or nudity.

(f) "Institutional network" defined

For purposes of this section, the term "institutional network" means a communication network which is constructed or operated by the cable operator and which is generally available only to subscribers who are not residential subscribers.

(June 19, 1934, ch. 652, title VI, § 611, as added Pub. L. 98-549, § 2, Oct. 30, 1984, 98 Stat. 2782; Pub. L. 104-104, title V, § 506(a), Feb. 8, 1996, 110 Stat. 136.)

AMENDMENTS

1996—Subsec. (e). Pub. L. 104-104 inserted before period at end “, except a cable operator may refuse to transmit any public access program or portion of a public access program which contains obscenity, indecency, or nudity”.

EFFECTIVE DATE

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

REGULATIONS

Pub. L. 102-385, § 10(c), Oct. 5, 1992, 106 Stat. 1486, provided that: “Within 180 days following the date of the enactment of this Act [Oct. 5, 1992], the Federal Communications Commission shall promulgate such regula-

tions 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.”

[For information regarding constitutionality of section 10(c) of Pub. L. 102-385, set out above, see Congressional Research Service, *The Constitution of the United States of America: Analysis and Interpretation*, Appendix 1, *Acts of Congress Held Unconstitutional in Whole or in Part by the Supreme Court of the United States*.]

§ 532. Cable channels for commercial use

(a) Purpose

The purpose of this section is to promote competition in the delivery of diverse sources of video programming and to assure that the widest possible diversity of information sources are made available to the public from cable systems in a manner consistent with growth and development of cable systems.

(b) Designation of channel capacity for commercial use

(1) A cable operator shall designate channel capacity for commercial use by persons unaffiliated with the operator in accordance with the following requirements:

(A) An operator of any cable system with 36 or more (but not more than 54) activated channels shall designate 10 percent of such channels which are not otherwise required for use (or the use of which is not prohibited) by Federal law or regulation.

(B) An operator of any cable system with 55 or more (but not more than 100) activated channels shall designate 15 percent of such channels which are not otherwise required for use (or the use of which is not prohibited) by Federal law or regulation.

(C) An operator of any cable system with more than 100 activated channels shall designate 15 percent of all such channels.

(D) An operator of any cable system with fewer than 36 activated channels shall not be required to designate channel capacity for commercial use by persons unaffiliated with the operator, unless the cable system is required to provide such channel capacity under the terms of a franchise in effect on October 30, 1984.

(E) An operator of any cable system in operation on October 30, 1984, shall not be required to remove any service actually being provided on July 1, 1984, in order to comply with this section, but shall make channel capacity available for commercial use as such capacity becomes available until such time as the cable operator is in full compliance with this section.

(2) Any Federal agency, State, or franchising authority may not require any cable system to designate channel capacity for commercial use by unaffiliated persons in excess of the capacity specified in paragraph (1), except as otherwise provided in this section.

(3) A cable operator may not be required, as part of a request for proposals or as part of a proposal for renewal, subject to section 546 of

this title, to designate channel capacity for any use (other than commercial use by unaffiliated persons under this section) except as provided in sections 531 and 557 of this title, but a cable operator may offer in a franchise, or proposal for renewal thereof, to provide, consistent with applicable law, such capacity for other than commercial use by such persons.

(4) A cable operator may use any unused channel capacity designated pursuant to this section until the use of such channel capacity is obtained, pursuant to a written agreement, by a person unaffiliated with the operator.

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

(6) Any channel capacity which has been designated for public, educational, or governmental use may not be considered as designated under this section for commercial use for purpose of this section.

(c) Use of channel capacity by unaffiliated persons; editorial control; restriction on service; rules on rates, terms, and conditions

(1) If a person unaffiliated with the cable operator seeks to use channel capacity designated pursuant to subsection (b) of this section for commercial use, the cable operator shall establish, consistent with the purpose of this section and with rules prescribed by the Commission under paragraph (4), the price, terms, and conditions of such use which are at least sufficient to assure that such use will not adversely affect the operation, financial condition, or market development of the cable system.

(2) A cable operator shall not exercise any editorial control over any video programming provided pursuant to this section, or in any other way consider the content of such programming, except that a cable operator may refuse to transmit any leased access program or portion of a leased access program which contains obscenity, indecency, or nudity and may consider such content to the minimum extent necessary to establish a reasonable price for the commercial use of designated channel capacity by an unaffiliated person.

(3) Any cable system channel designated in accordance with this section shall not be used to provide a cable service that is being provided over such system on October 30, 1984, if the provision of such programming is intended to avoid the purpose of this section.

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

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

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

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

(B) Within 180 days after October 5, 1992, the Commission shall establish rules for determin-

ing maximum reasonable rates under subparagraph (A)(i), for establishing terms and conditions under subparagraph (A)(ii), and for providing procedures under subparagraph (A)(iii).

(d) Right of action in district court; relief; factors not to be considered by court

Any person aggrieved by the failure or refusal of a cable operator to make channel capacity available for use pursuant to this section may bring an action in the district court of the United States for the judicial district in which the cable system is located to compel that such capacity be made available. If the court finds that the channel capacity sought by such person has not been made available in accordance with this section, or finds that the price, terms, or conditions established by the cable operator are unreasonable, the court may order such system to make available to such person the channel capacity sought, and further determine the appropriate price, terms, or conditions for such use consistent with subsection (c) of this section, and may award actual damages if it deems such relief appropriate. In any such action, the court shall not consider any price, term, or condition established between an operator and an affiliate for comparable services.

(e) Petition to Commission; relief

(1) Any person aggrieved by the failure or refusal of a cable operator to make channel capacity available pursuant to this section may petition the Commission for relief under this subsection upon a showing of prior adjudicated violations of this section. Records of previous adjudications resulting in a court determination that the operator has violated this section shall be considered as sufficient for the showing necessary under this subsection. If the Commission finds that the channel capacity sought by such person has not been made available in accordance with this section, or that the price, terms, or conditions established by such system are unreasonable under subsection (c) of this section, the Commission shall, by rule or order, require such operator to make available such channel capacity under price, terms, and conditions consistent with subsection (c) of this section.

(2) In any case in which the Commission finds that the prior adjudicated violations of this section constitute a pattern or practice of violations by an operator, the Commission may also establish any further rule or order necessary to assure that the operator provides the diversity of information sources required by this section.

(3) In any case in which the Commission finds that the prior adjudicated violations of this section constitute a pattern or practice of violations by any person who is an operator of more than one cable system, the Commission may also establish any further rule or order necessary to assure that such person provides the diversity of information sources required by this section.

(f) Presumption of reasonableness and good faith

In any action brought under this section in any Federal district court or before the Commission, there shall be a presumption that the price, terms, and conditions for use of channel capacity designated pursuant to subsection (b)

of this section are reasonable and in good faith unless shown by clear and convincing evidence to the contrary.

(g) Promulgation of rules

Notwithstanding sections 541(c) and 543(a) of this title, at such time as cable systems with 36 or more activated channels are available to 70 percent of households within the United States and are subscribed to by 70 percent of the households to which such systems are available, the Commission may promulgate any additional rules necessary to provide diversity of information sources. Any rules promulgated by the Commission pursuant to this subsection shall not preempt authority expressly granted to franchising authorities under this subchapter.

(h) Cable service unprotected by Constitution

Any cable service offered pursuant to this section shall not be provided, or shall be provided subject to conditions, if such cable service in the judgment of the franchising authority or the cable operator is obscene, or is in conflict with community standards in that it is lewd, lascivious, filthy, or indecent or is otherwise unprotected by the Constitution of the United States. This subsection shall permit a cable operator to enforce prospectively a written and published policy of prohibiting programming that the cable operator reasonably believes describes or depicts sexual or excretory activities or organs in a patently offensive manner as measured by contemporary community standards.

(i) Programming from qualified minority or educational programming sources

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

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

(3) For purposes of this subsection, the term "qualified educational programming source" means a programming source which devotes substantially all of its programming to educational or instructional programming that promotes public understanding of mathematics, the sciences, the humanities, and the arts and has a

documented annual expenditure on programming exceeding \$15,000,000. The annual expenditure on programming means all annual costs incurred by the programming source to produce or acquire programs which are scheduled to be televised, and specifically excludes marketing, promotion, satellite transmission and operational costs, and general administrative costs.

(4) Nothing in this subsection shall substitute for the requirements to carry qualified non-commercial educational television stations as specified under section 535 of this title.

(j) Single channel access to indecent programming

(1) Within 120 days following October 5, 1992, the Commission shall promulgate regulations designed to limit the access of children to indecent programming, as defined by Commission regulations, and which cable operators have not voluntarily prohibited under subsection (h) of this section by—

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

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

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

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

(June 19, 1934, ch. 652, title VI, §612, as added Pub. L. 98-549, §2, Oct. 30, 1984, 98 Stat. 2782; amended Pub. L. 102-385, §§9, 10(a), (b), Oct. 5, 1992, 106 Stat. 1484, 1486; Pub. L. 104-104, title V, §506(b), Feb. 8, 1996, 110 Stat. 137.)

CONSTITUTIONALITY

For information regarding constitutionality of certain provisions of section 612 of act June 19, 1934, as added by section 10(b) of Pub. L. 102-385, see Congressional Research Service, *The Constitution of the United States of America: Analysis and Interpretation*, Appendix 1, Acts of Congress Held Unconstitutional in Whole or in Part by the Supreme Court of the United States.

AMENDMENTS

1996—Subsec. (c)(2). Pub. L. 104-104 substituted "a cable operator may refuse to transmit any leased access program or portion of a leased access program which contains obscenity, indecency, or nudity and" for "an operator".

1992—Subsec. (a). Pub. L. 102-385, §9(a), inserted "to promote competition in the delivery of diverse sources of video programming and" after "purpose of this section is".

Subsec. (b)(5). Pub. L. 102-385, §9(d), amended par. (5) generally. Prior to amendment, par. (5) read as follows: "For the purposes of this section—

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

"(B) the term 'commercial use' means the provision of video programming, whether or not for profit."

Subsec. (c)(1). Pub. L. 102-385, §9(b)(1), inserted "and with rules prescribed by the Commission under paragraph (4)" after "purpose of this section".

Subsec. (c)(4). Pub. L. 102-385, §9(b)(2), added par. (4).
 Subsec. (h). Pub. L. 102-385, §10(a), inserted "or the cable operator" after "franchising authority" and inserted at end "This subsection shall permit a cable operator to enforce prospectively a written and published policy of prohibiting programming that the cable operator reasonably believes describes or depicts sexual or excretory activities or organs in a patently offensive manner as measured by contemporary community standards."

Subsec. (i). Pub. L. 102-385, §9(c), added subsec. (i).

Subsec. (j). Pub. L. 102-385, §10(b), added subsec. (j).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-385 effective 60 days after Oct. 5, 1992, see section 28 of Pub. L. 102-385, set out as a note under section 325 of this title.

EFFECTIVE DATE

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

§ 533. Ownership restrictions

(a) Cable operator holding license for multichannel distribution or offering satellite service

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

(1) shall waive the requirements of this paragraph for all existing multichannel multipoint distribution services and satellite master antenna television services which are owned by a cable operator on October 5, 1992;

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

(3) shall not apply the requirements of this subsection to any cable operator in any franchise area in which a cable operator is subject to effective competition as determined under section 543(l) of this title.

(b) Repealed. Pub. L. 104-104, title III, § 302(b)(1), Feb. 8, 1996, 110 Stat. 124

(c) Promulgation of rules

The Commission may prescribe rules with respect to the ownership or control of cable systems by persons who own or control other media of mass communications which serve the same community served by a cable system.

(d) Regulation of ownership by States or franchising authorities

Any State or franchising authority may not prohibit the ownership or control of a cable system by any person because of such person's ownership or control of any other media of mass communications or other media interests. Nothing in this section shall be construed to prevent any State or franchising authority from prohibiting the ownership or control of a cable system in a jurisdiction by any person (1) because of such person's ownership or control of any other

cable system in such jurisdiction; or (2) in circumstances in which the State or franchising authority determines that the acquisition of such a cable system may eliminate or reduce competition in the delivery of cable service in such jurisdiction.

(e) Holding of ownership interests or exercise of editorial control by States or franchising authorities

(1) Subject to paragraph (2), a State or franchising authority may hold any ownership interest in any cable system.

(2) Any State or franchising authority shall not exercise any editorial control regarding the content of any cable service on a cable system in which such governmental entity holds ownership interest (other than programming on any channel designated for educational or governmental use), unless such control is exercised through an entity separate from the franchising authority.

(f) Enhancement of effective competition

(1) In order to enhance effective competition, the Commission shall, within one year after October 5, 1992, conduct a proceeding—

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

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

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

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

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

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

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

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

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

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

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

(g) Combination of interests under prior law

This section shall not apply to prohibit any combination of any interests held by any person on July 1, 1984, to the extent of the interests so held as of such date, if the holding of such interests was not inconsistent with any applicable Federal or State law or regulations in effect on that date.

(h) "Media of mass communications" defined

For purposes of this section, the term "media of mass communications" shall have the meaning given such term under section 309(i)(3)(C)(i) of this title.

(June 19, 1934, ch. 652, title VI, § 613, as added Pub. L. 98-549, § 2, Oct. 30, 1984, 98 Stat. 2785; amended Pub. L. 102-385, § 11, Oct. 5, 1992, 106 Stat. 1486; Pub. L. 103-414, title III, § 303(a)(22), Oct. 25, 1994, 108 Stat. 4295; Pub. L. 104-104, title II, § 202(i), title III, §§ 302(b)(1), Feb. 8, 1996, 110 Stat. 112, 124.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-104, § 202(i), redesignated par. (2) as subsec. (a) and subpars. (A) and (B) of par. (2) as pars. (1) and (2) of subsec. (a), respectively, added par. (3), and struck out former par. (1) which read as follows: "It shall be unlawful for any person to be a cable operator if such person, directly or through 1 or more affiliates, owns or controls, the licensee of a television broadcast station and the predicted grade B contour of such station covers any portion of the community served by such operator's cable system."

Subsec. (b). Pub. L. 104-104, § 302(b)(1), struck out subsec. (b), which related to common carriers, direct video programming, an exception for rural areas, and waiver.

1994—Subsec. (b)(2). Pub. L. 103-414 substituted "pole, line, conduit space" for "pole line conduit space".

1992—Subsec. (a). Pub. L. 102-385, § 11(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (d). Pub. L. 102-385, § 11(b), substituted "any other media" for "any media" and inserted at end "Nothing in this section shall be construed to prevent any State or franchising authority from prohibiting the ownership or control of a cable system in a jurisdiction by any person (1) because of such person's ownership or control of any other cable system in such jurisdiction; or (2) in circumstances in which the State or franchising authority determines that the acquisition of such a cable system may eliminate or reduce competition in the delivery of cable service in such jurisdiction."

Subsecs. (f) to (h). Pub. L. 102-385, § 11(c), added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-385 effective 60 days after Oct. 5, 1992, see section 28 of Pub. L. 102-385, set out as a note under section 325 of this title.

EFFECTIVE DATE

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

§ 534. Carriage of local commercial television signals

(a) Carriage obligations

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

(b) Signals required

(1) In general

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

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

(2) Selection of signals

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

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

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

(3) Content to be carried

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

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

(4) Signal quality

(A) Nondegradation; technical specifications

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

(B) Advanced television

At such time as the Commission prescribes modifications of the standards for television broadcast signals, the Commission shall initiate a proceeding to establish any changes in the signal carriage requirements of cable television systems necessary to ensure cable carriage of such broadcast signals of local commercial television stations which have been changed to conform with such modified standards.

(5) Duplication not required

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

(6) Channel positioning

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

(7) Signal availability

Signals carried in fulfillment of the requirements of this section shall be provided to every subscriber of a cable system. Such signals shall be viewable via cable on all 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 543(b)(3) of this title.

(8) Identification of signals carried

A cable operator shall identify, upon request by any person, the signals carried on its system in fulfillment of the requirements of this section.

(9) Notification

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

(10) Compensation for carriage

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

(A) any such station may be required to bear the costs associated with delivering a good quality signal or a baseband video signal to the principal headend of the cable system;

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

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

(c) Low power station carriage obligation**(1) Requirement**

If there are not sufficient signals of full power local commercial television stations to fill the channels set aside under subsection (b) of this section—

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

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

(2) Use of public, educational, or governmental channels

A cable operator required to carry more than one signal of a qualified low power station under this subsection may do so, subject to approval by the franchising authority pursuant to section 531 of this title, by placing such additional station on public, educational, or governmental channels not in use for their designated purposes.

(d) Remedies**(1) Complaints by broadcast stations**

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

(2) Opportunity to respond

The Commission shall afford such cable operator an opportunity to present data and arguments to establish that there has been no failure to meet its obligations under this section.

(3) Remedial actions; dismissal

Within 120 days after the date a complaint is filed, the Commission shall determine whether the cable operator has met its obligations under this section. If the Commission determines that the cable operator has failed to meet such obligations, the Commission shall order the cable operator to reposition the

complaining station or, in the case of an obligation to carry a station, to commence carriage of the station and to continue such carriage for at least 12 months. If the Commission determines that the cable operator has fully met the requirements of this section, it shall dismiss the complaint.

(e) Input selector switch rules abolished

No cable operator shall be required—

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

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

(f) Regulations by Commission

Within 180 days after October 5, 1992, the Commission shall, following a rulemaking proceeding, issue regulations implementing the requirements imposed by this section. Such implementing regulations shall include necessary revisions to update section 76.51 of title 47 of the Code of Federal Regulations.

(g) Sales presentations and program length commercials**(1) Carriage pending proceeding**

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

(2) Proceeding concerning certain stations

Within 270 days after October 5, 1992, the Commission, notwithstanding prior proceedings to determine whether broadcast television stations that are predominantly utilized for the transmission of sales presentations or program length commercials are serving the public interest, convenience, and necessity, shall complete a proceeding in accordance with this paragraph to determine whether broadcast television stations that are predominantly utilized for the transmission of sales presentations or program length commercials are serving the public interest, convenience, and necessity. In conducting such proceeding, the Commission shall provide appropriate notice and opportunity for public comment. The Commission shall consider the viewing of such stations, the level of competing demands for the spectrum allocated to such stations, and the role of such stations in providing competition to nonbroadcast services offering similar programming. In the event that the Commission concludes that one or more of such stations are serving the public interest, convenience, and necessity, the Commission shall qualify such stations as local commercial television stations for purposes of subsection (a) of this section. In the event that the Commission concludes that one or more of such stations are not serving the public interest, convenience, and necessity, the Commis-

sion shall allow the licensees of such stations a reasonable period within which to provide different programming, and shall not deny such stations a renewal expectancy solely because their programming consisted predominantly of sales presentations or program length commercials.

(h) Definitions

(1) Local commercial television station

(A) In general

For purposes of this section, the term “local commercial television station” means any full power television broadcast station, other than a qualified noncommercial educational television station within the meaning of section 535(l)(1) of this title, licensed and operating on a channel regularly assigned to its community by the Commission that, with respect to a particular cable system, is within the same television market as the cable system.

(B) Exclusions

The term “local commercial television station” shall not include—

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

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

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

(C) Market determinations

(i) For purposes of this section, a broadcasting station’s market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns, except that, following a written request, the Commission may, with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station’s television market to better effectuate the purposes of this section. In considering such requests, the Commission may determine that particular communities are part of more than one television market.

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

(I) whether the station, or other stations located in the same area, have been his-

torically 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) Within 120 days after the date on which a request is filed under this subparagraph (or 120 days after February 8, 1996, if later), the Commission shall grant or deny the request.

(2) Qualified low power station

The term “qualified low power station” means any television broadcast station conforming to the rules established for Low Power Television Stations contained in part 74 of title 47, Code of Federal Regulations, only if—

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

(B) such station meets all obligations and requirements applicable to television broadcast stations under part 73 of title 47, Code of Federal Regulations, with respect to the broadcast of nonentertainment programming; programming and rates involving political candidates, election issues, controversial issues of public importance, editorials, and personal attacks; programming for children; and equal employment opportunity; and the Commission determines that the provision of such programming by such station would address local news and informational needs which are not being adequately served by full power television broadcast stations because of the geographic distance of such full power stations from the low power station’s community of license;

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

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

(E) the community of license of such station and the franchise area of the cable system are both located outside of the largest 160 Metropolitan Statistical Areas, ranked by population, as determined by the Office of

Management and Budget on June 30, 1990, and the population of such community of license on such date did not exceed 35,000; and

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

Nothing in this paragraph shall be construed to change the secondary status of any low power station as provided in part 74 of title 47, Code of Federal Regulations, as in effect on October 5, 1992.

(June 19, 1934, ch. 652, title VI, § 614, as added Pub. L. 102-385, § 4, Oct. 5, 1992, 106 Stat. 1471; amended Pub. L. 104-104, title III, § 301(d)(1), Feb. 8, 1996, 110 Stat. 116.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (g)(1), was in the original "this Act", meaning act June 19, 1934, ch. 652, 48 Stat. 1064, known as the Communications Act of 1934, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 609 of this title and Tables.

AMENDMENTS

1996—Subsec. (h)(1)(C)(i). Pub. L. 104-104, § 301(d)(1)(A), substituted "by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns," for "in the manner provided in section 73.3555(d)(3)(i) of title 47, Code of Federal Regulations, as in effect on May 1, 1991."

Subsec. (h)(1)(C)(iv). Pub. L. 104-104, § 301(d)(1)(B), added cl. (iv) and struck out former cl. (iv) which read as follows: "In the rulemaking proceeding required by subsection (f) of this section, the Commission shall provide for expedited consideration of requests filed under this subparagraph."

EFFECTIVE DATE

Section effective 60 days after Oct. 5, 1992, see section 28 of Pub. L. 102-385, set out as an Effective Date of 1992 Amendment note under section 325 of this title.

APPLICATION TO PENDING REQUESTS

Pub. L. 104-104, title III, § 301(d)(2), Feb. 8, 1996, 110 Stat. 116, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to—

"(A) any request pending under section 614(h)(1)(C) of the Communications Act of 1934 (47 U.S.C. 534(h)(1)(C)) on the date of enactment of this Act [Feb. 8, 1996]; and

"(B) any request filed under that section after that date."

§ 535. Carriage of noncommercial educational television

(a) Carriage obligations

In addition to the carriage requirements set forth in section 534 of this title, each cable operator of a cable system shall carry the signals of qualified noncommercial educational television stations in accordance with the provisions of this section.

(b) Requirements to carry qualified stations

(1) General requirement to carry each qualified station

Subject to paragraphs (2) and (3) and subsection (e) of this section, each cable operator shall carry, on the cable system of that cable operator, any qualified local noncommercial

educational television station requesting carriage.

(2) Systems with 12 or fewer channels

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

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

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

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

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

(3) Systems with 13 to 36 channels

(A) Subject to subsection (c) of this section, a cable operator of a cable system with 13 to 36 usable activated channels—

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

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

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

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

(D) A cable operator of a system described in this paragraph which increases the usable activated channel capacity of the system to more than 36 channels on or after March 29,

1990, shall, in accordance with the other provisions of this section, carry the signal of each qualified local noncommercial educational television station requesting carriage, subject to subsection (e) of this section.

(c) Continued carriage of existing stations

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

(d) Placement of additional signals

A cable operator required to add the signals of qualified local noncommercial educational television stations to a cable system under this section may do so, subject to approval by the franchising authority pursuant to section 531 of this title, by placing such additional stations on public, educational, or governmental channels not in use for their designated purposes.

(e) Systems with more than 36 channels

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

(f) Waiver of nonduplication rights

A qualified local noncommercial educational television station whose signal is carried by a cable operator shall not assert any network nonduplication rights it may have pursuant to section 76.92 of title 47, Code of Federal Regulations, to require the deletion of programs aired on other qualified local noncommercial educational television stations whose signals are carried by that cable operator.

(g) Conditions of carriage

(1) Content to be carried

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

(2) Bandwidth and technical quality

A cable operator shall provide each qualified local noncommercial educational television

station whose signal is carried in accordance with this section with bandwidth and technical capacity equivalent to that provided to commercial television broadcast stations carried on the cable system and shall carry the signal of each qualified local noncommercial educational television station without material degradation.

(3) Changes in carriage

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

(4) Good quality signal required

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

(5) Channel positioning

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

(h) Availability of signals

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

(i) Payment for carriage prohibited

(1) In general

A cable operator shall not accept monetary payment or other valuable consideration in exchange for carriage of the signal of any qualified local noncommercial educational television station carried in fulfillment of the requirements of this section, except that such a station may be required to bear the cost as-

sociated with delivering a good quality signal or a baseband video signal to the principal headend of the cable system.

(2) Distant signal exception

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

(j) Remedies

(1) Complaint

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

(2) Opportunity to respond

The Commission shall afford such cable operator an opportunity to present data, views, and arguments to establish that the cable operator has complied with the signal carriage requirements of this section.

(3) Remedial actions; dismissal

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

(k) Identification of signals

A cable operator shall identify, upon request by any person, those signals carried in fulfillment of the requirements of this section.

(l) Definitions

For purposes of this section—

(1) Qualified noncommercial educational television station

The term “qualified noncommercial educational television station” means any television broadcast station which—

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

(ii) has as its licensee an entity which is eligible to receive a community service

grant, or any successor grant thereto, from the Corporation for Public Broadcasting, or any successor organization thereto, on the basis of the formula set forth in section 396(k)(6)(B) of this title; or

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

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

(2) Qualified local noncommercial educational television station

The term “qualified local noncommercial educational television station” means a qualified noncommercial educational television station—

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

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

(June 19, 1934, ch. 652, title VI, §615, as added Pub. L. 102-385, §5, Oct. 5, 1992, 106 Stat. 1477.)

EFFECTIVE DATE

Section effective 60 days after Oct. 5, 1992, see section 28 of Pub. L. 102-385, set out as an Effective Date of 1992 Amendment note under section 325 of this title.

§ 536. Regulation of carriage agreements

(a) Regulations

Within one year after October 5, 1992, the Commission shall establish regulations governing program carriage agreements and related practices between cable operators or other multichannel video programming distributors and video programming vendors. Such regulations shall—

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

(2) include provisions designed to prohibit a cable operator or other multichannel video programming distributor from coercing a video programming vendor to provide, and from retaliating against such a vendor for failing to provide, exclusive rights against other

multichannel video programming distributors as a condition of carriage on a system;

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

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

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

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

(b) "Video programming vendor" defined

As used in this section, the term "video programming vendor" means a person engaged in the production, creation, or wholesale distribution of video programming for sale.

(June 19, 1934, ch. 652, title VI, §616, as added Pub. L. 102-385, §12, Oct. 5, 1992, 106 Stat. 1488.)

EFFECTIVE DATE

Section effective 60 days after Oct. 5, 1992, see section 28 of Pub. L. 102-385, set out as an Effective Date of 1992 Amendment note under section 325 of this title.

§ 537. Sales of cable systems

A franchising authority shall, if the franchise requires franchising authority approval of a sale or transfer, have 120 days to act upon any request for approval of such sale or transfer that contains or is accompanied by such information as is required in accordance with Commission regulations and by the franchising authority. If the franchising authority fails to render a final decision on the request within 120 days, such request shall be deemed granted unless the requesting party and the franchising authority agree to an extension of time.

(June 19, 1934, ch. 652, title VI, §617, as added Pub. L. 102-385, §13, Oct. 5, 1992, 106 Stat. 1489; amended Pub. L. 104-104, title III, §301(i), Feb. 8, 1996, 110 Stat. 117.)

AMENDMENTS

1996—Pub. L. 104-104 redesignated subsec. (e) as entire section, substituted "A franchising authority" for "LIMITATION ON DURATION OF FRANCHISING AUTHORITY POWER TO DISAPPROVE TRANSFERS.—In the case of any sale or transfer of ownership of any cable system after the 36-month period following acquisition of such system, a franchising authority", and struck out subsecs. (a) to (d) which related to three-year holding period requirement, treatment of multiple transfers, exceptions to holding requirement, and waiver authority.

EFFECTIVE DATE

Section effective 60 days after Oct. 5, 1992, see section 28 of Pub. L. 102-385, set out as an Effective Date of 1992 Amendment note under section 325 of this title.

PART III—FRANCHISING AND REGULATION

§ 541. General franchise requirements

(a) Authority to award franchises; public rights-of-way and easements; equal access to service; time for provision of service; assurances

(1) A franchising authority may award, in accordance with the provisions of this subchapter, 1 or more franchises within its jurisdiction; except that a franchising authority may not grant an exclusive franchise and may not unreasonably refuse to award an additional competitive franchise. Any applicant whose application for a second franchise has been denied by a final decision of the franchising authority may appeal such final decision pursuant to the provisions of section 555 of this title for failure to comply with this subsection.

(2) Any franchise shall be construed to authorize the construction of a cable system over public rights-of-way, and through easements, which is within the area to be served by the cable system and which have been dedicated for compatible uses, except that in using such easements the cable operator shall ensure—

(A) that the safety, functioning, and appearance of the property and the convenience and safety of other persons not be adversely affected by the installation or construction of facilities necessary for a cable system;

(B) that the cost of the installation, construction, operation, or removal of such facilities be borne by the cable operator or subscriber, or a combination of both; and

(C) that the owner of the property be justly compensated by the cable operator for any damages caused by the installation, construction, operation, or removal of such facilities by the cable operator.

(3) In awarding a franchise or franchises, a franchising authority shall assure that access to cable service is not denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides.

(4) In awarding a franchise, the franchising authority—

(A) shall allow the applicant's cable system a reasonable period of time to become capable of providing cable service to all households in the franchise area;

(B) may require adequate assurance that the cable operator will provide adequate public, educational, and governmental access channel capacity, facilities, or financial support; and

(C) may require adequate assurance that the cable operator has the financial, technical, or legal qualifications to provide cable service.

(b) No cable service without franchise; exception under prior law

(1) Except to the extent provided in paragraph (2) and subsection (f) of this section, a cable operator may not provide cable service without a franchise.

(2) Paragraph (1) shall not require any person lawfully providing cable service without a franchise on July 1, 1984, to obtain a franchise unless the franchising authority so requires.

(3)(A) If a cable operator or affiliate thereof is engaged in the provision of telecommunications services—

(i) such cable operator or affiliate shall not be required to obtain a franchise under this subchapter for the provision of telecommunications services; and

(ii) the provisions of this subchapter shall not apply to such cable operator or affiliate for the provision of telecommunications services.

(B) A franchising authority may not impose any requirement under this subchapter that has the purpose or effect of prohibiting, limiting, restricting, or conditioning the provision of a telecommunications service by a cable operator or an affiliate thereof.

(C) A franchising authority may not order a cable operator or affiliate thereof—

(i) to discontinue the provision of a telecommunications service, or

(ii) to discontinue the operation of a cable system, to the extent such cable system is used for the provision of a telecommunications service, by reason of the failure of such cable operator or affiliate thereof to obtain a franchise or franchise renewal under this subchapter with respect to the provision of such telecommunications service.

(D) Except as otherwise permitted by sections 531 and 532 of this title, a franchising authority may not require a cable operator to provide any telecommunications service or facilities, other than institutional networks, as a condition of the initial grant of a franchise, a franchise renewal, or a transfer of a franchise.

(c) Status of cable system as common carrier or utility

Any cable system shall not be subject to regulation as a common carrier or utility by reason of providing any cable service.

(d) Informational tariffs; regulation by States; "State" defined

(1) A State or the Commission may require the filing of informational tariffs for any intrastate communications service provided by a cable system, other than cable service, that would be subject to regulation by the Commission or any State if offered by a common carrier subject, in whole or in part, to subchapter II of this chapter. Such informational tariffs shall specify the rates, terms, and conditions for the provision of such service, including whether it is made available to all subscribers generally, and shall take effect on the date specified therein.

(2) Nothing in this subchapter shall be construed to affect the authority of any State to regulate any cable operator to the extent that such operator provides any communication service other than cable service, whether offered on a common carrier or private contract basis.

(3) For purposes of this subsection, the term "State" has the meaning given it in section 153 of this title.

(e) State regulation of facilities serving subscribers in multiple dwelling units

Nothing in this subchapter shall be construed to affect the authority of any State to license or otherwise regulate any facility or combination of facilities which serves only subscribers in one or more multiple unit dwellings under common

ownership, control, or management and which does not use any public right-of-way.

(f) Local or municipal authority as multichannel video programming distributor

No provision of this chapter shall be construed to—

(1) prohibit a local or municipal authority that is also, or is affiliated with, a franchising authority from operating as a multichannel video programming distributor in the 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.

(June 19, 1934, ch. 652, title VI, §621, as added Pub. L. 98-549, §2, Oct. 30, 1984, 98 Stat. 2786; amended Pub. L. 102-385, §§7(a)(1), (b), (c), Oct. 5, 1992, 106 Stat. 1483; Pub. L. 104-104, §3(d)(3), title III, §303(a), Feb. 8, 1996, 110 Stat. 61, 124.)

REFERENCES IN TEXT

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

AMENDMENTS

1996—Subsec. (b)(3). Pub. L. 104-104, §303(a), added par. (3).

Subsec. (d)(3). Pub. L. 104-104, §3(d)(3), substituted "section 153" for "section 153(v)".

1992—Subsec. (a)(1). Pub. L. 102-385, §7(a)(1), inserted before period at end "; except that a franchising authority may not grant an exclusive franchise and may not unreasonably refuse to award an additional competitive franchise. Any applicant whose application for a second franchise has been denied by a final decision of the franchising authority may appeal such final decision pursuant to the provisions of section 555 of this title for failure to comply with this subsection".

Subsec. (a)(4). Pub. L. 102-385, §7(b), added par. (4).

Subsec. (b)(1). Pub. L. 102-385, §7(c)(1), inserted "and subsection (f) of this section" after "paragraph (2)".

Subsec. (f). Pub. L. 102-385, §7(c)(2), added subsec. (f).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-385 effective 60 days after Oct. 5, 1992, see section 28 of Pub. L. 102-385, set out as a note under section 325 of this title.

EFFECTIVE DATE

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

§ 542. Franchise fees

(a) Payment under terms of franchise

Subject to the limitation of subsection (b) of this section, any cable operator may be required under the terms of any franchise to pay a franchise fee.

(b) Amount of fees per annum

For any twelve-month period, the franchise fees paid by a cable operator with respect to any cable system shall not exceed 5 percent of such cable operator's gross revenues derived in such period from the operation of the cable system to

provide cable services. For purposes of this section, the 12-month period shall be the 12-month period applicable under the franchise for accounting purposes. Nothing in this subsection shall prohibit a franchising authority and a cable operator from agreeing that franchise fees which lawfully could be collected for any such 12-month period shall be paid on a prepaid or deferred basis; except that the sum of the fees paid during the term of the franchise may not exceed the amount, including the time value of money, which would have lawfully been collected if such fees had been paid per annum.

(c) Itemization of subscriber bills

Each cable operator may identify, consistent with the regulations prescribed by the Commission pursuant to section 543 of this title, as a separate line item on each regular bill of each subscriber, each of the following:

(1) The amount of the total bill assessed as a franchise fee and the identity of the franchising authority to which the fee is paid.

(2) The amount of the total bill assessed to satisfy any requirements imposed on the cable operator by the franchise agreement to support public, educational, or governmental channels or the use of such channels.

(3) The amount of any other fee, tax, assessment, or charge of any kind imposed by any governmental authority on the transaction between the operator and the subscriber.

(d) Court actions; reflection of costs in rate structures

In any court action under subsection (c) of this section, the franchising authority shall demonstrate that the rate structure reflects all costs of the franchise fees.

(e) Decreases passed through to subscribers

Any cable operator shall pass through to subscribers the amount of any decrease in a franchise fee.

(f) Itemization of franchise fee in bill

A cable operator may designate that portion of a subscriber's bill attributable to the franchise fee as a separate item on the bill.

(g) "Franchise fee" defined

For the purposes of this section—

(1) the term "franchise fee" includes any tax, fee, or assessment of any kind imposed by a franchising authority or other governmental entity on a cable operator or cable subscriber, or both, solely because of their status as such;

(2) the term "franchise fee" does not include—

(A) any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable subscribers);

(B) in the case of any franchise in effect on October 30, 1984, payments which are required by the franchise to be made by the cable operator during the term of such franchise for, or in support of the use of, public, educational, or governmental access facilities;

(C) in the case of any franchise granted after October 30, 1984, capital costs which are required by the franchise to be incurred by the cable operator for public, educational, or governmental access facilities;

(D) requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or

(E) any fee imposed under title 17.

(h) Uncompensated services; taxes, fees and other assessments; limitation on fees

(1) Nothing in this chapter shall be construed to limit any authority of a franchising authority to impose a tax, fee, or other assessment of any kind on any person (other than a cable operator) with respect to cable service or other communications service provided by such person over a cable system for which charges are assessed to subscribers but not received by the cable operator.

(2) For any 12-month period, the fees paid by such person with respect to any such cable service or other communications service shall not exceed 5 percent of such person's gross revenues derived in such period from the provision of such service over the cable system.

(i) Regulatory authority of Federal agencies

Any Federal agency may not regulate the amount of the franchise fees paid by a cable operator, or regulate the use of funds derived from such fees, except as provided in this section.

(June 19, 1934, ch. 652, title VI, §622, as added Pub. L. 98-549, §2, Oct. 30, 1984, 98 Stat. 2787; amended Pub. L. 102-385, §14, Oct. 5, 1992, 106 Stat. 1489; Pub. L. 104-104, title III, §303(b), Feb. 8, 1996, 110 Stat. 125.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (h)(1), was in the original "this Act", meaning act June 19, 1934, ch. 652, 48 Stat. 1064, known as the Communications Act of 1934, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 609 of this title and Tables.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104-104 inserted "to provide cable services" before period at end of first sentence.

1992—Subsec. (c). Pub. L. 102-385 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "A cable operator may pass through to subscribers the amount of any increase in a franchise fee, unless the franchising authority demonstrates that the rate structure specified in the franchise reflects all costs of franchise fees and so notifies the cable operator in writing."

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-385 effective 60 days after Oct. 5, 1992, see section 28 of Pub. L. 102-385, set out as a note under section 325 of this title.

EFFECTIVE DATE

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

§ 543. Regulation of rates**(a) Competition preference; local and Federal regulation****(1) In general**

No Federal agency or State may regulate the rates for the provision of cable service except to the extent provided under this section and section 532 of this title. Any franchising authority may regulate the rates for the provision of cable service, or any other communications service provided over a cable system to cable subscribers, but only to the extent provided under this section. No Federal agency, State, or franchising authority may regulate the rates for cable service of a cable system that is owned or operated by a local government or franchising authority within whose jurisdiction that cable system is located and that is the only cable system located within such jurisdiction.

(2) Preference for competition

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

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

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

(3) Qualification of franchising authority

A franchising authority that seeks to exercise the regulatory jurisdiction permitted under paragraph (2)(A) shall file with the Commission a written certification that—

(A) the franchising authority will adopt and administer regulations with respect to the rates subject to regulation under this section that are consistent with the regulations prescribed by the Commission under subsection (b) of this section;

(B) the franchising authority has the legal authority to adopt, and the personnel to administer, such regulations; and

(C) procedural laws and regulations applicable to rate regulation proceedings by such authority provide a reasonable opportunity for consideration of the views of interested parties.

(4) Approval by Commission

A certification filed by a franchising authority under paragraph (3) shall be effective 30 days after the date on which it is filed unless the Commission finds, after notice to the authority and a reasonable opportunity for the authority to comment, that—

(A) the franchising authority has adopted or is administering regulations with respect

to the rates subject to regulation under this section that are not consistent with the regulations prescribed by the Commission under subsection (b) of this section;

(B) the franchising authority does not have the legal authority to adopt, or the personnel to administer, such regulations; or

(C) procedural laws and regulations applicable to rate regulation proceedings by such authority do not provide a reasonable opportunity for consideration of the views of interested parties.

If the Commission disapproves a franchising authority's certification, the Commission shall notify the franchising authority of any revisions or modifications necessary to obtain approval.

(5) Revocation of jurisdiction

Upon petition by a cable operator or other interested party, the Commission shall review the regulation of cable system rates by a franchising authority under this subsection. A copy of the petition shall be provided to the franchising authority by the person filing the petition. If the Commission finds that the franchising authority has acted inconsistently with the requirements of this subsection, the Commission shall grant appropriate relief. If the Commission, after the franchising authority has had a reasonable opportunity to comment, determines that the State and local laws and regulations are not in conformance with the regulations prescribed by the Commission under subsection (b) of this section, the Commission shall revoke the jurisdiction of such authority.

(6) Exercise of jurisdiction by Commission

If the Commission disapproves a franchising authority's certification under paragraph (4), or revokes such authority's jurisdiction under paragraph (5), the Commission shall exercise the franchising authority's regulatory jurisdiction under paragraph (2)(A) until the franchising authority has qualified to exercise that jurisdiction by filing a new certification that meets the requirements of paragraph (3). Such new certification shall be effective upon approval by the Commission. The Commission shall act to approve or disapprove any such new certification within 90 days after the date it is filed.

(7) Aggregation of equipment costs**(A) In general**

The Commission shall allow cable operators, pursuant to any rules promulgated under subsection (b)(3) of this section, to aggregate, on a franchise, system, regional, or company level, their equipment costs into broad categories, such as converter boxes, regardless of the varying levels of functionality of the equipment within each such broad category. Such aggregation shall not be permitted with respect to equipment used by subscribers who receive only a rate regulated basic service tier.

(B) Revision to Commission rules; forms

Within 120 days of February 8, 1996, the Commission shall issue revisions to the ap-

propriate rules and forms necessary to implement subparagraph (A).

(b) Establishment of basic service tier rate regulations

(1) Commission obligation to subscribers

The Commission shall, by regulation, ensure that the rates for the basic service tier are reasonable. Such regulations shall be designed to achieve the goal of protecting subscribers of any cable system that is not subject to effective competition from rates for the basic service tier that exceed the rates that would be charged for the basic service tier if such cable system were subject to effective competition.

(2) Commission regulations

Within 180 days after October 5, 1992, the Commission shall prescribe, and periodically thereafter revise, regulations to carry out its obligations under paragraph (1). In prescribing such regulations, the Commission—

(A) shall seek to reduce the administrative burdens on subscribers, cable operators, franchising authorities, and the Commission;

(B) may adopt formulas or other mechanisms and procedures in complying with the requirements of subparagraph (A); and

(C) shall take into account the following factors:

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

(ii) the direct costs (if any) of obtaining, transmitting, and otherwise providing signals carried on the basic service tier, including signals and services carried on the basic service tier pursuant to paragraph (7)(B), and changes in such costs;

(iii) only such portion of the joint and common costs (if any) of obtaining, transmitting, and otherwise providing such signals as is determined, in accordance with regulations prescribed by the Commission, to be reasonably and properly allocable to the basic service tier, and changes in such costs;

(iv) the revenues (if any) received by a cable operator from advertising from programming that is carried as part of the basic service tier or from other consideration obtained in connection with the basic service tier;

(v) the reasonably and properly allocable portion of any amount assessed as a franchise fee, tax, or charge of any kind imposed by any State or local authority on the transactions between cable operators and cable subscribers or any other fee, tax, or assessment of general applicability imposed by a governmental entity applied against cable operators or cable subscribers;

(vi) any amount required, in accordance with paragraph (4), to satisfy franchise requirements to support public, educational, or governmental channels or the use of such channels or any other services required under the franchise; and

(vii) a reasonable profit, as defined by the Commission consistent with the Com-

mission's obligations to subscribers under paragraph (1).

(3) Equipment

The regulations prescribed by the Commission under this subsection shall include standards to establish, on the basis of actual cost, the price or rate for—

(A) installation and lease of the equipment used by subscribers to receive the basic service tier, including a converter box and a remote control unit and, if requested by the subscriber, such addressable converter box or other equipment as is required to access programming described in paragraph (8); and

(B) installation and monthly use of connections for additional television receivers.

(4) Costs of franchise requirements

The regulations prescribed by the Commission under this subsection shall include standards to identify costs attributable to satisfying franchise requirements to support public, educational, and governmental channels or the use of such channels or any other services required under the franchise.

(5) Implementation and enforcement

The regulations prescribed by the Commission under this subsection shall include additional standards, guidelines, and procedures concerning the implementation and enforcement of such regulations, which shall include—

(A) procedures by which cable operators may implement and franchising authorities may enforce the regulations prescribed by the Commission under this subsection;

(B) procedures for the expeditious resolution of disputes between cable operators and franchising authorities concerning the administration of such regulations;

(C) standards and procedures to prevent unreasonable charges for changes in the subscriber's selection of services or equipment subject to regulation under this section, which standards shall require that charges for changing the service tier selected shall be based on the cost of such change and shall not exceed nominal amounts when the system's configuration permits changes in service tier selection to be effected solely by coded entry on a computer terminal or by other similarly simple method; and

(D) standards and procedures to assure that subscribers receive notice of the availability of the basic service tier required under this section.

(6) Notice

The procedures prescribed by the Commission pursuant to paragraph (5)(A) shall require a cable operator to provide 30 days' advance notice to a franchising authority of any increase proposed in the price to be charged for the basic service tier.

(7) Components of basic tier subject to rate regulation

(A) Minimum contents

Each cable operator of a cable system shall provide its subscribers a separately

available basic service tier to which subscription is required for access to any other tier of service. Such basic service tier shall, at a minimum, consist of the following:

(i) All signals carried in fulfillment of the requirements of sections 534 and 535 of this title.

(ii) Any public, educational, and governmental access programming required by the franchise of the cable system to be provided to subscribers.

(iii) Any signal of any television broadcast station that is provided by the cable operator to any subscriber, except a signal which is secondarily transmitted by a satellite carrier beyond the local service area of such station.

(B) Permitted additions to basic tier

A cable operator may add additional video programming signals or services to the basic service tier. Any such additional signals or services provided on the basic service tier shall be provided to subscribers at rates determined under the regulations prescribed by the Commission under this subsection.

(8) Buy-through of other tiers prohibited

(A) Prohibition

A cable operator may not require the subscription to any tier other than the basic service tier required by paragraph (7) as a condition of access to video programming offered on a per channel or per program basis. A cable operator may not discriminate between subscribers to the basic service tier and other subscribers with regard to the rates charged for video programming offered on a per channel or per program basis.

(B) Exception; limitation

The prohibition in subparagraph (A) shall not apply to a cable system that, by reason of the lack of addressable converter boxes or other technological limitations, does not permit the operator to offer programming on a per channel or per program basis in the same manner required by subparagraph (A). This subparagraph shall not be available to any cable operator after—

(i) the technology utilized by the cable system is modified or improved in a way that eliminates such technological limitation; or

(ii) 10 years after October 5, 1992, subject to subparagraph (C).

(C) Waiver

If, in any proceeding initiated at the request of any cable operator, the Commission determines that compliance with the requirements of subparagraph (A) would require the cable operator to increase its rates, the Commission may, to the extent consistent with the public interest, grant such cable operator a waiver from such requirements for such specified period as the Commission determines reasonable and appropriate.

(c) Regulation of unreasonable rates

(1) Commission regulations

Within 180 days after October 5, 1992, the Commission shall, by regulation, establish the following:

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

(B) fair and expeditious procedures for the receipt, consideration, and resolution of complaints from any franchising authority (in accordance with paragraph (3)) alleging that a rate for cable programming services charged by a cable operator violates the criteria prescribed under subparagraph (A), which procedures shall include the minimum showing that shall be required for a complaint to obtain Commission consideration and resolution of whether the rate in question is unreasonable; and

(C) the procedures to be used to reduce rates for cable programming services that are determined by the Commission to be unreasonable and to refund such portion of the rates or charges that were paid by subscribers after the filing of the first complaint filed with the franchising authority under paragraph (3) and that are determined to be unreasonable.

(2) Factors to be considered

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

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

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

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

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

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

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

(3) Review of rate changes

The Commission shall review any complaint submitted by a franchising authority after February 8, 1996, concerning an increase in rates for cable programming services and issue

a final order within 90 days after it receives such a complaint, unless the parties agree to extend the period for such review. A franchising authority may not file a complaint under this paragraph unless, within 90 days after such increase becomes effective it receives subscriber complaints.

(4) Sunset of upper tier rate regulation

This subsection shall not apply to cable programming services provided after March 31, 1999.

(d) Uniform rate structure required

A cable operator shall have a rate structure, for the provision of cable service, that is uniform throughout the geographic area in which cable service is provided over its cable system. This subsection does not apply to (1) a cable operator with respect to the provision of cable service over its cable system in any geographic area in which the video programming services offered by the operator in that area are subject to effective competition, or (2) any video programming offered on a per channel or per program basis. Bulk discounts to multiple dwelling units shall not be subject to this subsection, except that a cable operator of a cable system that is not subject to effective competition may not charge predatory prices to a multiple dwelling unit. Upon a prima facie showing by a complainant that there are reasonable grounds to believe that the discounted price is predatory, the cable system shall have the burden of showing that its discounted price is not predatory.

(e) Discrimination; services for the hearing impaired

Nothing in this subchapter shall be construed as prohibiting any Federal agency, State, or a franchising authority from—

- (1) prohibiting discrimination among subscribers and potential subscribers to cable service, except that no Federal agency, State, or franchising authority may prohibit a cable operator from offering reasonable discounts to senior citizens or other economically disadvantaged group discounts; or
- (2) requiring and regulating the installation or rental of equipment which facilitates the reception of cable service by hearing impaired individuals.

(f) Negative option billing prohibited

A cable operator shall not charge a subscriber for any service or equipment that the subscriber has not affirmatively requested by name. For purposes of this subsection, a subscriber's failure to refuse a cable operator's proposal to provide such service or equipment shall not be deemed to be an affirmative request for such service or equipment.

(g) Collection of information

The Commission shall, by regulation, require cable operators to file with the Commission or a franchising authority, as appropriate, within one year after October 5, 1992, and annually thereafter, such financial information as may be needed for purposes of administering and enforcing this section.

(h) Prevention of evasions

Within 180 days after October 5, 1992, the Commission shall, by regulation, establish stand-

ards, guidelines, and procedures to prevent evasions, including evasions that result from retiering, of the requirements of this section and shall, thereafter, periodically review and revise such standards, guidelines, and procedures.

(i) Small system burdens

In developing and prescribing regulations pursuant to this section, the Commission shall design such regulations to reduce the administrative burdens and cost of compliance for cable systems that have 1,000 or fewer subscribers.

(j) Rate regulation agreements

During the term of an agreement made before July 1, 1990, by a franchising authority and a cable operator providing for the regulation of basic cable service rates, where there was not effective competition under Commission rules in effect on that date, nothing in this section (or the regulations thereunder) shall abridge the ability of such franchising authority to regulate rates in accordance with such an agreement.

(k) Reports on average prices

The Commission shall annually publish statistical reports on the average rates for basic cable service and other cable programming, and for converter boxes, remote control units, and other equipment, of—

- (1) cable systems that the Commission has found are subject to effective competition under subsection (a)(2) of this section, compared with
- (2) cable systems that the Commission has found are not subject to such effective competition.

(l) Definitions

As used in this section—

- (1) The term "effective competition" means that—
 - (A) fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system;
 - (B) the franchise area is—
 - (i) served by at least two unaffiliated multichannel video programming distributors each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and
 - (ii) the number of households subscribing to programming services offered by multichannel video programming distributors other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area;
 - (C) a multichannel video programming distributor operated by the franchising authority for that franchise area offers video programming to at least 50 percent of the households in that franchise area; or
 - (D) a local exchange carrier or its affiliate (or any multichannel video programming distributor using the facilities of such carrier or its affiliate) offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, but only if the

video programming services so offered in that area are comparable to the video programming services provided by the unaffiliated cable operator in that area.

(2) The term “cable programming service” means any video programming provided over a cable system, regardless of service tier, including installation or rental of equipment used for the receipt of such video programming, other than (A) video programming carried on the basic service tier, and (B) video programming offered on a per channel or per program basis.

(m) Special rules for small companies

(1) In general

Subsections (a), (b), and (c) of this section do not apply to a small cable operator with respect to—

(A) cable programming services, or

(B) a basic service tier that was the only service tier subject to regulation as of December 31, 1994,

in any franchise area in which that operator services 50,000 or fewer subscribers.

(2) “Small cable operator” defined

For purposes of this subsection, the term “small cable operator” means a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.

(n) Treatment of prior year losses

Notwithstanding any other provision of this section or of section 532 of this title, losses associated with a cable system (including losses associated with the grant or award of a franchise) that were incurred prior to September 4, 1992, with respect to a cable system that is owned and operated by the original franchisee of such system shall not be disallowed, in whole or in part, in the determination of whether the rates for any tier of service or any type of equipment that is subject to regulation under this section are lawful.

(June 19, 1934, ch. 652, title VI, § 623, as added Pub. L. 98-549, § 2, Oct. 30, 1984, 98 Stat. 2788; amended Pub. L. 102-385, § 3(a), Oct. 5, 1992, 106 Stat. 1464; Pub. L. 104-104, title III, § 301(b), (c), (j), (k)(1), Feb. 8, 1996, 110 Stat. 114, 116, 118.)

AMENDMENTS

1996—Subsec. (a)(7). Pub. L. 104-104, § 301(j), added par. (7).

Subsec. (c)(1)(B). Pub. L. 104-104, § 301(b)(1)(A), substituted “franchising authority (in accordance with paragraph (3))” for “subscriber, franchising authority, or other relevant State or local government entity”.

Subsec. (c)(1)(C). Pub. L. 104-104, § 301(b)(1)(B), substituted “the first complaint filed with the franchising authority under paragraph (3)” for “such complaint”.

Subsec. (c)(3), (4). Pub. L. 104-104, § 301(b)(1)(C), added pars. (3) and (4) and struck out heading and text of former par. (3). Text read as follows: “Except during the 180-day period following the effective date of the regulations prescribed by the Commission under paragraph (1), the procedures established under subparagraph (B) of such paragraph shall be available only

with respect to complaints filed within a reasonable period of time following a change in rates that is initiated after that effective date, including a change in rates that results from a change in that system’s service tiers.”

Subsec. (d). Pub. L. 104-104, § 301(b)(2), inserted at end “This subsection does not apply to (1) a cable operator with respect to the provision of cable service over its cable system in any geographic area in which the video programming services offered by the operator in that area are subject to effective competition, or (2) any video programming offered on a per channel or per program basis. Bulk discounts to multiple dwelling units shall not be subject to this subsection, except that a cable operator of a cable system that is not subject to effective competition may not charge predatory prices to a multiple dwelling unit. Upon a prima facie showing by a complainant that there are reasonable grounds to believe that the discounted price is predatory, the cable system shall have the burden of showing that its discounted price is not predatory.”

Subsec. (l)(1)(D). Pub. L. 104-104, § 301(b)(3), added subpar. (D).

Subsec. (m). Pub. L. 104-104, § 301(c), added subsec. (m).

Subsec. (n). Pub. L. 104-104, § 301(k)(1), added subsec. (n).

1992—Pub. L. 102-385 amended section generally, substituting present provisions for former provisions which related in subsec. (a) to limitation on regulatory power of Federal agencies, States, or franchising authorities, in subsec. (b) to promulgation, scope, content, periodic review, and amendment of regulations, in subsec. (c) to regulation by franchising authority during initial 2-year period, in subsec. (d) to automatic granting of rate increase requests upon agency inaction within 180-day period, in subsec. (e) to additional increases in rates and to reduction by amount of increase under franchise provisions, in subsec. (f) to non-discrimination and facilitation of reception by hearing-impaired individuals, in subsec. (g) to continued effectiveness of limitation or the preemption of regulation under prior State law, and in subsec. (h) to reports and recommendations to Congress.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-104, title III, § 301(k)(2), Feb. 8, 1996, 110 Stat. 118, provided that: “The amendment made by paragraph (1) [amending this section] shall take effect on the date of enactment of this Act [Feb. 8, 1996] and shall be applicable to any rate proposal filed on or after September 4, 1993, upon which no final action has been taken by December 1, 1995.”

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102-385, § 3(b), Oct. 5, 1992, 106 Stat. 1471, provided that: “The amendment made by subsection (a) [amending this section] shall take effect 180 days after the date of enactment of this Act [Oct. 5, 1992], except that the authority of the Federal Communications Commission to prescribe regulations is effective on such date of enactment.”

EFFECTIVE DATE

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

RESTORATION, RETIERMENT AND REPRICING OF SERVICE PREVIOUSLY ELIMINATED, RETIERED, OR REPRICED

Pub. L. 98-549, § 9(b), Oct. 30, 1984, 98 Stat. 2806, provided that: “Nothing in section 623 or 624 of the Communications Act of 1934 [sections 543 and 544 of this title], as added by this Act, shall be construed to allow a franchising authority, or a State or any political subdivision of a State, to require a cable operator to restore, retier, or reprice any cable service which was lawfully eliminated, retiered, or repriced as of September 26, 1984.”

§ 544. Regulation of services, facilities, and equipment

(a) Regulation by franchising authority

Any franchising authority may not regulate the services, facilities, and equipment provided by a cable operator except to the extent consistent with this subchapter.

(b) Requests for proposals; establishment and enforcement of requirements

In the case of any franchise granted after the effective date of this subchapter, the franchising authority, to the extent related to the establishment or operation of a cable system—

(1) in its request for proposals for a franchise (including requests for renewal proposals, subject to section 546 of this title), may establish requirements for facilities and equipment, but may not, except as provided in subsection (h) of this section, establish requirements for video programming or other information services; and

(2) subject to section 545 of this title, may enforce any requirements contained within the franchise—

(A) for facilities and equipment; and

(B) for broad categories of video programming or other services.

(c) Enforcement authority respecting franchises effective under prior law

In the case of any franchise in effect on the effective date of this subchapter, the franchising authority may, subject to section 545 of this title, enforce requirements contained within the franchise for the provision of services, facilities, and equipment, whether or not related to the establishment or operation of a cable system.

(d) Cable service unprotected by Constitution; blockage of premium channel upon request

(1) Nothing in this subchapter shall be construed as prohibiting a franchising authority and a cable operator from specifying, in a franchise or renewal thereof, that certain cable services shall not be provided or shall be provided subject to conditions, if such cable services are obscene or are otherwise unprotected by the Constitution of the United States.

(2) In order to restrict the viewing of of¹ programming which is obscene or indecent, upon the request of a subscriber, a cable operator shall provide (by sale or lease) a device by which the subscriber can prohibit viewing of a particular cable service during periods selected by that subscriber.

(3)(A) If a cable operator provides a premium channel without charge to cable subscribers who do not subscribe to such premium channel, the cable operator shall, not later than 30 days before such premium channel is provided without charge—

(i) notify all cable subscribers that the cable operator plans to provide a premium channel without charge;

(ii) notify all cable subscribers when the cable operator plans to offer a premium channel without charge;

(iii) notify all cable subscribers that they have a right to request that the channel carrying the premium channel be blocked; and

(iv) block the channel carrying the premium channel upon the request of a subscriber.

(B) For the purpose of this section, the term “premium channel” shall mean any pay service offered on a per channel or per program basis, which offers movies rated by the Motion Picture Association of America as X, NC-17, or R.

(e) Technical standards

Within one year after October 5, 1992, the Commission shall prescribe regulations which establish minimum technical standards relating to cable systems’ technical operation and signal quality. The Commission shall update such standards periodically to reflect improvements in technology. No State or franchising authority may prohibit, condition, or restrict a cable system’s use of any type of subscriber equipment or any transmission technology.

(f) Limitation on regulatory powers of Federal agencies, States, or franchising authorities; exceptions

(1) Any Federal agency, State, or franchising authority may not impose requirements regarding the provision or content of cable services, except as expressly provided in this subchapter.

(2) Paragraph (1) shall not apply to—

(A) any rule, regulation, or order issued under any Federal law, as such rule, regulation, or order (i) was in effect on September 21, 1983, or (ii) may be amended after such date if the rule, regulation, or order as amended is not inconsistent with the express provisions of this subchapter; and

(B) any rule, regulation, or order under title 17.

(g) Access to emergency information

Notwithstanding any such rule, regulation, or order, each cable operator shall comply with such standards as the Commission shall prescribe to ensure that viewers of video programming on cable systems are afforded the same emergency information as is afforded by the emergency broadcasting system pursuant to Commission regulations in subpart G of part 73, title 47, Code of Federal Regulations.

(h) Notice of changes in and comments on services

A franchising authority may require a cable operator to do any one or more of the following:

(1) Provide 30 days’ advance written notice of any change in channel assignment or in the video programming service provided over any such channel.

(2) Inform subscribers, via written notice, that comments on programming and channel position changes are being recorded by a designated office of the franchising authority.

(i) Disposition of cable upon termination of service

Within 120 days after October 5, 1992, the Commission shall prescribe rules concerning the disposition, after a subscriber to a cable system terminates service, of any cable installed by the cable operator within the premises of such subscriber.

(June 19, 1934, ch. 652, title VI, §624, as added Pub. L. 98-549, §2, Oct. 30, 1984, 98 Stat. 2789;

¹ So in original.

amended Pub. L. 102-385, §§ 15, 16, Oct. 5, 1992, 106 Stat. 1490; Pub. L. 103-414, title III, §§ 303(a)(23), 304(a)(12), Oct. 25, 1994, 108 Stat. 4295, 4297; Pub. L. 104-104, title III, § 301(e), Feb. 8, 1996, 110 Stat. 116.)

REFERENCES IN TEXT

For “the effective date of this subchapter”, referred to in subsecs. (b) and (c), as 60 days after Oct. 30, 1984, except where otherwise expressly provided, see section 9(a) of Pub. L. 98-549, set out as an Effective Date note under section 521 of this title.

AMENDMENTS

1996—Subsec. (e). Pub. L. 104-104 substituted “No State or franchising authority may prohibit, condition, or restrict a cable system’s use of any type of subscriber equipment or any transmission technology.” for “A franchising authority may require as part of a franchise (including a modification, renewal, or transfer thereof) provisions for the enforcement of the standards prescribed under this subsection. A franchising authority may apply to the Commission for a waiver to impose standards that are more stringent than the standards prescribed by the Commission under this subsection.”

1994—Subsec. (d)(2). Pub. L. 103-414, § 304(a)(12), struck out designation “(A)”, inserted “of” after “restrict the viewing”, and struck out subpar. (B) which read as follows: “Subparagraph (A) shall take effect 180 days after the effective date of this subchapter.”

Pub. L. 103-414, § 303(a)(23), inserted “of” after “restrict the viewing” in subpar. (A).

1992—Subsec. (b)(1). Pub. L. 102-385, § 16(c)(1), inserted “, except as provided in subsection (h) of this section,” after “but may not”.

Subsec. (d)(3). Pub. L. 102-385, § 15, added par. (3).

Subsec. (e). Pub. L. 102-385, § 16(a), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “The Commission may establish technical standards relating to the facilities and equipment of cable systems which a franchising authority may require in the franchise.”

Subsec. (g). Pub. L. 102-385, § 16(b), added subsec. (g).

Subsec. (h). Pub. L. 102-385, § 16(c)(2), added subsec. (h).

Subsec. (i). Pub. L. 102-385, § 16(d), added subsec. (i).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-385 effective 60 days after Oct. 5, 1992, see section 28 of Pub. L. 102-385, set out as a note under section 325 of this title.

EFFECTIVE DATE

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

RESTORATION, RETIERMENT AND REPRICING OF SERVICE PREVIOUSLY ELIMINATED, RETIERED, OR REPRICED

Section not to be construed to allow a franchising authority, or a State or political subdivision thereof, to require a cable operator to restore, retier or reprice cable service previously eliminated, retiered, or repriced as of Sept. 26, 1984, see section 9(b) of Pub. L. 98-549, set out as a note under section 543 of this title.

§ 544a. Consumer electronics equipment compatibility

(a) Findings

The Congress finds that—

(1) new and recent models of television receivers and video cassette recorders often contain premium features and functions that are disabled or inhibited because of cable scrambling, encoding, or encryption technologies

and devices, including converter boxes and remote control devices required by cable operators to receive programming;

(2) if these problems are allowed to persist, consumers will be less likely to purchase, and electronics equipment manufacturers will be less likely to develop, manufacture, or offer for sale, television receivers and video cassette recorders with new and innovative features and functions;

(3) cable operators should use technologies that will prevent signal thefts while permitting consumers to benefit from such features and functions in such receivers and recorders; and

(4) compatibility among televisions, video cassette recorders, and cable systems can be assured with narrow technical standards that mandate a minimum degree of common design and operation, leaving all features, functions, protocols, and other product and service options for selection through open competition in the market.

(b) Compatible interfaces

(1) Report; regulations

Within 1 year after October 5, 1992, the Commission, in consultation with representatives of the cable industry and the consumer electronics industry, shall report to Congress on means of assuring compatibility between televisions and video cassette recorders and cable systems, consistent with the need to prevent theft of cable service, so that cable subscribers will be able to enjoy the full benefit of both the programming available on cable systems and the functions available on their televisions and video cassette recorders. Within 180 days after the date of submission of the report required by this subsection, the Commission shall issue such regulations as are necessary to assure such compatibility.

(2) Scrambling and encryption

In issuing the regulations referred to in paragraph (1), the Commission shall determine whether and, if so, under what circumstances to permit cable systems to scramble or encrypt signals or to restrict cable systems in the manner in which they encrypt or scramble signals, except that the Commission shall not limit the use of scrambling or encryption technology where the use of such technology does not interfere with the functions of subscribers’ television receivers or video cassette recorders.

(c) Rulemaking requirements

(1) Factors to be considered

In prescribing the regulations required by this section, the Commission shall consider—

(A) the need to maximize open competition in the market for all features, functions, protocols, and other product and service options of converter boxes and other cable converters unrelated to the descrambling or decryption of cable television signals;

(B) the costs and benefits to consumers of imposing compatibility requirements on cable operators and television manufactur-

ers in a manner that, while providing effective protection against theft or unauthorized reception of cable service, will minimize interference with or nullification of the special functions of subscribers' television receivers or video cassette recorders, including functions that permit the subscriber—

(i) to watch a program on one channel while simultaneously using a video cassette recorder to tape a program on another channel;

(ii) to use a video cassette recorder to tape two consecutive programs that appear on different channels; and

(iii) to use advanced television picture generation and display features; and

(C) the need for cable operators to protect the integrity of the signals transmitted by the cable operator against theft or to protect such signals against unauthorized reception.

(2) Regulations required

The regulations prescribed by the Commission under this section shall include such regulations as are necessary—

(A) to specify the technical requirements with which a television receiver or video cassette recorder must comply in order to be sold as “cable compatible” or “cable ready”;

(B) to require cable operators offering channels whose reception requires a converter box—

(i) to notify subscribers that they may be unable to benefit from the special functions of their television receivers and video cassette recorders, including functions that permit subscribers—

(I) to watch a program on one channel while simultaneously using a video cassette recorder to tape a program on another channel;

(II) to use a video cassette recorder to tape two consecutive programs that appear on different channels; and

(III) to use advanced television picture generation and display features; and

(ii) to the extent technically and economically feasible, to offer subscribers the option of having all other channels delivered directly to the subscribers' television receivers or video cassette recorders without passing through the converter box;

(C) to promote the commercial availability, from cable operators and retail vendors that are not affiliated with cable systems, of converter boxes and of remote control devices compatible with converter boxes;

(D) to ensure that any standards or regulations developed under the authority of this section to ensure compatibility between televisions, video cassette recorders, and cable systems do not affect features, functions, protocols, and other product and service options other than those specified in paragraph (1)(B), including telecommunications interface equipment, home automation communications, and computer network services;

(E) to require a cable operator who offers subscribers the option of renting a remote control unit—

(i) to notify subscribers that they may purchase a commercially available remote control device from any source that sells such devices rather than renting it from the cable operator; and

(ii) to specify the types of remote control units that are compatible with the converter box supplied by the cable operator; and

(F) to prohibit a cable operator from taking any action that prevents or in any way disables the converter box supplied by the cable operator from operating compatibly with commercially available remote control units.

(d) Review of regulations

The Commission shall periodically review and, if necessary, modify the regulations issued pursuant to this section in light of any actions taken in response to such regulations and to reflect improvements and changes in cable systems, television receivers, video cassette recorders, and similar technology.

(June 19, 1934, ch. 652, title VI, §624A, as added Pub. L. 102-385, §17, Oct. 5, 1992, 106 Stat. 1491; amended Pub. L. 104-104, title III, §301(f), Feb. 8, 1996, 110 Stat. 116.)

AMENDMENTS

1996—Subsec. (a)(4). Pub. L. 104-104, §301(f)(1), added par. (4).

Subsec. (c)(1)(A) to (C). Pub. L. 104-104, §301(f)(2), added subpar. (A) and redesignated former subpars. (A) and (B) as (B) and (C), respectively.

Subsec. (c)(2)(D) to (F). Pub. L. 104-104, §301(f)(3), added subpar. (D) and redesignated former subpars. (D) and (E) as (E) and (F), respectively.

EFFECTIVE DATE

Section effective 60 days after Oct. 5, 1992, see section 28 of Pub. L. 102-385, set out as an Effective Date of 1992 Amendment note under section 325 of this title.

§ 545. Modification of franchise obligations

(a) Grounds for modification by franchising authority; public proceeding; time of decision

(1) During the period a franchise is in effect, the cable operator may obtain from the franchising authority modifications of the requirements in such franchise—

(A) in the case of any such requirement for facilities or equipment, including public, educational, or governmental access facilities or equipment, if the cable operator demonstrates that (i) it is commercially impracticable for the operator to comply with such requirement, and (ii) the proposal by the cable operator for modification of such requirement is appropriate because of commercial impracticability; or

(B) in the case of any such requirement for services, if the cable operator demonstrates that the mix, quality, and level of services required by the franchise at the time it was granted will be maintained after such modification.

(2) Any final decision by a franchising authority under this subsection shall be made in a public proceeding. Such decision shall be made within 120 days after receipt of such request by

the franchising authority, unless such 120 day period is extended by mutual agreement of the cable operator and the franchising authority.

(b) Judicial proceedings; grounds for modification by court

(1) Any cable operator whose request for modification under subsection (a) of this section has been denied by a final decision of a franchising authority may obtain modification of such franchise requirements pursuant to the provisions of section 555 of this title.

(2) In the case of any proposed modification of a requirement for facilities or equipment, the court shall grant such modification only if the cable operator demonstrates to the court that—

(A) it is commercially impracticable for the operator to comply with such requirement; and

(B) the terms of the modification requested are appropriate because of commercial impracticability.

(3) In the case of any proposed modification of a requirement for services, the court shall grant such modification only if the cable operator demonstrates to the court that the mix, quality, and level of services required by the franchise at the time it was granted will be maintained after such modification.

(c) Rearrangement, replacement, or removal of service

Notwithstanding subsections (a) and (b) of this section, a cable operator may, upon 30 days' advance notice to the franchising authority, rearrange, replace, or remove a particular cable service required by the franchise if—

(1) such service is no longer available to the operator; or

(2) such service is available to the operator only upon the payment of a royalty required under section 801(b)(2) of title 17, which the cable operator can document—

(A) is substantially in excess of the amount of such payment required on the date of the operator's offer to provide such service, and

(B) has not been specifically compensated for through a rate increase or other adjustment.

(d) Rearrangement of particular services from one service tier to another or other offering of service

Notwithstanding subsections (a) and (b) of this section, a cable operator may take such actions to rearrange a particular service from one service tier to another, or otherwise offer the service, if the rates for all of the service tiers involved in such actions are not subject to regulation under section 543 of this title.

(e) Requirements for services relating to public, educational, or governmental access

A cable operator may not obtain modification under this section of any requirement for services relating to public, educational, or governmental access.

(f) "Commercially impracticable" defined

For purposes of this section, the term "commercially impracticable" means, with respect to

any requirement applicable to a cable operator, that it is commercially impracticable for the operator to comply with such requirement as a result of a change in conditions which is beyond the control of the operator and the nonoccurrence of which was a basic assumption on which the requirement was based.

(June 19, 1934, ch. 652, title VI, §625, as added Pub. L. 98-549, §2, Oct. 30, 1984, 98 Stat. 2790.)

EFFECTIVE DATE

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

§ 546. Renewal

(a) Commencement of proceedings; public notice and participation

(1) A franchising authority may, on its own initiative during the 6-month period which begins with the 36th month before the franchise expiration, commence a proceeding which affords the public in the franchise area 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) of this section unless—

(A) such a proceeding is requested by the cable operator by timely submission of such notice; or

(B) such a proceeding is commenced by the franchising authority on its own initiative.

(b) Submission of renewal proposals; contents; time

(1) Upon completion of a proceeding under subsection (a) of this section, a cable operator seeking renewal of a franchise may, on its own initiative or at the request of a franchising authority, submit a proposal for renewal.

(2) Subject to section 544 of this title, any such proposal shall contain such material as the franchising authority may require, including proposals for an upgrade of the cable system.

(3) The franchising authority may establish a date by which such proposal shall be submitted.

(c) Notice of proposal; renewal; preliminary assessment of nonrenewal; administrative review; issues; notice and opportunity for hearing; transcript; written decision

(1) Upon submittal by a cable operator of a proposal to the franchising authority for the renewal of a franchise pursuant to subsection (b) of this section, the franchising authority shall provide prompt public notice of such proposal and, during the 4-month period which begins on the date of the submission of the cable operator's proposal pursuant to subsection (b) of this section, renew the franchise or, issue a prelimi-

nary assessment that the franchise should not be renewed and, at the request of the operator or on its own initiative, commence an administrative proceeding, after providing prompt public notice of such proceeding, in accordance with paragraph (2) to consider whether—

(A) the cable operator has substantially complied with the material terms of the existing franchise and with applicable law;

(B) the quality of the operator's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the system, has been reasonable in light of community needs;

(C) the operator has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the operator's proposal; and

(D) the operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

(2) In any proceeding under paragraph (1), the cable operator shall be afforded adequate notice and the cable operator and the franchise authority, or its designee, shall be afforded fair opportunity for full participation, including the right to introduce evidence (including evidence related to issues raised in the proceeding under subsection (a) of this section), to require the production of evidence, and to question witnesses. A transcript shall be made of any such proceeding.

(3) At the completion of a proceeding under this subsection, the franchising authority shall issue a written decision granting or denying the proposal for renewal based upon the record of such proceeding, and transmit a copy of such decision to the cable operator. Such decision shall state the reasons therefor.

(d) Basis for denial

Any denial of a proposal for renewal that has been submitted in compliance with subsection (b) of this section shall be based on one or more adverse findings made with respect to the factors described in subparagraphs (A) through (D) of subsection (c)(1) of this section, pursuant to the record of the proceeding under subsection (c) of this section. A franchising authority may not base a denial of renewal on a failure to substantially comply with the material terms of the franchise under subsection (c)(1)(A) of this section or on events considered under subsection (c)(1)(B) of this section in any case in which a violation of the franchise or the events considered under subsection (c)(1)(B) of this section occur after the effective date of this subchapter unless the franchising authority has provided the operator with notice and the opportunity to cure, or in any case in which it is documented that the franchising authority has waived its right to object, or the cable operator gives written notice of a failure or inability to cure and the franchising authority fails to object within a reasonable time after receipt of such notice.

(e) Judicial review; grounds for relief

(1) Any cable operator whose proposal for renewal has been denied by a final decision of a

franchising authority made pursuant to this section, or has been adversely affected by a failure of the franchising authority to act in accordance with the procedural requirements of this section, may appeal such final decision or failure pursuant to the provisions of section 555 of this title.

(2) The court shall grant appropriate relief if the court finds that—

(A) any action of the franchising authority, other than harmless error, is not in compliance with the procedural requirements of this section; or

(B) in the event of a final decision of the franchising authority denying the renewal proposal, the operator has demonstrated that the adverse finding of the franchising authority with respect to each of the factors described in subparagraphs (A) through (D) of subsection (c)(1) of this section on which the denial is based is not supported by a preponderance of the evidence, based on the record of the proceeding conducted under subsection (c) of this section.

(f) Finality of administrative decision

Any decision of a franchising authority on a proposal for renewal shall not be considered final unless all administrative review by the State has occurred or the opportunity therefor has lapsed.

(g) "Franchise expiration" defined

For purposes of this section, the term "franchise expiration" means the date of the expiration of the term of the franchise, as provided under the franchise, as it was in effect on October 30, 1984.

(h) Alternative renewal procedures

Notwithstanding the provisions of subsections (a) through (g) of this section, a cable operator may submit a proposal for the renewal of a franchise pursuant to this subsection at any time, and a franchising authority may, after affording the public adequate notice and opportunity for comment, grant or deny such proposal at any time (including after proceedings pursuant to this section have commenced). The provisions of subsections (a) through (g) of this section shall not apply to a decision to grant or deny a proposal under this subsection. The denial of a renewal pursuant to this subsection shall not affect action on a renewal proposal that is submitted in accordance with subsections (a) through (g) of this section.

(i) Effect of renewal procedures upon action to revoke franchise for cause

Notwithstanding the provisions of subsections (a) through (h) of this section, any lawful action to revoke a cable operator's franchise for cause shall not be negated by the subsequent initiation of renewal proceedings by the cable operator under this section.

(June 19, 1934, ch. 652, title VI, §626, as added Pub. L. 98-549, §2, Oct. 30, 1984, 98 Stat. 2791; amended Pub. L. 102-385, §18, Oct. 5, 1992, 106 Stat. 1493.)

REFERENCES IN TEXT

For "the effective date of this subchapter", referred to in subsec. (d), as 60 days after Oct. 30, 1984, except

where otherwise expressly provided, see section 9(a) of Pub. L. 98-549, set out as an Effective Date note under section 521 of this title.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-385, §18(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “During the 6-month period which begins with the 36th month before the franchise expiration, the franchising authority may on its own initiative, and shall at the request of the cable operator, commence proceedings which afford the public in the franchise area appropriate notice and participation for the purpose of—

“(1) identifying the future cable-related community needs and interests; and

“(2) reviewing the performance of the cable operator under the franchise during the then current franchise term.”

Subsec. (c)(1). Pub. L. 102-385, §18(b), inserted “pursuant to subsection (b) of this section” after “renewal of a franchise” and substituted “date of the submission of the cable operator’s proposal pursuant to subsection (b) of this section” for “completion of any proceedings under subsection (a) of this section”.

Subsec. (c)(1)(B). Pub. L. 102-385, §18(c), substituted “mix or quality” for “mix, quality, or level”.

Subsec. (d). Pub. L. 102-385, §18(d), inserted “that has been submitted in compliance with subsection (b) of this section” after “Any denial of a proposal for renewal” and substituted “or the cable operator gives written notice of a failure or inability to cure and the franchising authority fails to object within a reasonable time after receipt of such notice” for “or has effectively acquiesced”.

Subsec. (e)(2)(A). Pub. L. 102-385, §18(e), inserted “, other than harmless error,” after “franchising authority”.

Subsec. (i). Pub. L. 102-385, §18(f), added subsec. (i).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-385 effective 60 days after Oct. 5, 1992, see section 28 of Pub. L. 102-385, set out as a note under section 325 of this title.

EFFECTIVE DATE

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

§ 547. Conditions of sale

(a) If a renewal of a franchise held by a cable operator is denied and the franchising authority acquires ownership of the cable system or effects a transfer of ownership of the system to another person, any such acquisition or transfer shall be—

(1) at fair market value, determined on the basis of the cable system valued as a going concern but with no value allocated to the franchise itself, or

(2) in the case of any franchise existing on the effective date of this subchapter, at a price determined in accordance with the franchise if such franchise contains provisions applicable to such an acquisition or transfer.

(b) If a franchise held by a cable operator is revoked for cause and the franchising authority acquires ownership of the cable system or effects a transfer of ownership of the system to another person, any such acquisition or transfer shall be—

(1) at an equitable price, or

(2) in the case of any franchise existing on the effective date of this subchapter, at a price

determined in accordance with the franchise if such franchise contains provisions applicable to such an acquisition or transfer.

(June 19, 1934, ch. 652, title VI, §627, as added Pub. L. 98-549, §2, Oct. 30, 1984, 98 Stat. 2793.)

REFERENCES IN TEXT

For “the effective date of this subchapter”, referred to in subsecs. (a)(2) and (b)(2), as 60 days after Oct. 30, 1984, except where otherwise expressly provided, see section 9(a) of Pub. L. 98-549, set out as an Effective Date note under section 521 of this title.

EFFECTIVE DATE

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

§ 548. Development of competition and diversity in video programming distribution

(a) Purpose

The purpose of this section is to promote the public interest, convenience, and necessity by increasing competition and diversity in the multichannel video programming market, to 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 October 5, 1992, the Commission shall, in order to promote the public interest, convenience, and necessity by increasing competition and diversity in the multichannel video programming market and the continuing development of communications technologies, prescribe regulations to specify particular conduct that is prohibited by subsection (b) of this section.

(2) Minimum contents of regulations

The regulations to be promulgated under this section shall—

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

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

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

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

(iii) establishing different prices, terms, and conditions which take into account economies of scale, cost savings, or other direct and legitimate economic benefits reasonably attributable to the number of subscribers served by the distributor; or

(iv) entering into an exclusive contract that is permitted under subparagraph (D);

(C) prohibit practices, understandings, arrangements, and activities, including exclusive contracts for satellite cable programming or satellite broadcast programming between a cable operator and a satellite cable programming vendor or satellite broadcast programming vendor, that prevent a multichannel video programming distributor from obtaining such programming from any satellite cable programming vendor in which a cable operator has an attributable interest or any satellite broadcast programming vendor in which a cable operator has an attributable interest for distribution to persons in areas not served by a cable operator as of October 5, 1992; and

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

(3) Limitations

(A) Geographic limitations

Nothing in this section shall require any person who is engaged in the national or regional distribution of video programming to make such programming available in any geographic area beyond which such programming has been authorized or licensed for distribution.

(B) Applicability to satellite retransmissions

Nothing in this section shall apply (i) to the signal of any broadcast affiliate of a national television network or other television signal that is retransmitted by satellite but that is not satellite broadcast programming, or (ii) to any internal satellite communication of any broadcast network or cable network that is not satellite broadcast programming.

(4) Public interest determinations on exclusive contracts

In determining whether an exclusive contract is in the public interest for purposes of paragraph (2)(D), the Commission shall consider each of the following factors with respect to the effect of such contract on the distribution of video programming in areas that are served by a cable operator:

(A) the effect of such exclusive contract on the development of competition in local and national multichannel video programming distribution markets;

(B) the effect of such exclusive contract on competition from multichannel video 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 October 5, 1992, unless the Commission finds, in a proceeding conducted during the last year of such 10-year period, that such prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming.

(d) Adjudicatory proceeding

Any multichannel video programming distributor aggrieved by conduct that it alleges constitutes a violation of subsection (b) of this section, or the regulations of the Commission under subsection (c) of this section, may commence an adjudicatory proceeding at the Commission.

(e) Remedies for violations

(1) Remedies authorized

Upon completion of such adjudicatory proceeding, the Commission shall have the power to order appropriate remedies, including, if necessary, the power to establish prices, terms, and conditions of sale of programming to the aggrieved multichannel video programming distributor.

(2) Additional remedies

The remedies provided in paragraph (1) are in addition to and not in lieu of the remedies available under subchapter V of this chapter or any other provision of this chapter.

(f) Procedures

The Commission shall prescribe regulations to implement this section. The Commission's regulations shall—

- (1) provide for an expedited review of any complaints made pursuant to this section;
- (2) establish procedures for the Commission to collect such data, including the right to obtain copies of all contracts and documents reflecting arrangements and understandings alleged to violate this section, as the Commission requires to carry out this section; and
- (3) provide for penalties to be assessed against any person filing a frivolous complaint pursuant to this section.

(g) Reports

The Commission shall, beginning not later than 18 months after promulgation of the regulations required by subsection (c) of this section, annually report to Congress on the status of competition in the market for the delivery of video programming.

(h) Exemptions for prior contracts**(1) In general**

Nothing in this section shall affect any contract that grants exclusive distribution rights to any person with respect to satellite cable programming and that was entered into on or before June 1, 1990, except that the provisions of subsection (c)(2)(C) of this section shall apply for distribution to persons in areas not served by a cable operator.

(2) Limitation on renewals

A contract that was entered into on or before June 1, 1990, but that is renewed or extended after October 5, 1992, shall not be exempt under paragraph (1).

(i) Definitions

As used in this section:

- (1) The term "satellite cable programming" has the meaning provided under section 605 of this title, except that such term does not include satellite broadcast programming.
- (2) The term "satellite cable programming vendor" means a person engaged in the production, creation, or wholesale distribution for sale of satellite cable programming, but does not include a satellite broadcast programming vendor.
- (3) The term "satellite broadcast programming" means broadcast video programming when such programming is retransmitted by satellite and the entity retransmitting such programming is not the broadcaster or an entity performing such retransmission on behalf of and with the specific consent of the broadcaster.
- (4) The term "satellite broadcast programming vendor" means a fixed service satellite carrier that provides service pursuant to section 119 of title 17 with respect to satellite broadcast programming.

(j) Common carriers

Any provision that applies to a cable operator under this section shall apply to a common carrier or its affiliate that provides video programming by any means directly to subscribers. Any

such provision that applies to a satellite cable programming vendor in which a cable operator has an attributable interest shall apply to any satellite cable programming vendor in which such common carrier has an attributable interest. For the purposes of this subsection, two or fewer common officers or directors shall not by itself establish an attributable interest by a common carrier in a satellite cable programming vendor (or its parent company).

(June 19, 1934, ch. 652, title VI, §628, as added Pub. L. 102-385, §19, Oct. 5, 1992, 106 Stat. 1494; amended Pub. L. 104-104, title III, §301(h), Feb. 8, 1996, 110 Stat. 117.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (e)(2), was in the original "this Act", meaning act June 19, 1934, ch. 652, 48 Stat. 1064, known as the Communications Act of 1934, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 609 of this title and Tables.

AMENDMENTS

1996—Subsec. (j). Pub. L. 104-104 added subsec. (j).

EFFECTIVE DATE

Section effective 60 days after Oct. 5, 1992, see section 28 of Pub. L. 102-385, set out as an Effective Date of 1992 Amendment note under section 325 of this title.

§ 549. Competitive availability of navigation devices**(a) Commercial consumer availability of equipment used to access services provided by multichannel video programming distributors**

The Commission shall, in consultation with appropriate industry standard-setting organizations, adopt regulations to assure the commercial availability, to consumers of multichannel video programming and other services offered over multichannel video programming systems, of converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems, from manufacturers, retailers, and other vendors not affiliated with any multichannel video programming distributor. Such regulations shall not prohibit any multichannel video programming distributor from also offering converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems, to consumers, if the system operator's charges to consumers for such devices and equipment are separately stated and not subsidized by charges for any such service.

(b) Protection of system security

The Commission shall not prescribe regulations under subsection (a) of this section which would jeopardize security of multichannel video programming and other services offered over multichannel video programming systems, or impede the legal rights of a provider of such services to prevent theft of service.

(c) Waiver

The Commission shall waive a regulation adopted under subsection (a) of this section for

a limited time upon an appropriate showing by a provider of multichannel video programming and other services offered over multichannel video programming systems, or an equipment provider, that such waiver is necessary to assist the development or introduction of a new or improved multichannel video programming or other service offered over multichannel video programming systems, technology, or products. Upon an appropriate showing, the Commission shall grant any such waiver request within 90 days of any application filed under this subsection, and such waiver shall be effective for all service providers and products in that category and for all providers of services and products.

(d) Avoidance of redundant regulations

(1) Commercial availability determinations

Determinations made or regulations prescribed by the Commission with respect to commercial availability to consumers of converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems, before February 8, 1996, shall fulfill the requirements of this section.

(2) Regulations

Nothing in this section affects section 64.702(e) of the Commission's regulations (47 C.F.R. 64.702(e)) or other Commission regulations governing interconnection and competitive provision of customer premises equipment used in connection with basic common carrier communications services.

(e) Sunset

The regulations adopted under this section shall cease to apply when the Commission determines that—

- (1) the market for the multichannel video programming distributors is fully competitive;
- (2) the market for converter boxes, and interactive communications equipment, used in conjunction with that service is fully competitive; and
- (3) elimination of the regulations would promote competition and the public interest.

(f) Commission's authority

Nothing in this section shall be construed as expanding or limiting any authority that the Commission may have under law in effect before February 8, 1996.

(June 19, 1934, ch. 652, title VI, §629, as added Pub. L. 104-104, title III, §304, Feb. 8, 1996, 110 Stat. 125.)

PART IV—MISCELLANEOUS PROVISIONS

§ 551. Protection of subscriber privacy

(a) Notice to subscriber regarding personally identifiable information; definitions

(1) At the time of entering into an agreement to provide any cable service or other service to a subscriber and at least once a year thereafter, a cable operator shall provide notice in the form of a separate, written statement to such subscriber which clearly and conspicuously informs the subscriber of—

(A) the nature of personally identifiable information collected or to be collected with respect to the subscriber and the nature of the use of such information;

(B) the nature, frequency, and purpose of any disclosure which may be made of such information, including an identification of the types of persons to whom the disclosure may be made;

(C) the period during which such information will be maintained by the cable operator;

(D) the times and place at which the subscriber may have access to such information in accordance with subsection (d) of this section; and

(E) the limitations provided by this section with respect to the collection and disclosure of information by a cable operator and the right of the subscriber under subsections (f) and (h) of this section to enforce such limitations.

In the case of subscribers who have entered into such an agreement before the effective date of this section, such notice shall be provided within 180 days of such date and at least once a year thereafter.

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

(A) the term "personally identifiable information" does not include any record of aggregate data which does not identify particular persons;

(B) the term "other service" includes any wire or radio communications service provided using any of the facilities of a cable operator that are used in the provision of cable service; and

(C) the term "cable operator" includes, in addition to persons within the definition of cable operator in section 522 of this title, any person who (i) is owned or controlled by, or under common ownership or control with, a cable operator, and (ii) provides any wire or radio communications service.

(b) Collection of personally identifiable information using cable system

(1) Except as provided in paragraph (2), a cable operator shall not use the cable system to collect personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned.

(2) A cable operator may use the cable system to collect such information in order to—

(A) obtain information necessary to render a cable service or other service provided by the cable operator to the subscriber; or

(B) detect unauthorized reception of cable communications.

(c) Disclosure of personally identifiable information

(1) Except as provided in paragraph (2), a cable operator shall not disclose personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned and shall take such actions as are necessary to prevent unauthorized access to such information by a person other than the subscriber or cable operator.

(2) A cable operator may disclose such information if the disclosure is—

(A) necessary to render, or conduct a legitimate business activity related to, a cable service or other service provided by the cable operator to the subscriber;

(B) subject to subsection (h) of this section, made pursuant to a court order authorizing such disclosure, if the subscriber is notified of such order by the person to whom the order is directed;

(C) a disclosure of the names and addresses of subscribers to any cable service or other service, if—

(i) the cable operator has provided the subscriber the opportunity to prohibit or limit such disclosure, and

(ii) the disclosure does not reveal, directly or indirectly, the—

(I) extent of any viewing or other use by the subscriber of a cable service or other service provided by the cable operator, or

(II) the nature of any transaction made by the subscriber over the cable system of the cable operator; or

(D) to a government entity as authorized under chapters 119, 121, or 206 of title 18, except that such disclosure shall not include records revealing cable subscriber selection of video programming from a cable operator.

(d) Subscriber access to information

A cable subscriber shall be provided access to all personally identifiable information regarding that subscriber which is collected and maintained by a cable operator. Such information shall be made available to the subscriber at reasonable times and at a convenient place designated by such cable operator. A cable subscriber shall be provided reasonable opportunity to correct any error in such information.

(e) Destruction of information

A cable operator shall destroy personally identifiable information if the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under subsection (d) of this section or pursuant to a court order.

(f) Civil action in United States district court; damages; attorney's fees and costs; nonexclusive nature of remedy

(1) Any person aggrieved by any act of a cable operator in violation of this section may bring a civil action in a United States district court.

(2) The court may award—

(A) actual damages but not less than liquidated damages computed at the rate of \$100 a day for each day of violation or \$1,000, whichever is higher;

(B) punitive damages; and

(C) reasonable attorneys' fees and other litigation costs reasonably incurred.

(3) The remedy provided by this section shall be in addition to any other lawful remedy available to a cable subscriber.

(g) Regulation by States or franchising authorities

Nothing in this subchapter shall be construed to prohibit any State or any franchising author-

ity from enacting or enforcing laws consistent with this section for the protection of subscriber privacy.

(h) Disclosure of information to governmental entity pursuant to court order

Except as provided in subsection (c)(2)(D) of this section, a governmental entity may obtain personally identifiable information concerning a cable subscriber pursuant to a court order only if, in the court proceeding relevant to such court order—

(1) such entity offers clear and convincing evidence that the subject of the information is reasonably suspected of engaging in criminal activity and that the information sought would be material evidence in the case; and

(2) the subject of the information is afforded the opportunity to appear and contest such entity's claim.

(June 19, 1934, ch. 652, title VI, §631, as added Pub. L. 98-549, §2, Oct. 30, 1984, 98 Stat. 2794; amended Pub. L. 102-385, §20, Oct. 5, 1992, 106 Stat. 1497; Pub. L. 107-56, title II, §211, Oct. 26, 2001, 115 Stat. 283.)

REFERENCES IN TEXT

For "the effective date of this section", referred to in subsec. (a)(1), as 60 days after Oct. 30, 1984, except where otherwise expressly provided, see section 9(a) of Pub. L. 98-549, set out as an Effective Date note under section 521 of this title.

AMENDMENTS

2001—Subsec. (c)(2)(D). Pub. L. 107-56, §211(1), added subpar. (D).

Subsec. (h). Pub. L. 107-56, §211(2), substituted "Except as provided in subsection (c)(2)(D) of this section, a governmental entity" for "A governmental entity" in introductory provisions.

1992—Subsec. (a)(2). Pub. L. 102-385, §20(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "For purposes of this section, the term 'personally identifiable information' does not include any record of aggregate data which does not identify particular persons."

Subsec. (c)(1). Pub. L. 102-385, §20(b), inserted before period at end "and shall take such actions as are necessary to prevent unauthorized access to such information by a person other than the subscriber or cable operator".

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-385 effective 60 days after Oct. 5, 1992, see section 28 of Pub. L. 102-385, set out as a note under section 325 of this title.

EFFECTIVE DATE

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

§ 552. Consumer protection and customer service

(a) Franchising authority enforcement

A franchising authority may establish and enforce—

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

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

(b) Commission standards

The Commission shall, within 180 days of October 5, 1992, establish standards by which cable operators may fulfill their customer service requirements. Such standards shall include, at a minimum, requirements governing—

- (1) cable system office hours and telephone availability;
- (2) installations, outages, and service calls; and
- (3) communications between the cable operator and the subscriber (including standards governing bills and refunds).

(c) Subscriber notice

A cable operator may provide notice of service and rate changes to subscribers using any reasonable written means at its sole discretion. Notwithstanding section 543(b)(6) of this title or any other provision of this chapter, a cable operator shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, State, or franchising authority on the transaction between the operator and the subscriber.

(d) Consumer protection laws and customer service agreements**(1) Consumer protection laws**

Nothing in this subchapter shall be construed to prohibit any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted by this subchapter.

(2) Customer service requirement agreements

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

(June 19, 1934, ch. 652, title VI, §632, as added Pub. L. 98-549, §2, Oct. 30, 1984, 98 Stat. 2796; amended Pub. L. 102-385, §8, Oct. 5, 1992, 106 Stat. 1484; Pub. L. 104-104, title III, §301(g), Feb. 8, 1996, 110 Stat. 117.)

REFERENCES IN TEXT

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

AMENDMENTS

1996—Subsecs. (c), (d). Pub. L. 104-104 added subsec. (c) and redesignated former subsec. (c) as (d).

1992—Pub. L. 102-385 amended section generally. Prior to amendment, section read as follows:

“(a) A franchising authority may require, as part of a franchise (including a franchise renewal, subject to

section 546 of this title), provisions for enforcement of—

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

“(2) construction schedules and other construction-related requirements of the cable operator.

“(b) A franchising authority may enforce any provision, contained in any franchise, relating to requirements described in paragraph (1) or (2) of subsection (a) of this section, to the extent not inconsistent with this subchapter.

“(c) Nothing in this subchapter shall be construed to prohibit any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not inconsistent with this subchapter.”

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-385 effective 60 days after Oct. 5, 1992, see section 28 of Pub. L. 102-385, set out as a note under section 325 of this title.

EFFECTIVE DATE

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

§ 553. Unauthorized reception of cable service**(a) Unauthorized interception or receipt or assistance in intercepting or receiving service; “assist in intercepting or receiving” defined**

(1) No person shall intercept or receive or assist in intercepting or receiving any communications service offered over a cable system, unless specifically authorized to do so by a cable operator or as may otherwise be specifically authorized by law.

(2) For the purpose of this section, the term “assist in intercepting or receiving” shall include the manufacture or distribution of equipment intended by the manufacturer or distributor (as the case may be) for unauthorized reception of any communications service offered over a cable system in violation of subparagraph (1).

(b) Penalties for willful violation

(1) Any person who willfully violates subsection (a)(1) of this section shall be fined not more than \$1,000 or imprisoned for not more than 6 months, or both.

(2) Any person who violates subsection (a)(1) of this section willfully and for purposes of commercial advantage or private financial gain shall be fined not more than \$50,000 or imprisoned for not more than 2 years, or both, for the first such offense and shall be fined not more than \$100,000 or imprisoned for not more than 5 years, or both, for any subsequent offense.

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

(c) Civil action in district court; injunctions; damages; attorney’s fees and costs; regulation by States or franchising authorities

(1) Any person aggrieved by any violation of subsection (a)(1) of this section may bring a civil action in a United States district court or in any other court of competent jurisdiction.

(2) The court may—

(A) grant temporary and final injunctions on such terms as it may deem reasonable to pre-

vent or restrain violations of subsection (a)(1) of this section;

(B) award damages as described in paragraph (3); and

(C) direct the recovery of full costs, including awarding reasonable attorneys' fees to an aggrieved party who prevails.

(3)(A) Damages awarded by any court under this section shall be computed in accordance with either of the following clauses:

(i) the party aggrieved may recover the actual damages suffered by him as a result of the violation and any profits of the violator that are attributable to the violation which are not taken into account in computing the actual damages; in determining the violator's profits, the party aggrieved shall be required to prove only the violator's gross revenue, and the violator shall be required to prove his deductible expenses and the elements of profit attributable to factors other than the violation; or

(ii) the party aggrieved may recover an award of statutory damages for all violations involved in the action, in a sum of not less than \$250 or more than \$10,000 as the court considers just.

(B) In any case in which the court finds that the violation was committed willfully and for purposes of commercial advantage or private financial gain, the court in its discretion may increase the award of damages, whether actual or statutory under subparagraph (A), by an amount of not more than \$50,000.

(C) In any case where the court finds that the violator was not aware and had no reason to believe that his acts constituted a violation of this section, the court in its discretion may reduce the award of damages to a sum of not less than \$100.

(D) Nothing in this subchapter shall prevent any State or franchising authority from enacting or enforcing laws, consistent with this section, regarding the unauthorized interception or reception of any cable service or other communications service.

(June 19, 1934, ch. 652, title VI, § 633, as added Pub. L. 98-549, § 2, Oct. 30, 1984, 98 Stat. 2796; amended Pub. L. 102-385, § 21, Oct. 5, 1992, 106 Stat. 1498.)

AMENDMENTS

1992—Subsec. (b)(2). Pub. L. 102-385, § 21(1), substituted “\$50,000” for “\$25,000”, “2 years” for “1 year”, “\$100,000” for “\$50,000”, and “5 years” for “2 years”.

Subsec. (b)(3). Pub. L. 102-385, § 21(2), added par. (3).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-385 effective 60 days after Oct. 5, 1992, see section 28 of Pub. L. 102-385, set out as a note under section 325 of this title.

EFFECTIVE DATE

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

§ 554. Equal employment opportunity

(a) Entities within scope of coverage

This section shall apply to any corporation, partnership, association, joint-stock company,

or trust engaged primarily in the management or operation of any cable system.

(b) Discrimination prohibited

Equal opportunity in employment shall be afforded by each entity specified in subsection (a) of this section, and no person shall be discriminated against in employment by such entity because of race, color, religion, national origin, age, or sex.

(c) Equal opportunity programs; establishment; maintenance; execution; terms

Any entity specified in subsection (a) of this section shall establish, maintain, and execute a positive continuing program of specific practices designed to ensure equal opportunity in every aspect of its employment policies and practices. Under the terms of its program, each such entity shall—

(1) define the responsibility of each level of management to ensure a positive application and vigorous enforcement of its policy of equal opportunity, and establish a procedure to review and control managerial and supervisory performance;

(2) inform its employees and recognized employee organizations of the equal employment opportunity policy and program and enlist their cooperation;

(3) communicate its equal employment opportunity policy and program and its employment needs to sources of qualified applicants without regard to race, color, religion, national origin, age, or sex, and solicit their recruitment assistance on a continuing basis;

(4) conduct a continuing program to exclude every form of prejudice or discrimination based on race, color, religion, national origin, age, or sex, from its personnel policies and practices and working conditions; and

(5) conduct a continuing review of job structure and employment practices and adopt positive recruitment, training, job design, and other measures needed to ensure genuine equality of opportunity to participate fully in all its organizational units, occupations, and levels of responsibility.

(d) Revision of rules; required provisions; annual statistical report; notice and comment on amendments

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

(2) Such rules shall specify the terms under which an entity specified in subsection (a) of this section shall, to the extent possible—

(A) disseminate its equal opportunity program to job applicants, employees, and those with whom it regularly does business;

(B) use minority organizations, organizations for women, media, educational institutions, and other potential sources of minority

and female applicants, to supply referrals whenever jobs are available in its operation;

(C) evaluate its employment profile and job turnover against the availability of minorities and women in its franchise area;

(D) undertake to offer promotions of minorities and women to positions of greater responsibility;

(E) encourage minority and female entrepreneurs to conduct business with all parts of its operation; and

(F) analyze the results of its efforts to recruit, hire, promote, and use the services of minorities and women and explain any difficulties encountered in implementing its equal employment opportunity program.

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

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

(B) The report required by subparagraph (A) shall be made on separate forms, provided by the Commission, for full-time and part-time employees. The Commission's rules shall sufficiently define the job categories listed in clauses (i) through (vi) of such subparagraph so as to ensure that only employees who are principal decisionmakers and who have supervisory authority are reported for such categories. The Commission shall adopt rules that define the job categories listed in clauses (vii) through (xv) in a manner that is consistent with the Commission policies in effect on June 1, 1990. The Commission shall prescribe the method by which entities shall be required to compute and report the number of minorities and women in the job categories listed in clauses (i) through (x) and the number of minorities and women in the job categories listed in clauses (i) through (xv) in proportion to the total number of qualified minorities and women in the relevant labor market. The report shall include information on hiring, promotion, and recruitment practices necessary for the Commission to evaluate the efforts of entities to comply with the provisions of paragraph (2) of this subsection. The report shall be available for public inspection at the entity's central location and at every location where 5 or more full-time employees are regularly assigned to work. Nothing in this subsection shall be construed as prohibiting the Commission from collecting or continuing to collect statistical or

other employment information in a manner that it deems appropriate to carry out this section.

(4) The Commission may amend such rules from time to time to the extent necessary to carry out the provisions of this section. Any such amendment shall be made after notice and opportunity for comment.

(e) Annual certification of compliance; periodic investigation of employment practices

(1) On an annual basis, the Commission shall certify each entity described in subsection (a) of this section as in compliance with this section if, on the basis of information in the possession of the Commission, including the report filed pursuant to subsection (d)(3) of this section, such entity was in compliance, during the annual period involved, with the requirements of subsections (b), (c), and (d) of this section.

(2) The Commission shall, periodically but not less frequently than every five years, investigate the employment practices of each entity described in subsection (a) of this section, in the aggregate, as well as in individual job categories, and determine whether such entity is in compliance with the requirements of subsections (b), (c), and (d) of this section, including whether such entity's employment practices deny or abridge women and minorities equal employment opportunities. As part of such investigation, the Commission shall review whether the entity's reports filed pursuant to subsection (d)(3) of this section accurately reflect employee responsibilities in the reported job classifications.

(f) Substantial failure to comply; penalties; notice to public and franchising authorities

(1) If the Commission finds after notice and hearing that the entity involved has willfully or repeatedly without good cause failed to comply with the requirements of this section, such failure shall constitute a substantial failure to comply with this subchapter. The failure to obtain certification under subsection (e) of this section shall not itself constitute the basis for a determination of substantial failure to comply with this title. For purposes of this paragraph, the term "repeatedly", when used with respect to failures to comply, refers to 3 or more failures during any 7-year period.

(2) Any person who is determined by the Commission, through an investigation pursuant to subsection (e) of this section or otherwise, to have failed to meet or failed to make best efforts to meet the requirements of this section, or rules under this section, shall be liable to the United States for a forfeiture penalty of \$500 for each violation. Each day of a continuing violation shall constitute a separate offense. Any entity defined in subsection (a) of this section shall not be liable for more than 180 days of forfeitures which accrued prior to notification by the Commission of a potential violation. Nothing in this paragraph shall limit the forfeiture imposed on any person as a result of any violation that continues subsequent to such notification. In addition, any person liable for such penalty may also have any license under this chapter for cable auxiliary relay service suspended until the Commission determines that the failure involved has been corrected. Whoever know-

ingly makes any false statement or submits documentation which he knows to be false, pursuant to an application for certification under this section shall be in violation of this section.

(3) The provisions of paragraphs (3) and (4), and the last 2 sentences of paragraph (2), of section 503(b) of this title shall apply to forfeitures under this subsection.

(4) The Commission shall provide for notice to the public and appropriate franchising authorities of any penalty imposed under this section.

(g) Discrimination complaints; investigation; enforcement

Employees or applicants for employment who believe they have been discriminated against in violation of the requirements of this section, or rules under this section, or any other interested person, may file a complaint with the Commission. A complaint by any such person shall be in writing, and shall be signed and sworn to by that person. The regulations under subsection (d)(1) of this section shall specify a program, under authorities otherwise available to the Commission, for the investigation of complaints and violations, and for the enforcement of this section.

(h) "Cable operator" defined; owners of multiple unit dwellings

(1) For purposes of this section, the term "cable operator" includes any operator of any satellite master antenna television system, including a system described in section 522(7)(A) of this title and any multichannel video programming distributor.

(2) Such term does not include any operator of a system which, in the aggregate, serves fewer than 50 subscribers.

(3) In any case in which a cable operator is the owner of a multiple unit dwelling, the requirements of this section shall only apply to such cable operator with respect to its employees who are primarily engaged in cable telecommunications.

(i) Regulatory powers of States and franchising authorities; nonexclusive nature of remedies and enforcement provisions; covered franchises

(1) Nothing in this section shall affect the authority of any State or any franchising authority—

(A) to establish or enforce any requirement which is consistent with the requirements of this section, including any requirement which affords equal employment opportunity protection for employees;

(B) to establish or enforce any provision requiring or encouraging any cable operator to conduct business with enterprises which are owned or controlled by members of minority groups (as defined in section 309(i)(3)(C)(ii) of this title) or which have their principal operations located within the community served by the cable operator; or

(C) to enforce any requirement of a franchise in effect on the effective date of this subchapter.

(2) The remedies and enforcement provisions of this section are in addition to, and not in lieu of, those available under this or any other law.

(3) The provisions of this section shall apply to any cable operator, whether operating pursuant to a franchise granted before, on, or after October 30, 1984.

(June 19, 1934, ch. 652, title VI, §634, as added Pub. L. 98-549, §2, Oct. 30, 1984, 98 Stat. 2797; amended Pub. L. 102-385, §22(b)-(e), Oct. 5, 1992, 106 Stat. 1498, 1499; Pub. L. 103-414, title III, §303(a)(24), Oct. 25, 1994, 108 Stat. 4295.)

REFERENCES IN TEXT

The Cable Television Consumer Protection and Competition Act of 1992, referred to in subsec. (d)(1), is Pub. L. 102-385, Oct. 5, 1992, 106 Stat. 1460. For complete classification of this Act to the Code, see Short Title of 1992 Amendments note set out under section 609 of this title and Tables.

This chapter, referred to in subsec. (f)(2), was in the original "this Act", meaning act June 19, 1934, ch. 652, 48 Stat. 1064, known as the Communications Act of 1934, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 609 of this title and Tables.

For "the effective date of this subchapter", referred to in subsec. (i)(1)(C), as 60 days after Oct. 30, 1984, except where otherwise expressly provided, see section 9(a) of Pub. L. 98-549, set out as an Effective Date note under section 521 of this title.

AMENDMENTS

1994—Subsec. (h)(1). Pub. L. 103-414 substituted "section 522(7)(A)" for "section 522(6)(A)".

1992—Subsec. (d)(1). Pub. L. 102-385, §22(b), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "Not later than 270 days after the effective date of this section, and after notice and opportunity for hearing, the Commission shall prescribe rules to carry out this section."

Subsec. (d)(3). Pub. L. 102-385, §22(c), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "Such rules also shall require an entity specified in subsection (a) of this section with more than 5 full-time employees to file with the Commission an annual statistical report identifying by race and sex the number of employees in each of the following full-time and part-time job categories:

- "(A) officials and managers;
- "(B) professionals;
- "(C) technicians;
- "(D) sales persons;
- "(E) office and clerical personnel;
- "(F) skilled craft persons;
- "(G) semiskilled operatives;
- "(H) unskilled laborers; and
- "(I) service workers.

The report shall include the number of minorities and women in the relevant labor market for each of the above categories. The statistical report shall be available to the public at the central office and at every location where more than 5 full-time employees are regularly assigned to work."

Subsec. (f)(2). Pub. L. 102-385, §22(d), substituted "\$500" for "\$200".

Subsec. (h)(1). Pub. L. 102-385, §22(e), inserted before period at end "and any multichannel video programming distributor".

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-385 effective 60 days after Oct. 5, 1992, see section 28 of Pub. L. 102-385, set out as a note under section 325 of this title.

EFFECTIVE DATE

Section effective 60 days after Oct. 30, 1984, except where otherwise expressly provided, see section 9(a) of

Pub. L. 98-549, set out as a note under section 521 of this title.

CONGRESSIONAL FINDINGS: EMPLOYMENT OF WOMEN AND MINORITIES IN MANAGEMENT POSITIONS IN TELEVISION INDUSTRY

Pub. L. 102-385, §22(a), Oct. 5, 1992, 106 Stat. 1498, provided that: "The Congress finds and declares that—

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

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

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

STUDY AND REPORT ON EFFECT AND OPERATION OF AMENDMENTS BY SECTION 22 OF PUB. L. 102-385

Pub. L. 102-385, §22(g), Oct. 5, 1992, 106 Stat. 1500, provided that: "Not later than 2 years after the date of enactment of this Act [Oct. 5, 1992], the Commission shall submit to the Congress a report pursuant to a proceeding to review and obtain public comment on the effect and operation of the amendments made by this section [enacting section 334 of this title and amending this section]. In conducting such review, the Commission shall consider the effectiveness of its procedures, regulations, policies, standards, and guidelines in promoting equality of employment opportunity and promotion opportunity, and particularly the effectiveness of its procedures, regulations, policies, standards, and guidelines in promoting the congressional policy favoring increased employment opportunity for women and minorities in positions of management authority. The Commission shall forward to the Congress such legislative recommendations to improve equal employment opportunity in the broadcasting and cable industries as it deems necessary."

§ 555. Judicial proceedings

(a) Actions to review determinations by franchising authorities

Any cable operator adversely affected by any final determination made by a franchising authority under section 541(a)(1), 545 or 546 of this title may commence an action within 120 days after receiving notice of such determination, which may be brought in—

(1) the district court of the United States for any judicial district in which the cable system is located; or

(2) in any State court of general jurisdiction having jurisdiction over the parties.

(b) Available relief

The court may award any appropriate relief consistent with the provisions of the relevant section described in subsection (a) of this section and with the provisions of subsection (a) of this section.

(c) Review of constitutionality of sections 534 and 535

(1) Notwithstanding any other provision of law, any civil action challenging the constitutionality of section 534 or 535 of this title or any provision thereof shall be heard by a district court of three judges convened pursuant to the provisions of section 2284 of title 28.

(2) Notwithstanding any other provision of law, an interlocutory or final judgment, decree, or order of the court of three judges in an action under paragraph (1) holding section 534 or 535 of this title or any provision thereof unconstitutional shall be reviewable as a matter of right by direct appeal to the Supreme Court. Any such appeal shall be filed not more than 20 days after entry of such judgment, decree, or order.

(June 19, 1934, ch. 652, title VI, §635, as added Pub. L. 98-549, §2, Oct. 30, 1984, 98 Stat. 2800; amended Pub. L. 102-385, §§7(a)(2), 23, 24(b), Oct. 5, 1992, 106 Stat. 1483, 1500, 1501.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-385, §7(a)(2), inserted "541(a)(1)," after "section".

Subsec. (b). Pub. L. 102-385, §24(b), inserted "and with the provisions of subsection (a) of this section" after "subsection (a) of this section".

Subsec. (c). Pub. L. 102-385, §23, added subsec. (c).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-385 effective 60 days after Oct. 5, 1992, see section 28 of Pub. L. 102-385, set out as a note under section 325 of this title.

EFFECTIVE DATE

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

§ 555a. Limitation of franchising authority liability

(a) Suits for damages prohibited

In any court proceeding pending on or initiated after October 5, 1992, involving any claim against a franchising authority or other governmental entity, or any official, member, employee, or agent of such authority or entity, arising from the regulation of cable service or from a decision of approval or disapproval with respect to a grant, renewal, transfer, or amendment of a franchise, any relief, to the extent such relief is required by any other provision of Federal, State, or local law, shall be limited to injunctive relief and declaratory relief.

(b) Exception for completed cases

The limitation contained in subsection (a) of this section shall not apply to actions that, prior to such violation, have been determined by a final order of a court of binding jurisdiction, no longer subject to appeal, to be in violation of a cable operator's rights.

(c) Discrimination claims permitted

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

(d) Rule of construction

Nothing in this section shall be construed as creating or authorizing liability of any kind, under any law, for any action or failure to act relating to cable service or the granting of a

franchise by any franchising authority or other governmental entity, or any official, member, employee, or agent of such authority or entity.

(June 19, 1934, ch. 652, title VI, §635A, as added Pub. L. 102-385, §24(a), Oct. 5, 1992, 106 Stat. 1500.)

EFFECTIVE DATE

Section effective 60 days after Oct. 5, 1992, see section 28 of Pub. L. 102-385, set out as an Effective Date of 1992 Amendment note under section 325 of this title.

§ 556. Coordination of Federal, State, and local authority

(a) Regulation by States, political subdivisions, State and local agencies, and franchising authorities

Nothing in this subchapter shall be construed to affect any authority of any State, political subdivision, or agency thereof, or franchising authority, regarding matters of public health, safety, and welfare, to the extent consistent with the express provisions of this subchapter.

(b) State jurisdiction with regard to cable services

Nothing in this subchapter shall be construed to restrict a State from exercising jurisdiction with regard to cable services consistent with this subchapter.

(c) Preemption

Except as provided in section 557 of this title, any provision of law of any State, political subdivision, or agency thereof, or franchising authority, or any provision of any franchise granted by such authority, which is inconsistent with this chapter shall be deemed to be preempted and superseded.

(d) "State" defined

For purposes of this section, the term "State" has the meaning given such term in section 153 of this title.

(June 19, 1934, ch. 652, title VI, §636, as added Pub. L. 98-549, §2, Oct. 30, 1984, 98 Stat. 2800; amended Pub. L. 104-104, §3(d)(3), Feb. 8, 1996, 110 Stat. 61.)

REFERENCES IN TEXT

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

AMENDMENTS

1996—Subsec. (d). Pub. L. 104-104 substituted "section 153" for "section 153(v)".

EFFECTIVE DATE

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

§ 557. Existing franchises

(a) The provisions of—

(1) any franchise in effect on the effective date of this subchapter, including any such provisions which relate to the designation,

use, or support for the use of channel capacity for public, educational, or governmental use, and

(2) any law of any State (as defined in section 153 of this title) in effect on October 30, 1984, or any regulation promulgated pursuant to such law, which relates to such designation, use or support of such channel capacity,

shall remain in effect, subject to the express provisions of this subchapter, and for not longer than the then current remaining term of the franchise as such franchise existed on such effective date.

(b) For purposes of subsection (a) of this section and other provisions of this subchapter, a franchise shall be considered in effect on the effective date of this subchapter if such franchise was granted on or before such effective date.

(June 19, 1934, ch. 652, title VI, §637, as added Pub. L. 98-549, §2, Oct. 30, 1984, 98 Stat. 2800; amended Pub. L. 104-104, §3(d)(3), Feb. 8, 1996, 110 Stat. 61.)

REFERENCES IN TEXT

For "the effective date of this subchapter" and "such effective date", referred to in subsecs. (a) and (b), as 60 days after Oct. 30, 1984, except where otherwise expressly provided, see section 9(a) of Pub. L. 98-549, set out as an Effective Date note under section 521 of this title.

AMENDMENTS

1996—Subsec. (a)(2). Pub. L. 104-104 substituted "section 153" for "section 153(v)".

EFFECTIVE DATE

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

§ 558. Criminal and civil liability

Nothing in this subchapter shall be deemed to affect the criminal or civil liability of cable programmers or cable operators pursuant to the Federal, State, or local law of libel, slander, obscenity, incitement, invasions of privacy, false or misleading advertising, or other similar laws, except that cable operators shall not incur any such liability for any program carried on any channel designated for public, educational, governmental use or on any other channel obtained under section 532 of this title or under similar arrangements unless the program involves obscene material.

(June 19, 1934, ch. 652, title VI, §638, as added Pub. L. 98-549, §2, Oct. 30, 1984, 98 Stat. 2801; amended Pub. L. 102-385, §10(d), Oct. 5, 1992, 106 Stat. 1486.)

AMENDMENTS

1992—Pub. L. 102-385 inserted before period at end "unless the program involves obscene material".

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-385 effective 60 days after Oct. 5, 1992, see section 28 of Pub. L. 102-385, set out as a note under section 325 of this title.

EFFECTIVE DATE

Section effective 60 days after Oct. 30, 1984, except where otherwise expressly provided, see section 9(a) of

Pub. L. 98-549, set out as a note under section 521 of this title.

§ 559. Obscene programming

Whoever transmits over any cable system any matter which is obscene or otherwise unprotected by the Constitution of the United States shall be fined under title 18 or imprisoned not more than 2 years, or both.

(June 19, 1934, ch. 652, title VI, § 639, as added Pub. L. 98-549, § 2, Oct. 30, 1984, 98 Stat. 2801; amended Pub. L. 104-104, title V, § 503, Feb. 8, 1996, 110 Stat. 136.)

AMENDMENTS

1996—Pub. L. 104-104 substituted “under title 18” for “not more than \$10,000”.

EFFECTIVE DATE

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

§ 560. Scrambling of cable channels for non-subscribers

(a) Subscriber request

Upon request by a cable service subscriber, a cable operator shall, without charge, fully scramble or otherwise fully block the audio and video programming of each channel carrying such programming so that one not a subscriber does not receive it.

(b) “Scramble” defined

As used in this section, the term “scramble” means to rearrange the content of the signal of the programming so that the programming cannot be viewed or heard in an understandable manner.

(June 19, 1934, ch. 652, title VI, § 640, as added Pub. L. 104-104, title V, § 504, Feb. 8, 1996, 110 Stat. 136.)

§ 561. Scrambling of sexually explicit adult video service programming

(a) Requirement

In providing sexually explicit adult programming or other programming that is indecent on any channel of its service primarily dedicated to sexually-oriented programming, a multichannel video programming distributor shall fully scramble or otherwise fully block the video and audio portion of such channel so that one not a subscriber to such channel or programming does not receive it.

(b) Implementation

Until a multichannel video programming distributor complies with the requirement set forth in subsection (a) of this section, the distributor shall limit the access of children to the programming referred to in that subsection by not providing such programming during the hours of the day (as determined by the Commission) when a significant number of children are likely to view it.

(c) “Scramble” defined

As used in this section, the term “scramble” means to rearrange the content of the signal of

the programming so that the programming cannot be viewed or heard in an understandable manner.

(June 19, 1934, ch. 652, title VI, § 641, as added Pub. L. 104-104, title V, § 505(a), Feb. 8, 1996, 110 Stat. 136.)

CONSTITUTIONALITY

For information regarding constitutionality of section 641 of act June 19, 1934, as added by section 505(a) of Pub. L. 104-104, see Congressional Research Service, *The Constitution of the United States of America: Analysis and Interpretation*, Appendix 1, *Acts of Congress Held Unconstitutional in Whole or in Part by the Supreme Court of the United States*.

EFFECTIVE DATE

Pub. L. 104-104, title V, § 505(b), Feb. 8, 1996, 110 Stat. 136, provided that: “The amendment made by subsection (a) [enacting this section] shall take effect 30 days after the date of enactment of this Act [Feb. 8, 1996].”

PART V—VIDEO PROGRAMMING SERVICES PROVIDED BY TELEPHONE COMPANIES

§ 571. Regulatory treatment of video programming services

(a) Limitations on cable regulation

(1) Radio-based systems

To the extent that a common carrier (or any other person) is providing video programming to subscribers using radio communication, such carrier (or other person) shall be subject to the requirements of subchapter III of this chapter and section 572 of this title, but shall not otherwise be subject to the requirements of this subchapter.

(2) Common carriage of video traffic

To the extent that a common carrier is providing transmission of video programming on a common carrier basis, such carrier shall be subject to the requirements of subchapter II of this chapter and section 572 of this title, but shall not otherwise be subject to the requirements of this subchapter. This paragraph shall not affect the treatment under section 522(7)(C) of this title of a facility of a common carrier as a cable system.

(3) Cable systems and open video systems

To the extent that a common carrier is providing video programming to its subscribers in any manner other than that described in paragraphs (1) and (2)—

(A) such carrier shall be subject to the requirements of this subchapter, unless such programming is provided by means of an open video system for which the Commission has approved a certification under section 573 of this title; or

(B) if such programming is provided by means of an open video system for which the Commission has approved a certification under section 573 of this title, such carrier shall be subject to the requirements of this part, but shall be subject to parts I through IV of this subchapter only as provided in 573(c) of this title.

(4) Election to operate as open video system

A common carrier that is providing video programming in a manner described in para-

graph (1) or (2), or a combination thereof, may elect to provide such programming by means of an open video system that complies with section 573 of this title. If the Commission approves such carrier's certification under section 573 of this title, such carrier shall be subject to the requirements of this part, but shall be subject to parts I through IV of this subchapter only as provided in 573(c) of this title.

(b) Limitations on interconnection obligations

A local exchange carrier that provides cable service through an open video system or a cable system shall not be required, pursuant to subchapter II of this chapter, to make capacity available on a nondiscriminatory basis to any other person for the provision of cable service directly to subscribers.

(c) Additional regulatory relief

A common carrier shall not be required to obtain a certificate under section 214 of this title with respect to the establishment or operation of a system for the delivery of video programming.

(June 19, 1934, ch. 652, title VI, §651, as added Pub. L. 104-104, title III, §302(a), Feb. 8, 1996, 110 Stat. 118.)

§ 572. Prohibition on buy outs

(a) Acquisitions by carriers

No local exchange carrier or any affiliate of such carrier owned by, operated by, controlled by, or under common control with such carrier may purchase or otherwise acquire directly or indirectly more than a 10 percent financial interest, or any management interest, in any cable operator providing cable service within the local exchange carrier's telephone service area.

(b) Acquisitions by cable operators

No cable operator or affiliate of a cable operator that is owned by, operated by, controlled by, or under common ownership with such cable operator may purchase or otherwise acquire, directly or indirectly, more than a 10 percent financial interest, or any management interest, in any local exchange carrier providing telephone exchange service within such cable operator's franchise area.

(c) Joint ventures

A local exchange carrier and a cable operator whose telephone service area and cable franchise area, respectively, are in the same market may not enter into any joint venture or partnership to provide video programming directly to subscribers or to provide telecommunications services within such market.

(d) Exceptions

(1) Rural systems

Notwithstanding subsections (a), (b), and (c) of this section, a local exchange carrier (with respect to a cable system located in its telephone service area) and a cable operator (with respect to the facilities of a local exchange carrier used to provide telephone exchange service in its cable franchise area) may obtain a controlling interest in, management interest

in, or enter into a joint venture or partnership with the operator of such system or facilities for the use of such system or facilities to the extent that—

(A) such system or facilities only serve incorporated or unincorporated—

- (i) places or territories that have fewer than 35,000 inhabitants; and
- (ii) are outside an urbanized area, as defined by the Bureau of the Census; and

(B) in the case of a local exchange carrier, such system, in the aggregate with any other system in which such carrier has an interest, serves less than 10 percent of the households in the telephone service area of such carrier.

(2) Joint use

Notwithstanding subsection (c) of this section, a local exchange carrier may obtain, with the concurrence of the cable operator on the rates, terms, and conditions, the use of that part of the transmission facilities of a cable system extending from the last multi-user terminal to the premises of the end user, if such use is reasonably limited in scope and duration, as determined by the Commission.

(3) Acquisitions in competitive markets

Notwithstanding subsections (a) and (c) of this section, a local exchange carrier may obtain a controlling interest in, or form a joint venture or other partnership with, or provide financing to, a cable system (hereinafter in this paragraph referred to as "the subject cable system"), if—

(A) the subject cable system operates in a television market that is not in the top 25 markets, and such market has more than 1 cable system operator, and the subject cable system is not the cable system with the most subscribers in such television market;

(B) the subject cable system and the cable system with the most subscribers in such television market held on May 1, 1995, cable television franchises from the largest municipality in the television market and the boundaries of such franchises were identical on such date;

(C) the subject cable system is not owned by or under common ownership or control of any one of the 50 cable system operators with the most subscribers as such operators existed on May 1, 1995; and

(D) the system with the most subscribers in the television market is owned by or under common ownership or control of any one of the 10 largest cable system operators as such operators existed on May 1, 1995.

(4) Exempt cable systems

Subsection (a) of this section does not apply to any cable system if—

(A) the cable system serves no more than 17,000 cable subscribers, of which no less than 8,000 live within an urban area, and no less than 6,000 live within a nonurbanized area as of June 1, 1995;

(B) the cable system is not owned by, or under common ownership or control with, any of the 50 largest cable system operators in existence on June 1, 1995; and

(C) the cable system operates in a television market that was not in the top 100 television markets as of June 1, 1995.

(5) Small cable systems in nonurban areas

Notwithstanding subsections (a) and (c) of this section, a local exchange carrier with less than \$100,000,000 in annual operating revenues (or any affiliate of such carrier owned by, operated by, controlled by, or under common control with such carrier) may purchase or otherwise acquire more than a 10 percent financial interest in, or any management interest in, or enter into a joint venture or partnership with, any cable system within the local exchange carrier's telephone service area that serves no more than 20,000 cable subscribers, if no more than 12,000 of those subscribers live within an urbanized area, as defined by the Bureau of the Census.

(6) Waivers

The Commission may waive the restrictions of subsections¹ (a), (b), or (c) of this section only if—

(A) the Commission determines that, because of the nature of the market served by the affected cable system or facilities used to provide telephone exchange service—

(i) the affected cable operator or local exchange carrier would be subjected to undue economic distress by the enforcement of such provisions;

(ii) the system or facilities would not be economically viable if such provisions were enforced; or

(iii) the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served; and

(B) the local franchising authority approves of such waiver.

(e) "Telephone service area" defined

For purposes of this section, the term "telephone service area" when used in connection with a common carrier subject in whole or in part to subchapter II of this chapter means the area within which such carrier provided telephone exchange service as of January 1, 1993, but if any common carrier after such date transfers its telephone exchange service facilities to another common carrier, the area to which such facilities provide telephone exchange service shall be treated as part of the telephone service area of the acquiring common carrier and not of the selling common carrier.

(June 19, 1934, ch. 652, title VI, §652, as added Pub. L. 104-104, title III, §302(a), Feb. 8, 1996, 110 Stat. 119.)

§ 573. Establishment of open video systems

(a) Open video systems

(1) Certificates of compliance

A local exchange carrier may provide cable service to its cable service subscribers in its

telephone service area through an open video system that complies with this section. To the extent permitted by such regulations as the Commission may prescribe consistent with the public interest, convenience, and necessity, an operator of a cable system or any other person may provide video programming through an open video system that complies with this section. An operator of an open video system shall qualify for reduced regulatory burdens under subsection (c) of this section if the operator of such system certifies to the Commission that such carrier complies with the Commission's regulations under subsection (b) of this section and the Commission approves such certification. The Commission shall publish notice of the receipt of any such certification and shall act to approve or disapprove any such certification within 10 days after receipt of such certification.

(2) Dispute resolution

The Commission shall have the authority to resolve disputes under this section and the regulations prescribed thereunder. Any such dispute shall be resolved within 180 days after notice of such dispute is submitted to the Commission. At that time or subsequently in a separate damages proceeding, the Commission may, in the case of any violation of this section, require carriage, award damages to any person denied carriage, or any combination of such sanctions. Any aggrieved party may seek any other remedy available under this chapter.

(b) Commission actions

(1) Regulations required

Within 6 months after February 8, 1996, the Commission shall complete all actions necessary (including any reconsideration) to prescribe regulations that—

(A) except as required pursuant to section 531, 534, or 535 of this title, prohibit an operator of an open video system from discriminating among video programming providers with regard to carriage on its open video system, and ensure that the rates, terms, and conditions for such carriage are just and reasonable, and are not unjustly or unreasonably discriminatory;

(B) if demand exceeds the channel capacity of the open video system, prohibit an operator of an open video system and its affiliates from selecting the video programming services for carriage on more than one-third of the activated channel capacity on such system, but nothing in this subparagraph shall be construed to limit the number of channels that the carrier and its affiliates may offer to provide directly to subscribers;

(C) permit an operator of an open video system to carry on only one channel any video programming service that is offered by more than one video programming provider (including the local exchange carrier's video programming affiliate); *Provided*, That subscribers have ready and immediate access to any such video programming service;

(D) extend to the distribution of video programming over open video systems the Com-

¹ So in original. Probably should be "subsection".

mission's regulations concerning sports exclusivity (47 C.F.R. 76.67), network non-duplication (47 C.F.R. 76.92 et seq.), and syndicated exclusivity (47 C.F.R. 76.151 et seq.); and

(E)(i) prohibit an operator of an open video system from unreasonably discriminating in favor of the operator or its affiliates with regard to material or information (including advertising) provided by the operator to subscribers for the purposes of selecting programming on the open video system, or in the way such material or information is presented to subscribers;

(ii) require an operator of an open video system to ensure that video programming providers or copyright holders (or both) are able suitably and uniquely to identify their programming services to subscribers;

(iii) if such identification is transmitted as part of the programming signal, require the carrier to transmit such identification without change or alteration; and

(iv) prohibit an operator of an open video system from omitting television broadcast stations or other unaffiliated video programming services carried on such system from any navigational device, guide, or menu.

(2) Consumer access

Subject to the requirements of paragraph (1) and the regulations thereunder, nothing in this section prohibits a common carrier or its affiliate from negotiating mutually agreeable terms and conditions with over-the-air broadcast stations and other unaffiliated video programming providers to allow consumer access to their signals on any level or screen of any gateway, menu, or other program guide, whether provided by the carrier or its affiliate.

(c) Reduced regulatory burdens for open video systems

(1) In general

Any provision that applies to a cable operator under—

(A) sections 533 (other than subsection (a) thereof), 536, 543(f), 548, 551, and 554 of this title, shall apply,

(B) sections 531, 534, and 535 of this title, and section 325 of this title, shall apply in accordance with the regulations prescribed under paragraph (2), and

(C) sections 532 and 537 of this title, and parts III and IV of this subchapter (other than sections 543(f), 548, 551, and 554 of this title), shall not apply,

to any operator of an open video system for which the Commission has approved a certification under this section.

(2) Implementation

(A) Commission action

In the rulemaking proceeding to prescribe the regulations required by subsection (b)(1) of this section, the Commission shall, to the extent possible, impose obligations that are no greater or lesser than the obligations contained in the provisions described in paragraph (1)(B) of this subsection. The

Commission shall complete all action (including any reconsideration) to prescribe such regulations no later than 6 months after February 8, 1996.

(B) Fees

An operator of an open video system under this part may be subject to the payment of fees on the gross revenues of the operator for the provision of cable service imposed by a local franchising authority or other governmental entity, in lieu of the franchise fees permitted under section 542 of this title. The rate at which such fees are imposed shall not exceed the rate at which franchise fees are imposed on any cable operator transmitting video programming in the franchise area, as determined in accordance with regulations prescribed by the Commission. An operator of an open video system may designate that portion of a subscriber's bill attributable to the fee under this subparagraph as a separate item on the bill.

(3) Regulatory streamlining

With respect to the establishment and operation of an open video system, the requirements of this section shall apply in lieu of, and not in addition to, the requirements of subchapter II of this chapter.

(4) Treatment as cable operator

Nothing in this chapter precludes a video programming provider making use of an open video system from being treated as an operator of a cable system for purposes of section 111 of title 17.

(d) "Telephone service area" defined

For purposes of this section, the term "telephone service area" when used in connection with a common carrier subject in whole or in part to subchapter II of this chapter means the area within which such carrier is offering telephone exchange service.

(June 19, 1934, ch. 652, title VI, §653, as added Pub. L. 104-104, title III, §302(a), Feb. 8, 1996, 110 Stat. 121.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(2) and (c)(4), was in the original "this Act", meaning act June 19, 1934, ch. 652, 48 Stat. 1064, known as the Communications Act of 1934, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 609 of this title and Tables.

SUBCHAPTER VI—MISCELLANEOUS PROVISIONS

§ 601. Interstate Commerce Commission and Postmaster General; duties, powers, and functions transferred to Commission

(a) All duties, powers, and functions of the Interstate Commerce Commission under sections 9 to 15 of this title, relating to operation of telegraph lines by railroad and telegraph companies granted Government aid in the construction of their lines, are imposed upon and vested in the Commission: *Provided*, That such transfer of duties, powers, and functions shall not be construed to affect the duties, powers,