103D CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
103–560

NATIONAL COMMUNICATIONS COMPETITION AND INFORMATION INFRASTRUCTURE ACT OF 1994

JUNE 24, 1994.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DINGELL, from the Committee on Energy and Commerce, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 3636]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 3636) to promote a national communications infrastructure to encourage deployment of advanced communications services through competition, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

79–006

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "National Communications Competition and Information Infrastructure Act of 1994".

(b) TABLE OF CONTENTS.—

TITLE I—TELECOMMUNICATIONS INFRASTRUCTURE AND COMPETITION

SEC. 101. POLICY; DEFINITIONS.

(a) POLICY.—Section 1 of the Communications Act of 1934 (47 U.S.C. 151) is amended—

(1) by inserting "(a)" after "SECTION 1."; and

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

"(b) The purposes described in subsection (a), as they relate to common carrier services, include—

"(1) to preserve and enhance universal telecommunications service at just and reasonable rates;

"(2) to encourage the continued development and deployment of advanced and reliable capabilities and services in telecommunications networks;

"(3) to make available, so far as possible, to all the people of the United States, regardless of location or disability, a switched, broadband telecommunications network capable of enabling users to originate and receive affordable high quality voice, data, graphics, and video telecommunications services;

"(4) to ensure that the costs of such networks and services are allocated equitably among users and are constrained by competition whenever possible;

"(5) to ensure a seamless and open nationwide telecommunications network through joint planning, coordination, and service arrangements between and among carriers; and

"(6) to ensure that common carriers' networks function at a high standard of quality in delivering advances in network capabilities and services.".

(b) DEFINITIONS.—Section 3 of such Act (47 U.S.C. 153) is amended—

(1) in subsection (r)—

(A) by inserting "(A)" after "means"; and

(B) by inserting before the period at the end the following: ", or (B) service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service within a State but which does not result in the subscriber incurring a telephone toll charge"; and

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

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

"(hh) 'Equal access' means to afford, to any person seeking to provide an information service or a telecommunications service, reasonable and nondiscriminatory access on an unbundled basis—

"(1) to databases, signaling systems, poles, ducts, conduits, and rights-of-way owned or controlled by a local exchange carrier, or other facilities, functions, or information (including subscriber numbers) integral to the efficient transmission, routing, or other provision of telephone exchange services or telephone exchange access services;

"(2) that is at least equal in type, quality, and price to the access which the carrier affords to itself or to any other person; and

"(3) that is sufficient to ensure the full interoperability of the equipment and facilities of the carrier and of the person seeking such access.

"(ii) 'Open platform service' means a switched, end-to-end digital telecommunications service that is subject to title II of this Act, and that (1) provides subscribers with sufficient network capability to access multimedia information services, (2) is widely available throughout a State, (3) is provided based on industry standards, and (4) is available to all subscribers on a single line basis upon reasonable request.

"(jj) 'Local exchange carrier' means any person that is engaged in the provision of telephone exchange service or telephone exchange access service. Such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under section 332(c), except to the extent that the Commission finds that such service as provided by such person in a State is a replacement for a substantial portion of the wireline telephone exchange service within such State.

"(kk) 'Telephone exchange access service' means the offering of telephone exchange services or facilities for the purpose of the origination or termination of interexchange telecommunications services to or from an exchange area.

"(ll) 'Telecommunications' means the transmission, between or among points specified by the subscriber, of information of the subscriber's choosing, without change in the form or content of the information as sent and received, by means of an electromagnetic transmission medium, including all instrumentalities, facilities, apparatus, and services (including the collection, storage, forwarding, switching, and delivery of such information) essential to such transmission.

"(mm) 'Telecommunications service' means the offering, on a common carrier basis, of telecommunications facilities, or of telecommunications by means of such facilities. Such term does not include an information service.".

SEC. 102. EQUAL ACCESS AND NETWORK FUNCTIONALITY AND QUALITY.

(a) AMENDMENT.—Section 201 of the Communications Act of 1934 (47 U.S.C. 201) is amended by adding at the end thereof the following new subsections:

"(c) EQUAL ACCESS.—

"(1) OPENNESS AND ACCESSIBILITY OBLIGATIONS.—

"(A) COMMON CARRIER OBLIGATIONS.—The duty of a common carrier under subsection (a) to furnish communications service includes the duty to interconnect with the facilities and equipment of other providers of telecommunications services and information services in accordance with such regulations as the Commission may prescribe as necessary or desirable in the public interest with respect to the openness and accessibility of common carrier networks.

"(B) ADDITIONAL OBLIGATIONS OF LOCAL EXCHANGE CARRIERS.—The duty under subsection (a) of a local exchange carrier includes the duty—

"(i) to provide, in accordance with the regulations prescribed under paragraph (2), equal access to and interconnection with the facilities of the carrier's networks to any other carrier or person providing telecommunications services or information services reasonably requesting such equal access and interconnection, so that such networks are fully interoperable with such telecommunications services and information services; and

"(ii) to offer unbundled features, functions, and capabilities whenever technically feasible and economically reasonable, in accordance with requirements prescribed by the Commission pursuant to this subsection and other laws.

"(2) EQUAL ACCESS AND INTERCONNECTION REGULATIONS.—

"(A) REGULATIONS REQUIRED.—Within 1 year after the date of enactment of this subsection, the Commission shall establish regulations that require reasonable and nondiscriminatory equal access to and interconnection with the facilities of a local exchange carrier's network at any technically feasible and economically reasonable point within the carrier's network on reasonable terms and conditions, to any other carrier or person offering telecommunications services requesting such access. The Commission shall establish such regulations after consultation with the Joint Board established pursuant to subparagraph (D). Such regulations shall provide for actual collocation of equipment necessary for interconnection for telecommunications services at the premises of a local exchange carrier, except that the regulations shall provide for virtual collocation where the local exchange carrier demonstrates that actual collocation is not practical for technical reasons or because of space limitations.

"(B) COMPENSATION.—Within 1 year after the date of enactment of this subsection, the Commission shall establish regulations requiring just and reasonable compensation to the exchange carrier providing such equal access and interconnection pursuant to subparagraph (A). Such regulations shall include regulations to require the carrier, to the extent it provides a telecommunications service or an information service, to impute such access and interconnection charges to itself as the Commission determines are reasonable and nondiscriminatory.

"(C) EXEMPTIONS AND MODIFICATIONS.—Notwithstanding paragraph (1) or subparagraph (A) of this paragraph, a rural telephone company shall not be required to provide equal access and interconnection to another local exchange carrier. The Commission shall not apply the requirements of this paragraph or impose requirements pursuant to paragraph (1)(B)(ii) to any rural telephone company, except to the extent that the Commission determines that compliance with such requirements would not be unduly economically burdensome, unfairly competitive, technologically infeasible, or otherwise not in the public interest. The Commission may modify the requirements of this paragraph for any other local exchange carrier that has, in the aggregate nationwide, fewer than 500,000 access lines installed, to the extent that the Commission determines that compliance with such requirements (without such modification) would be unduly economically burdensome, technologically infeasible, or otherwise not in the public interest. The Commission may include, in the regulations prescribed pursuant to paragraph (1)(B), modified requirements for any feature, function, or capability that the Commission determines is generally available to competing providers of telecommunications services or information services at the same or better price, terms, and conditions.

"(D) JOINT BOARD ON EQUAL ACCESS AND INTERCONNECTION STANDARDS.—Within 30 days after the date of enactment of this subsection, the Commission shall convene a Federal-State Joint Board under section 410(c) for the purpose of preparing a recommended decision for the Commission with respect to the equal access and interconnection regulations required by this paragraph.

"(E) ENFORCEMENT OF EXISTING REGULATIONS.—Nothing in this section shall be construed to prohibit the Commission from enforcing regulations prescribed prior to the date of enactment of this subsection in fulfilling the requirements of this subsection to the extent that such regulations are consistent with the provisions of this subsection.

"(F) DEFINITION OF RURAL TELEPHONE COMPANY.—For the purpose of subparagraph (C) of this paragraph, the term 'rural telephone company' means a local exchange carrier operating entity to the extent that such entity—

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

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

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

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

"(iii) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines.

"(3) PREEMPTION.—

"(A) LIMITATION.—Notwithstanding section 2(b), no State or local government may, after one year after the date of enactment of this subsection—

"(i) effectively prohibit any person or carrier from providing any interstate or intrastate telecommunications service or information service, or impose any restriction or condition on entry into the business of providing any such service;

"(ii) prohibit any carrier or other person providing interstate or intrastate telecommunications services or information services from exercising the access and interconnection rights provided under this subsection; or

"(iii) impose any limitation on the exercise of such rights.

"(B) PERMITTED TERMS AND CONDITIONS.—Subparagraph (A) shall not be construed to prohibit a State from imposing a term or condition on providers of telecommunications services or information services if such term or condition is not inconsistent with subparagraph (A) and is necessary and appropriate to—

"(i) protect public safety and welfare;

"(ii) ensure the continued quality of intrastate telecommunications;

"(iii) ensure that rates for intrastate telecommunications services are just and reasonable; or

"(iv) ensure that the provider's business practices are consistent with consumer protection laws and regulations.

"(C) EXCEPTION.—In the case of commercial mobile services, the provisions of section 332(c)(3) shall apply in lieu of the provisions of this paragraph.

"(D) PARITY OF FRANCHISE AND OTHER CHARGES.—Notwithstanding section 2(b), no local government may, after 1 year after the date of enactment of this subsection, impose or collect any franchise, license, permit, or right-of-way fee or any assessment, rental, or any other charge or equivalent thereof as a condition for operating in the locality or for obtaining access to, occupying, or crossing public rights-of-way from any provider of telecommunications services that distinguishes between or among providers of telecommunications services, including the local exchange carrier. For purposes of this subsection, a franchise, license, permit, or right-of-way fee or an assessment, rental, or any other charge or equivalent thereof does not include any imposition of general applicability which does not distinguish between or among providers of telecommunications services, or any tax.

"(4) TARIFFS.—

"(A) GENERALLY.—Within 18 months after the date of enactment of this subsection, a local exchange carrier shall prepare and file tariffs in accordance with this Act with respect to the services or elements offered to comply with the equal access and interconnection regulations required under this subsection. The costs that a carrier incurs in providing such services or elements shall be borne solely by the users of the features and functions comprising such services or elements or of the feature or function that uses or includes such services or elements. The Commission shall review such tariffs to ensure that—

"(i) the charges for such services or elements are cost-based; and

"(ii) the terms and conditions contained in such tariffs unbundle any separable services, elements, features, or functions in accordance with paragraph (1)(B)(ii) and any regulations thereunder.

"(B) SUPPORTING INFORMATION.—A local exchange carrier shall submit supporting information with its tariffs for equal access and interconnection that is sufficient to enable the Commission and the public to determine the relationship between the proposed charges and the costs of providing such services or elements. The submission of such information shall be pursuant to regulations adopted by the Commission to ensure that similarly situated carriers provide such information in a uniform fashion.

"(5) PRICING FLEXIBILITY.—

"(A) ESTABLISHMENT OF CRITERIA.—Within 270 days after the date of enactment of this subsection, the Commission, by regulation, shall establish criteria for determining—

"(i) whether a telecommunications service or provider of such service has become, or is substantially certain to become, subject to competition, either within a geographic area or within a class or category of service;

"(ii) whether such competition will effectively prevent rates for such service that are unjust or unreasonable or that are unjustly or unreasonably discriminatory; and

"(iii) appropriate flexible pricing procedures that can be used in lieu of the filing of tariff schedules, or in lieu of other pricing procedures established by the Commission, and that are consistent with the protection of subscribers and the public interest, convenience, and necessity.

"(B) DETERMINATIONS.—The Commission, with respect to rates for interstate or foreign communications, and State commissions, with respect to rates for intrastate communications, shall, upon application—

"(i) render determinations in accordance with the criteria established under clauses (i) and (ii) of subparagraph (A) concerning the services or providers that are the subject of such application; and

"(ii) upon a proper showing, establish appropriate flexible pricing procedures consistent with the criteria established under clause (iii) of such subparagraph.

The Commission shall approve or reject any such application within 180 days after the date of its submission.

"(C) EXCEPTION.—In the case of commercial mobile services, the provisions of section 332(c)(1) shall apply in lieu of the provisions of this paragraph.

"(6) JOINT BOARD TO PRESERVE UNIVERSAL SERVICE.—

"(A) ESTABLISHMENT; FUNCTIONS.—Within 30 days after the date of enactment of this subsection, the Commission shall convene a Federal-State Joint Board under section 410(c) for the purpose of recommending actions to the Commission and State commissions for the preservation of universal service. As a part of preparing such recommendations, the Joint Board shall survey providers and users of telephone exchange service and consult with State commissions in order to determine the pecuniary difference between the cost of providing universal service and the prices determined to be appropriate for such service.

"(B) PRINCIPLES.—The Joint Board shall base policies for the preservation of universal service on the following principles:

"(i) A plan adopted by the Commission and the States should ensure the continued viability of universal service by maintaining quality services at just and reasonable rates.

"(ii) Such plan should define the nature and extent of the services encompassed within carriers' universal service obligations. Such plan should seek to promote access to advanced telecommunications services and capabilities, including open platform service, for all Americans by including access to advanced telecommunications services and capabilities in the definition of universal service while maintaining just and reasonable rates. Such plan should ensure reasonably comparable services for the general public in urban and rural areas.

"(iii) Such plan should establish specific and predictable mechanisms to provide adequate and sustainable support for universal service.

"(iv) All providers of telecommunications services should make an equitable and nondiscriminatory contribution to preservation of universal service.

"(v) Such plan should permit residential subscribers to continue to receive only basic voice-grade local telephone service, equivalent to the service generally available to residential subscribers on the date of enactment of this subsection, at just, reasonable, and affordable rates. De-

terminations concerning the affordability of rates for such services shall take into account the rates generally available to residential subscribers on such date of enactment and the pricing rules established by the States. If the plan would result in any increases in the rates for such services for residential subscribers that are not attributable to changes in consumer prices generally, such plan shall include a requirement that a rate increase shall be permitted in any proceeding commenced after March 16, 1994, only upon a showing that such increase is necessary to prevent competitive disadvantages for one or more service providers and is in the public interest. Such plan should provide that any such increase in rates shall be minimized to the greatest extent practical and shall be implemented over a time period of not less than 5 years.

"(vi) To the extent that a common carrier establishes advanced telecommunications services, such plan should include provisions to promote public access to advanced telecommunications services, other than a video platform, at a preferential rate that will recover only the added costs of providing such service, for educational, library, public broadcast, and other tax-exempt institutions, and governmental entities, both as producers and users of services as soon as technically feasible and economically reasonable. Such preferential rates should only be made available to such institutions and entities for the purpose of providing noncommercial information services or telecommunications services to the general public and not for the internal telecommunications needs or commercial use of such institutions and entities.

"(vii) Such plan should determine and establish mechanisms to ensure that rates charged by a provider of interexchange telecommunications services for services in rural areas are maintained at levels no higher than those charged by the same carrier to subscribers in urban areas.

"(viii) Such plan should, notwithstanding any other provision of law, require common carriers serving more than 1,800,000 access lines in the aggregate nationwide, to be subject to alternative or price regulation, and not cost-based rate-of-return regulation, for services that are subject to the jurisdiction of the Commission or the States, as applicable, when such carrier's network has been made open to competition as a result of its implementation of the equal access, interconnection, and accessibility provisions of this subsection.

"(ix) Such other principles as the Board determines are necessary and appropriate for the protection of the public interest, convenience, and necessity and consistent with the purposes of this Act.

"(C) DEFINITION OF UNIVERSAL SERVICE; ACCESS TO ADVANCED SERVICES.—In defining the nature and extent of the services encompassed within carriers' universal service obligations under subparagraph (B)(ii), the Joint Board shall consider the extent to which—

"(i) a telecommunications service has, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers;

"(ii) denial of access to such service to any individual would unfairly deny that individual educational and economic opportunities;

"(iii) such service has been deployed in the public switched telecommunications network; and

"(iv) inclusion of such service within carriers' universal service obligations is otherwise consistent with the public interest, convenience, and necessity.

The Joint Board may, from time to time, recommend to the Commission modifications in the definition proposed under subparagraph (B).

"(D) REPORT; COMMISSION RESPONSE.—The Joint Board convened pursuant to subparagraph (A) shall report its recommendations within 270 days after the date of enactment of this subsection. The Commission shall complete any proceeding to act upon such recommendations within one year after such date of enactment. A State may adopt regulations to implement the Joint Board's recommendations, except that such regulations shall not, after 18 months after such date of enactment, be inconsistent with regulations prescribed by the Commission to implement such recommendations.

"(7) CROSS SUBSIDIES PROHIBITION.—The Commission shall—

"(A) prescribe regulations to prohibit a common carrier from engaging in any practice that results in the inclusion in rates for telephone exchange

service or telephone exchange access service of any operating expenses, costs, depreciation charges, capital investments, or other expenses directly associated with the provision of competing telecommunications services, information services, or video programming services by the common carrier or affiliate; and

"(B) ensure such competing telecommunications services, information services or video programming services bear a reasonable share of the joint and common costs of facilities used to provide telephone exchange service or telephone exchange access service and competing telecommunications services, information services, or video programming services.

"(8) RESALE.—The resale or sharing of telephone exchange service (or unbundled services, elements, features, or functions of such service) in conjunction with the furnishing of a telecommunications service or any information service shall not be prohibited nor subject to unreasonable conditions by the carrier, the Commission, or any State.

"(9) TELECOMMUNICATIONS NUMBER PORTABILITY.—The Commission shall prescribe regulations to ensure that—

"(A) telecommunications number portability shall be available, upon request, as soon as technically feasible and economically reasonable; and

"(B) an impartial entity shall administer telecommunications numbering and make such numbers available on an equitable basis.

The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States. For the purpose of this paragraph, the term 'telecommunications number portability' means the ability of users of telecommunications services to retain existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one provider of telecommunications services to another.

"(10) REVIEW OF STANDARDS AND REQUIREMENTS.—At least once every three years, the Commission shall—

"(A) conduct a proceeding in which interested parties shall have an opportunity to comment on whether the standards and requirements established by or under this subsection have opened the networks of carriers to reasonable and nondiscriminatory access by providers of telecommunications services and information services;

"(B) review the definition of, and the adequacy of support for, universal service, and evaluate the extent to which universal service has been protected and access to advanced services has been facilitated pursuant to this subsection and the plans and regulations thereunder; and

"(C) submit to the Congress a report containing a statement of the Commission's findings pursuant to such proceeding, and including an identification of any defects or delays observed in attaining the objectives of this subsection and a plan for correcting such defects and delays.

"(11) STUDY OF RURAL PHONE SERVICE.—Within 1 year after the date of enactment of this subsection, the Commission shall initiate an inquiry to examine the effects of competition in the provision of telephone exchange access service and telephone exchange service on the availability and rates for telephone exchange access service and telephone exchange service furnished by rural exchange carriers.

"(d) NETWORK FUNCTIONALITY AND QUALITY.—

"(1) FUNCTIONALITY AND RELIABILITY OBLIGATIONS.—The duty of a common carrier under subsection (a) to furnish communications service includes the duty to furnish that service in accordance with such regulations of functionality and reliability as the Commission may prescribe as necessary or desirable in the public interest pursuant to this subsection.

"(2) COORDINATED PLANNING FOR INTEROPERABILITY AND OTHER PURPOSES.—The Commission shall establish—

"(A) procedures for the conduct of coordinated network planning by common carriers and other providers of telecommunications services or information services, subject to Commission supervision, for the effective and efficient interconnection and interoperability of public and private networks; and

"(B) procedures for Commission oversight of the development by appropriate standards-setting organizations of—

"(i) standards for the interconnection and interoperability of such networks;

"(ii) standards that promote access to network capabilities and services by individuals with disabilities; and

"(iii) standards that promote access to information services by subscribers to telephone exchange service furnished by a rural telephone company (as such term is defined in subsection (c)(2)(F)).

"(3) OPEN PLATFORM SERVICE.—

"(A) STUDY.—Within 90 days after the date of enactment of this subsection, the Commission shall initiate an inquiry to consider the regulations and policies necessary to make open platform service available to subscribers at reasonable rates based on the reasonably identifiable costs of providing such service, utilizing existing facilities or new facilities with improved capability or efficiency. The inquiry required under this paragraph shall be completed within 180 days after the date of its initiation.

"(B) REGULATIONS.—On the basis of the results of the inquiry required under subparagraph (A), the Commission shall prescribe and make effective such regulations as are necessary to implement the inquiry's conclusions. Such regulations may require a local exchange carrier to file, in the appropriate jurisdiction, tariffs for the origination and termination of open platform service as soon as such service is economically and technically feasible. In establishing any such regulations, the Commission shall take into account the proximate and long-term deployment plans of local exchange carriers.

"(C) TEMPORARY WAIVER.—The Commission shall also establish a procedure to waive temporarily specific provisions of the regulations prescribed under this paragraph if a local exchange carrier demonstrates that compliance with such requirement—

"(i) would be economically or technically infeasible, or

"(ii) would materially delay the deployment of new facilities with improved capabilities or efficiencies that will be used to meet the requirements of open platform services.

Such petitions shall be decided by the Commission within 180 days after the date of its submission.

"(D) COST ALLOCATION.—Any such regulations shall provide for the allocation of all costs of facilities jointly used to provide open platform service and telephone exchange service or telephone exchange access services.

"(E) STATE AUTHORITY.—Nothing in this paragraph shall be construed to limit a State's authority to continue to regulate any services subject to State jurisdiction under this Act.

"(F) CONTINUING OVERSIGHT.—Commencing not later than 2 years after the date of enactment of this subsection, the Commission shall conduct an inquiry on the progress of open platform service deployment. The Commission shall submit a report to the Congress on the results of such inquiry within 180 days after the commencement of such inquiry and annually thereafter for the succeeding 5 years.

"(4) ACCESSIBILITY REGULATIONS.—

"(A) REGULATIONS.—Within 1 year after the date of enactment of this section, the Commission shall prescribe such regulations as are necessary to ensure that advances in network services deployed by local exchange carriers shall be accessible and usable by individuals with disabilities, including individuals with functional limitations of hearing, vision, movement, manipulation, speech, and interpretation of information, unless the cost of making the services accessible and usable would result in an undue burden or adverse competitive impact. Such regulations shall seek to permit the use of both standard and special equipment, and seek to minimize the need of individuals to acquire additional devices beyond those used by the general public to obtain such access. Throughout the process of developing such regulations, the Commission shall coordinate and consult with representatives of individuals with disabilities and interested equipment and service providers to ensure their concerns and interests are given full consideration in such process.

"(B) COMPATIBILITY.—Such regulations shall require that whenever an undue burden or adverse competitive impact would result from the requirements in subparagraph (A), the local exchange carrier that deploys the network service shall ensure that the network service in question is compatible with existing peripheral devices or specialized customer premises equipment commonly used by persons with disabilities to achieve access, unless doing so would result in an undue burden or adverse competitive impact.

"(C) UNDUE BURDEN.—The term 'undue burden' means significant difficulty or expense. In determining whether the activity necessary to comply

with the requirements of this paragraph would result in an undue burden, the factors to be considered include the following:

"(i) The nature and cost of the activity.

"(ii) The impact on the operation of the facility involved in the deployment of the network service.

"(iii) The financial resources of the local exchange carrier.

"(iv) The type of operations of the local exchange carrier.

"(D) ADVERSE COMPETITIVE IMPACT.—In determining whether the activity necessary to comply with the requirements of this paragraph would result in adverse competitive impact, the following factors shall be considered:

"(i) Whether such activity would raise the cost of the network service in question beyond the level at which there would be sufficient consumer demand by the general population to make the network service profitable.

"(ii) Whether such activity would, with respect to the network service in question, put the local exchange carrier at a competitive disadvantage. This factor may be considered so long as competing network service providers are not held to the same obligation with respect to access by persons with disabilities.

"(E) REVIEW OF STANDARDS AND REQUIREMENTS.—At least once every 3 years, the Commission shall conduct a proceeding in which interested parties shall have an opportunity to comment on whether the regulations established under this paragraph have ensured that advances in network services by providers of telecommunications services and information services are accessible and usable by individuals with disabilities.

"(F) EFFECTIVE DATE.—The regulations required by this paragraph shall become effective 18 months after the date of enactment of this subsection.

"(5) QUALITY RULES.—

"(A) MEASURES OR BENCHMARKS REQUIRED.—The Commission shall designate or otherwise establish network reliability and quality performance measures or benchmarks for common carriers for the purpose of ensuring the continued maintenance and evolution of common carrier facilities and service. Not later than 180 days after the date of enactment of this subsection, the Commission shall initiate a rulemaking proceeding to establish such performance measures or benchmarks.

"(B) CONTENTS OF REGULATIONS.—Such regulations shall include—

"(i) quantitative network reliability and service quality performance measures or benchmarks;

"(ii) procedures to monitor and evaluate common carrier efforts to increase network reliability and service quality; and

"(iii) procedures to resolve network reliability and service quality complaints.

"(C) COORDINATION AND CONSULTATION.—Throughout the process of developing network reliability and service quality performance measures or benchmarks, as required by subparagraphs (A) and (B), the Commission shall coordinate and consult with service and equipment providers and users and State regulatory bodies to ensure their concerns and interests are given full consideration in such process.

"(6) RURAL EXEMPTION.—The Commission may modify, or grant exemptions from, the requirements of this subsection in the case of a common carrier providing telecommunications services in a rural area.

"(e) INFRASTRUCTURE SHARING.—

"(1) REGULATIONS REQUIRED.—Within one year after the date of enactment of this subsection, the Commission shall prescribe regulations that require local exchange carriers to make available to any qualifying carrier such public switched telecommunications network technology and information and telecommunications facilities and functions as may be requested by such qualifying carrier for the purpose of enabling that carrier to provide telecommunications services, or to provide access to information services, in the geographic area in which that carrier has requested and obtained designation as the qualifying carrier.

"(2) QUALIFYING CARRIERS.—For purposes of paragraph (1), the term 'qualifying carrier' means a local exchange carrier that—

"(A) lacks economies of scale or scope, as determined in accordance with regulations prescribed by the Commission pursuant to this subsection; and

"(B) is a common carrier which offers telephone exchange service, telephone exchange access service, and any other service that is within the definition of universal service, to all customers without preference throughout

one or more exchange areas in existence on the date of enactment of this subsection.

"(3) TERMS AND CONDITIONS OF REGULATIONS.—The regulations prescribed by the Commission pursuant to this subsection—

"(A) shall not require any local exchange carrier to take any action that is economically unreasonable or that is contrary to the public interest;

"(B) shall permit, but shall not require, the joint ownership or operation of public switched telecommunications network facilities, functions, and services by or among the local exchange carrier and the qualifying carrier;

"(C) shall ensure that a local exchange carrier shall not be treated by the Commission or any State commission as a common carrier for hire, or as offering common carrier services, with respect to any technology, information, facilities, or functions made available to a qualifying carrier pursuant to this subsection;

"(D) shall ensure that local exchange carriers make such technology, information, facilities, or functions available to qualifying carriers on fair and reasonable terms and conditions that permit such qualifying carriers to fully benefit from the economies of scale and scope of the providing local exchange carrier, as determined in accordance with guidelines prescribed by the Commission in such regulations;

"(E) shall establish conditions that promote cooperation between local exchange carriers and qualifying carriers; and

"(F) shall not require any local exchange carrier to engage in any infrastructure sharing agreement for any geographic area where such carrier is required to provide services subject to State regulation.

"(4) INFORMATION CONCERNING DEPLOYMENT OF NEW SERVICES AND EQUIPMENT.—Any local exchange carrier that has entered into an agreement with a qualifying carrier under this subsection shall provide to each party to such agreement timely information on the planned deployment of telecommunications services and equipment, including software integral to such telecommunications services and equipment, including upgrades.".

(b) PREEMPTION OF FRANCHISING AUTHORITY REGULATION OF TELECOMMUNICATIONS SERVICES.—

(1) TELECOMMUNICATIONS SERVICES.—Section 621(b) of the Communications Act of 1934 (47 U.S.C. 541(c)) is amended by adding at the end thereof the following new paragraph:

"(3)(A) To the extent that 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 title; and

"(ii) the provisions of this title shall not apply to such cable operator or affiliate.

"(B) A franchising authority may not impose any requirement 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 title with respect to the provision of such telecommunications service.

"(D) A franchising authority may not require a cable operator to provide any telecommunications service or facilities as a condition of the initial grant of a franchise or a franchise renewal.".

(2) FRANCHISE FEES.—Section 622(b) of the Communications Act of 1934 (47 U.S.C. 542(b)) is amended by inserting "to provide cable services" immediately before the period at the end of the first sentence thereof.

(c) CONFORMING AMENDMENT.—Section 2(b) of the Communications Act of 1934 (47 U.S.C.152(b)) is amended by inserting "201(c) and (d)," after "Except as provided in sections".

SEC. 103. TELECOMMUNICATIONS SERVICES FOR EDUCATIONAL INSTITUTIONS, HEALTH CARE INSTITUTIONS, AND LIBRARIES.

Title II of the Communications Act of 1934 is amended by adding at the end the following new section:

"SEC. 229. TELECOMMUNICATIONS SERVICES FOR EDUCATIONAL INSTITUTIONS, HEALTH CARE INSTITUTIONS, AND LIBRARIES.

"(a) PROMOTION OF DELIVERY OF ADVANCED SERVICES.—In fulfillment of its obligation under section 1 to make available to all the people of the United States a rapid, efficient, nationwide, and worldwide communications service, the Commission shall promote the provision of advanced telecommunications services by wire, wireless, cable, and satellite technologies to—

"(1) educational institutions;

"(2) health care institutions; and

"(3) public libraries.

"(b) ANNUAL SURVEY REQUIRED.—The National Telecommunications and Information Administration shall conduct a nationwide survey of the availability of advanced telecommunications services to educational institutions, health care institutions, and public libraries. The Administration shall complete the survey and release publicly the results of such survey not later than one year after the date of enactment of this section. The results of such survey shall include—

"(1) the number of educational institutions and classrooms, health care institutions, and public libraries;

"(2) the number of educational institutions and classrooms, health care institutions, and public libraries that have access to advanced telecommunications services; and

"(3) the nature of the telecommunications facilities through which such educational institutions, health care institutions, and public libraries obtain access to advanced telecommunications services.

The National Telecommunications and Information Administration shall update annually the survey required by this section. The survey required under this subsection shall be prepared in consultation with the Department of Education, Department of Health and Human Services, and such other Federal, State, and local departments, agencies, and authorities that may maintain or have access to information concerning the availability of advanced telecommunications services to educational institutions, health care institutions, and libraries.

"(c) RULEMAKING REQUIRED.—Within one year after the date of enactment of this section, the Commission shall issue a notice of proposed rulemaking for the purpose of adopting regulations that—

"(1) enhance, to the extent technically feasible and economically reasonable, the availability of advanced telecommunications services to all educational institutions and classrooms, health care institutions, and public libraries by the year 2000;

"(2) ensure that appropriate functional requirements or performance standards, or both, including interoperability standards, are established for telecommunications systems or facilities that interconnect educational institutions, health care institutions, and public libraries with the public switched telecommunications network;

"(3) define the circumstances under which a carrier may be required to interconnect its telecommunications network with educational institutions, health care institutions, and public libraries;

"(4) provide for either the establishment of preferential rates for telecommunications services, including advanced services, that are provided to educational institutions, health care institutions, and public libraries, or the use of alternative mechanisms to enhance the availability of advanced services to these institutions; and

"(5) address such other related matters as the Commission may determine.

"(d) FEASIBILITY STUDY.—The Commission shall assess the feasibility of including postsecondary educational institutions in any regulations promulgated under this section.

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

"(1) the term 'educational institutions' means elementary and secondary educational institutions; and

"(2) the term 'health care institutions' means not-for-profit health care institutions, including hospitals and clinics.".

SEC. 104. DISCRIMINATORY INTERCONNECTION.

Section 208 of the Communications Act of 1934 is amended by adding at the end thereof the following new subsection:

"(c) EXPEDITED REVIEW OF CERTAIN COMPLAINTS.—The Commission shall issue a final order with respect to any complaint arising from alleged violations of the regulations and orders prescribed pursuant to section 201(c) within 180 days after the date such complaint is filed.".

SEC. 105. EXPEDITED LICENSING OF NEW TECHNOLOGIES AND SERVICES.

Section 7 of the Communications Act of 1934 (47 U.S.C. 157) is amended by adding at the end thereof the following new subsection:

"(c) LICENSING OF NEW TECHNOLOGIES.—

"(1) EXPEDITED RULEMAKING.—Within 24 months after making a determination under subsection (b) that a technology or service related to the furnishing of telecommunications services is in the public interest, the Commission shall, with respect to any such service requiring a license or other authorization from the Commission, adopt and make effective regulations for—

"(A) the provision of such technology or service; and

"(B) the filing of applications for the licenses or authorizations necessary to offer such technology or service to the public, and shall act on any such application within 24 months after it is filed.

"(2) REVIEW OF APPLICATIONS.—Any application filed by a carrier under this subsection for the construction or extension of a line shall also be subject to section 214 and to any necessary approval by the appropriate State commissions.".

SEC. 106. NEW OR EXTENDED LINES.

Section 214 of the Communications Act of 1934 is amended by adding at the end the following new subsection:

"(e) Any application filed under this section for authority to construct or extend a line shall address the means by which such construction or extension will meet the network access needs of individuals with disabilities.".

SEC. 107. POLE ATTACHMENTS.

Section 224 of the Communications Act of 1934 (47 U.S.C. 244) is amended—

(1) in subsection (a)(4), by inserting after "system" the following: "or a provider of telecommunications service";

(2) in subsection (c)(2)(B), by striking "cable television services" and inserting "the services offered via such attachments";

(3) by redesignating subsection (d)(2) as subsection (d)(4); and

(4) by striking subsection (d)(1) and inserting the following:

"(d)(1) For purposes of subsection (b) of this section, the Commission shall, no later than 1 year after the date of enactment of the National Communications Competition and Information Infrastructure Act of 1994, prescribe regulations for ensuring that utilities charge just and reasonable and nondiscriminatory rates for pole attachments provided to all providers of telecommunications services, including such attachments used by cable television systems to provide telecommunications services (as defined in section 3(mm) of this Act). Such regulations shall—

"(A) recognize that the entire pole, duct, conduit, or right-of-way other than the usable space is of equal benefit to all attachments to the pole duct, conduit, or right-of-way and therefore apportion the cost of the space other than the usable space equally among all attachments,

"(B) recognize that the usable space is of proportional benefit to all entities attached to the pole, duct, conduit, or right-of-way and therefore apportion the cost of the usable space according to the percentage of usable space required for each entity, and

"(C) allow for reasonable terms and conditions relating to health, safety, and the provision of reliable utility service.

"(2) The final regulations prescribed by the Commission pursuant to subparagraphs (A), (B), and (C) of subsection (d)(1) shall not apply to a pole attachment used by a cable television system which solely provides cable service as defined in section 602(6) of this Act. The rates for pole attachments used for such purposes shall assure a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct, conduit, or right-of-way capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way.

"(3) For all providers of telecommunications services except members of the exchange carrier association established in 47 C.F.R. 69.601 as of December 31, 1993, upon enactment of this paragraph and until the Commission promulgates its final regulations pursuant to subparagraphs (A), (B), and (C) of paragraph (1), the rate formula contained in any joint use pole attachment agreement between the electric utility and the largest local exchange carrier having such a joint use agreement in the utility's service area, in effect on January 1, 1994, shall also apply to the pole attachments in the utility's service area, but if no such joint use agreement containing a rate formula exists, then the pole attachment rate shall be the rate applicable under paragraph (2) to cable television systems which solely provide cable service

as defined in section 602(6) of this Act. Disputes concerning the applicability of a joint use agreement shall be resolved by the Commission or the States, as appropriate.".

SEC. 108. INQUIRY ON CIVIC PARTICIPATION.

(a) INQUIRY ON POLICIES TO ENHANCE CIVIC PARTICIPATION ON THE INTERNET.—The Commission, in consultation with the National Telecommunications and Information Administration, shall initiate an inquiry into policies that will enhance civic participation through the Internet. The inquiry shall request public comment on the question of whether common carriers should be required to provide citizens with a flat rate service for gaining access to the Internet.

(b) PARTICIPATION IN REGULATORY AFFAIRS.—The Commission, in consultation with the Office of Consumer Affairs, shall conduct a study of how to encourage citizen participation in regulatory issues and, within 120 days from the date of enactment of this Act, report to Congress on the results of the study.

SEC. 109. COMPETITION BY SMALL BUSINESS AND MINORITY-OWNED BUSINESS CONCERNS.

Title II of the Communications Act of 1934 is amended by adding at the end the following new section:

"SEC. 230. POLICY AND RULEMAKING TO PROMOTE COMPETITION BY SMALL BUSINESS AND MINORITY-OWNED BUSINESS CONCERNS.

"(a) POLICY; FINDING.—It shall be the policy of the Commission to promote whenever possible the ownership of information services and telecommunication services by small business concerns, minority-owned business concerns, and nonprofit entities. The Congress finds that the goals of competitively priced services, service innovation, employment, and diversity of viewpoint can be advanced by promoting marketplace penetration by such concerns and entities.

"(b) RULEMAKING REQUIRED.—Within 1 year after the date of enactment of this section, the Commission, in consultation with the National Telecommunications and Information Administration, shall initiate a rulemaking proceeding for the purpose of lowering market entry barriers for small business, minority-owned business concerns, and nonprofit entities that are seeking to provide telecommunication services and information services. The proceeding shall seek to provide remedies for, among other things, lack of access to capital and technical and marketing expertise on the part of such concerns and entities. Consistent with the broad policy and finding set forth in subsection (a), the Commission shall adopt such regulations and make such recommendations to Congress as the Commission deems appropriate. Not later than 2 years after the date of enactment of this section, the Commission shall complete the proceeding required by this subsection.".

TITLE II—COMMUNICATIONS COMPETITIVENESS

SEC. 201. CABLE SERVICE PROVIDED BY TELEPHONE COMPANIES.

(a) GENERAL REQUIREMENT.—

(1) AMENDMENT.—Section 613(b) of the Communications Act of 1934 (47 U.S.C. 533(b)) is amended to read as follows:

"(b)(1) Subject to the requirements of part V and the other provisions of this title, any common carrier subject in whole or in part to title II of this Act may, either through its own facilities or through an affiliate owned, operated, or controlled by, or under common control with, the common carrier, provide video programming directly to subscribers in its telephone service area.

"(2) Subject to the requirements of part V and the other provisions of this title, any common carrier subject in whole or in part to title II of this Act may provide channels of communications or pole, line, or conduit space, or other rental arrangements, to any entity which is directly or indirectly owned, operated, or controlled by, or under common control with, such common carrier, if such facilities or arrangements are to be used for, or in connection with, the provision of video programming directly to subscribers in its telephone service area.

"(3) Notwithstanding paragraphs (1) and (2), an affiliate that—

"(A) is, consistent with section 656, owned, operated, or controlled by, or under common control with, a common carrier subject in whole or in part to title II of this Act, and

"(B) provides video programming to subscribers in the telephone service area of such carrier, but

"(C) does not utilize the local exchange facilities or services of any affiliated common carrier in distributing such programming,

shall not be subject to the requirements of part V, but shall be subject to the requirements of this part and parts III and IV.".

(2) CONFORMING AMENDMENT.—Section 602 of the Communications Act of 1934 (47 U.S.C. 531) is amended—

(A) in paragraph (6)(B), by inserting "or use" after "the selection";

(B) by redesignating paragraphs (18) and (19) as paragraphs (19) and (20) respectively; and

(C) by inserting after paragraph (17) the following new paragraph:

"(18) the term 'telephone service area' when used in connection with a common carrier subject in whole or in part to title II of this Act means the area within which such carrier provides telephone exchange service as of November 20, 1993, but if any common carrier after such date transfers its 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;".

(b) PROVISIONS FOR REGULATION OF CABLE SERVICE PROVIDED BY TELEPHONE COMPANIES.—Title VI of the Communications Act of 1934 (47 U.S.C. 521 et seq.) is amended by adding at the end the following new part:

"PART V—VIDEO PROGRAMMING SERVICES PROVIDED BY TELEPHONE COMPANIES

"SEC. 651. DEFINITIONS.

"For purposes of this part—

"(1) the term 'control' means—

"(A) an ownership interest in which an entity has the right to vote more than 50 percent of the outstanding common stock or other ownership interest; or

"(B) actual working control, as defined in the order of the Commission entitled 'Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competitive Act of 1992—Horizontal and Vertical Ownership Limits, Cross-Ownership Limitations, and Anti-Trafficking Provisions', MM Docket 92–264, adopted September 23, 1993, if no single entity directly or indirectly has the right to vote more than 50 percent of the outstanding common stock or other ownership interest;

"(2) the term 'video platform' has the same meaning as the term 'basic platform' in the order of the Commission entitled 'Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54–63.58', CC Docket No. 87–266, adopted July 16, 1992, except that the Commission may modify this definition by regulation consistent with the purposes of this Act; and

"(3) the term 'rural area' means a geographic area that does not include either—

"(A) any incorporated or unincorporated place of 10,000 inhabitants or more, or any part thereof; or

"(B) any territory, incorporated or unincorporated, included in an urbanized area.

"SEC. 652. SEPARATE VIDEO PROGRAMMING AFFILIATE.

"(a) IN GENERAL.—Except as provided in subsection (d) of this section, a common carrier subject to title II of this Act shall not provide video programming directly to subscribers in its telephone service area unless such video programming is provided through a video programming affiliate that is separate from such carrier.

"(b) BOOKS AND MARKETING.—

"(1) IN GENERAL.—A video programming affiliate of a common carrier shall—

"(A) maintain books, records, and accounts separate from such carrier which identify all transactions with such carrier;

"(B) carry out directly (or through any nonaffiliated person) its own promotion, except that institutional advertising carried out by such carrier shall be permitted so long as each party bears its pro rata share of the costs; and

"(C) not own real or personal property in common with such carrier.

"(2) INBOUND TELEMARKETING AND REFERRAL.—Notwithstanding paragraph (1)(B), a common carrier may provide telemarketing or referral services in response to the call of a customer or potential customer related to the provision of video programming by a video programming affiliate of such carrier. If such

services are provided to a video programming affiliate, such services shall be made available to any video programmer or cable operator on request, on nondiscriminatory terms, at just and reasonable prices, and subject to regulations of the Commission to ensure that the carrier's method of providing telemarketing or referral and its price structure do not competitively disadvantage any video programmer or cable operator, regardless of size, including those which do not use the carrier's telemarketing services.

"(3) JOINT TELEMARKETING.—Notwithstanding paragraph (1)(B), a common carrier may petition the Commission for permission to market video programming directly, upon a showing that a cable operator or other entity directly or indirectly provides telecommunications services within the telephone service area of the common carrier, and markets such telecommunications services jointly with video programming services. The common carrier shall specify the geographic region covered by the petition. Any such petition shall be granted or denied within 180 days after the date of its submission.

"(c) BUSINESS TRANSACTIONS WITH CARRIER SUBJECT TO REGULATION.—Any contract, agreement, arrangement, or other manner of conducting business, between a common carrier and its video programming affiliate, providing for—

"(1) the sale, exchange, or leasing of property between such affiliate and such carrier,

"(2) the furnishing of goods or services between such affiliate and such carrier, or

"(3) the transfer to or use by such affiliate for its benefit of any asset or resource of such carrier,

shall be pursuant to regulation prescribed by the Commission, shall be on a fully compensatory and auditable basis, shall be without cost to the telephone service ratepayers of the carrier, shall be filed with the Commission, and shall be in compliance with regulations established by the Commission that will enable the Commission to assess the compliance of any transaction.

"(d) WAIVER.—

"(1) CRITERIA FOR WAIVER.—The Commission may waive any of the requirements of this section for small telephone companies or telephone companies serving rural areas, if the Commission determines, after notice and comment, that—

"(A) such waiver will not affect the ability of the Commission to ensure that all video programming activity is carried out without any support from telephone ratepayers;

"(B) the interests of telephone ratepayers and cable subscribers will not be harmed if such waiver is granted;

"(C) such waiver will not adversely affect the ability of persons to obtain access to the video platform of such carrier; and

"(D) such waiver otherwise is in the public interest.

"(2) DEADLINE FOR ACTION.—The Commission shall act to approve or disapprove a waiver application within 180 days after the date it is filed.

"(3) CONTINUED APPLICABILITY OF SECTION 659.—In the case of a common carrier that obtains a waiver under this subsection, any requirement that section 659 applies to a video programming affiliate shall instead apply to such carrier.

"SEC. 653. ESTABLISHMENT OF VIDEO PLATFORM.

"(a) COMMON CARRIER OBLIGATIONS.—

"(1) IN GENERAL.—Any common carrier subject to title II of this Act and that provides, through a video programming affiliate, video programming directly to subscribers in its telephone service area, shall establish a video platform.

"(2) IDENTIFICATION OF DEMAND FOR CARRIAGE.—Any common carrier subject to the requirements of paragraph (1) shall, prior to establishing a video platform, submit a notice to the Commission of its intention to establish channel capacity for the provision of video programming to meet the bona fide demand for such capacity. Such notice shall—

"(A) be in such form and contain such information as the Commission may require by regulations pursuant to subsection (b);

"(B) specify the methods by which any entity seeking to use such channel capacity should submit to such carrier a specification of its channel capacity requirements; and

"(C) specify the procedures by which such carrier will determine (in accordance with the Commission's regulations under subsection (b)(1)(B)) whether such request for capacity are bona fide.

The Commission shall submit any such notice for publication in the Federal Register within 5 working days.

"(3) RESPONSE TO REQUEST FOR CARRIAGE.—After receiving and reviewing the requests for capacity submitted pursuant to such notice, such common carrier shall, subject to approval of a certificate under section 214, establish channel capacity that is sufficient to provide carriage for—

"(A) all bona fide requests submitted pursuant to such notice,

"(B) any additional channels required pursuant to section 659, and

"(C) any additional channels required by the Commission's regulations under subsection (b)(1)(C).

"(4) RESPONSES TO CHANGES IN DEMAND FOR CAPACITY.—Any common carrier that establishes a video platform under this section shall—

"(A) immediately notify the Commission and each video programming provider of any delay in or denial of channel capacity or service, and the reasons therefor;

"(B) continue to receive and grant, to the extent of available capacity, carriage in response to bona fide requests for carriage from existing or additional video programming providers;

"(C) if at any time the number of channels required for bona fide requests for carriage may reasonably be expected soon to exceed the existing capacity of such video platform, immediately notify the Commission of such expectation and of the manner and date by which such carrier will provide sufficient capacity to meet such excess demand; and

"(D) construct, subject to approval of a certificate under section 214, such additional capacity as may be necessary to meet such excess demand.

"(5) 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 award damages sustained in consequence of any violation of this section to any person denied carriage, or require carriage, or both. Any aggrieved party may seek any other remedy available under this Act.

"(b) COMMISSION REGULATIONS.—

"(1) IN GENERAL.—Within one year after the date of the enactment of this section, the Commission shall prescribe regulations that—

"(A) consistent with the requirements of section 659, prohibit a common carrier from discriminating among video programming providers with regard to carriage on its video platform, and ensure that the rates, terms, and conditions for such carriage are just, reasonable, and nondiscriminatory;

"(B) prescribe definitions and criteria for the purposes of determining whether a request shall be considered a bona fide request for purposes of this section;

"(C) establish a requirement that video platforms contain a suitable margin of unused channel capacity to meet reasonable growth in bona fide demand for such capacity;

"(D) extend to video platforms the Commission's regulations concerning network nonduplication (47 C.F.R. 76.92 et seq.) and syndicated exclusivity (47 C.F.R. 76.151 et seq.);

"(E) require the video platform to provide service, transmission, interconnection, and interoperability for unaffiliated or independent video programming providers that is equivalent to that provided to the common carrier's video programming affiliate;

"(F)(i) prohibit a common carrier from discriminating among video programming providers with regard to material or information provided by the common carrier to subscribers for the purposes of selecting programming on the video platform, or in the way such material or information is presented to subscribers;

"(ii) require a common carrier to ensure that video programming providers or copyright holders (or both) are able suitably and uniquely to identify their programming services to subscribers; and

"(iii) if such identification is transmitted as part of the programming signal, require the carrier to transmit such identification without change or alteration; and

"(G) prohibit a common carrier from excluding areas from its video platform service area on the basis of the ethnicity, race, or income of the residents of that area, and provide for public comments on the adequacy of the proposed service area on the basis of the standards set forth under this subparagraph.

"(2) EXTENSION OF REGULATIONS TO OTHER HIGH CAPACITY SYSTEMS.—The Commission shall extend the requirements of the regulations prescribed pursuant to this section, in lieu of the requirements of section 612, to any cable operator of a cable system that has installed a switched, broadband video programming delivery system, except that the Commission shall not extend the requirements of the regulations prescribed pursuant to subsection (b)(1)(D) or any other requirement that the Commission determines is clearly inappropriate.

"(c) COMMISSION INQUIRY.—The Commission shall conduct a study of whether it is in the public interest to extend the requirements of subsection (a) to any other cable operators in lieu of the requirements of section 612. The Commission shall submit to the Congress a report on the results of such study not later than 2 years after the date of enactment of this section.

"SEC. 654. EQUAL ACCESS COMPLIANCE.

"(a) CERTIFICATION REQUIRED.—

"(1) IN GENERAL.—A common carrier subject to title II of this Act shall not provide video programming directly to subscribers in its telephone service area unless such carrier has certified to the Commission that such carrier is in compliance with the requirements of paragraphs (1) and (2) of section 201(c) of this Act, and regulations prescribed pursuant to such paragraphs.

"(2) EXCEPTION.—Notwithstanding paragraph (1), a common carrier subject to title II of this Act may provide video programming directly to subscribers in its telephone service area during any period prior to the date the Commission first prescribes final regulations pursuant to paragraphs (1) and (2) of section 201(c) of this Act if such carrier has certified to the Commission that such carrier is in compliance with State laws and regulations concerning equal access, interconnection, and unbundling that are substantially similar to and fully consistent with the requirements of such paragraphs or if there is no statutory prohibition against such carrier providing video programming directly to subscribers in its telephone service area on the date of enactment of this section. A common carrier that submits a certification pursuant to this paragraph shall not be exempt from the requirements of paragraph (1) after the effective date of such final regulations.

"(b) CERTIFICATION AND APPLICATION APPROVAL.—A common carrier that submits a certification under paragraph (1) or (2) of subsection (a) shall be eligible to provide video programming to subscribers in accordance with the requirements of this part, subject to the approval of any necessary application under section 214 for authority to establish a video platform. An application under section 214 may be filed simultaneously with the filing of such certification or at any time after the date of enactment of this section, and the Commission shall act to approve (with or without modification) or reject such application within 180 days after the date of its submission. If the Commission acts to approve such an application prior to the filing of such certification, such approval shall not be effective until such certification is filed.

"SEC. 655. PROHIBITION OF CROSS-SUBSIDIZATION.

"(a) CROSS SUBSIDIES PROHIBITION.—The Commission shall—

"(1) prescribe regulations to prohibit a common carrier from engaging in any practice that results in the inclusion in rates for telephone exchange service or telephone exchange access service of any operating expenses, costs, depreciation charges, capital investments, or other expenses directly associated with the provision of competing video programming services by the common carrier or affiliate; and

"(2) ensure such competing video programming services bear a reasonable share of the joint and common costs of facilities used to provide telephone exchange service or telephone exchange access service and competing video programming services.

"(b) CABLE OPERATOR PROHIBITIONS.—The Commission shall prescribe regulations to prohibit a cable operator from engaging in any practice that results in improper cross-subsidization between its regulated cable operations and its provision of telecommunications service, either directly or through an affiliate.

"SEC. 656. PROHIBITION ON BUYOUTS.

"(a) GENERAL PROHIBITION.—No common carrier that provides telephone exchange service, and no entity owned by or under common ownership or control with such carrier, may purchase or otherwise obtain control over any cable system that is located within its telephone service area and is owned by an unaffiliated person.

"(b) EXCEPTIONS.—Notwithstanding subsection (a), a common carrier may—

"(1) obtain a controlling interest in, or form a joint venture or other partnership with, a cable system that serves a rural area;

"(2) obtain, in addition to any interest, joint venture, or partnership obtained or formed pursuant to paragraph (1), a controlling interest in, or form a joint venture or other partnership with, any cable system or systems if—

"(A) such systems in the aggregate serve less than 10 percent of the households in the telephone service area of such carrier; and

"(B) no such system serves a franchise area with more than 35,000 inhabitants, except that a common carrier may obtain such interest or form such joint venture or other partnership with a cable system that serves a franchise area with more than 35,000 but not more than 50,000 inhabitants if such system is not affiliated (as such term is defined in section 602) with any other system whose franchise area is contiguous to the franchise area of the acquired system; or

"(3) obtain, with the concurrence of the cable operator on the rates, terms, and conditions, the use of that part of the transmission facilities of such 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.

"(c) WAIVER.—

"(1) CRITERIA FOR WAIVER.—The Commission may waive the restrictions in subsection (a) of this section only upon a showing by the applicant that—

"(A) because of the nature of the market served by the cable system concerned—

"(i) the incumbent cable operator would be subjected to undue economic distress by the enforcement of such subsection; or

"(ii) the cable system would not be economically viable if such subsection were enforced; and

"(B) the local franchising authority approves of such waiver.

"(2) DEADLINE FOR ACTION.—The Commission shall act to approve or disapprove a waiver application within 180 days after the date it is filed.

"SEC. 657. PENALTIES.

"If the Commission finds that any common carrier has knowingly violated any provision of this part, the Commission shall assess such fines and penalties as it deems appropriate pursuant to this Act.

"SEC. 658. CONSUMER PROTECTION.

"(a) JOINT BOARD REQUIRED.—Within 30 days after the date of enactment of this part, the Commission shall convene a Federal-State Joint Board under the provisions of section 410(c) for the purpose of recommending a decision concerning the practices, classifications, and regulations as may be necessary to ensure proper jurisdictional separation and allocation of the costs of establishing and providing a video platform. The Board shall issue its recommendations to the Commission within 270 days after the date of enactment of this part.

"(b) COMMISSION REGULATIONS REQUIRED.—The Commission, with respect to interstate switched access service, and the States, with respect to telephone exchange service and intrastate interexchange service, shall establish such regulations as may be necessary to implement section 655 within one year after the date of the enactment of this part.

"(c) NO EFFECT ON CARRIER REGULATION AUTHORITY.—Nothing in this section shall be construed to limit or supersede the authority of any State or the Commission with respect to the allocation of costs associated with intrastate or interstate communication services.

"SEC. 659. APPLICABILITY OF FRANCHISE AND OTHER REQUIREMENTS.

"(a) IN GENERAL.—Any provision that applies to a cable operator under—

"(1) sections 613, 616, 617, 628, 631, 632, and 634 of this title, shall apply,

"(2) sections 611, 612, 614, and 615 of this title, and section 325 of title III, shall apply in accordance with the regulations prescribed under subsection (b), and

"(3) parts III and IV (other than sections 628, 631, 632, and 634) of this title shall not apply,

to any video programming affiliate established by a common carrier in accordance with the requirements of this part.

"(b) IMPLEMENTATION OF REQUIREMENTS.—

"(1) REGULATIONS.—The Commission shall prescribe regulations to ensure that a video programming affiliate of a common carrier shall provide (A) capacity, services, facilities, and equipment for public, educational, and governmental

use, (B) capacity for commercial use, (C) carriage of commercial and non-commercial broadcast television stations, and (D) an opportunity for commercial broadcast stations to choose between mandatory carriage and reimbursement for retransmission of the signal of such station. In prescribing such regulations, the Commission shall, to the extent possible, impose obligations that are no greater or lesser than the obligations contained in the provisions described in subsection (a)(2) of this section. Such regulations shall also require that, if a common carrier establishes a video platform but does not provide or ceases to provide video programming through a video programming affiliate, such carrier shall comply with the regulations prescribed under this paragraph and with the provisions described in subsection (a)(1) in the operation of its video platform.

"(2) FEES.—A video programming affiliate of any common carrier that establishes a video platform under this part, and any multichannel video programming distributor offering a competing service using such video platform (as determined in accordance with regulations of the Commission), shall be subject to the payment of fees imposed by a local franchising authority, in lieu of the fees required under section 622. 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 same service area.

"SEC. 660. RURAL AREA EXEMPTION.

"The provisions of sections 652, 653, 654, and 656 shall not apply to video programming provided in a rural area by a common carrier that provides telephone exchange service in the same area.".

SEC. 202. REVIEW OF BROADCASTERS OWNERSHIP RESTRICTIONS.

Within one year after the date of enactment of this Act, the Commission shall, after a notice and comment proceeding, prescribe regulations to modify, maintain, or remove the ownership regulations on radio and television broadcasters as necessary to ensure that broadcasters are able to compete fairly with other information providers while protecting the goals of diversity and localism.

SEC. 203. REVIEW OF STATUTORY OWNERSHIP RESTRICTION.

Within one year after the date of enactment of this Act, the Commission shall review the ownership restriction in section 613(a)(1) of the Communications Act of 1934 (47 U.S.C. 553(a)(1)) and report to Congress whether or not such restriction continues to serve the public interest.

SEC. 204. BROADCASTER SPECTRUM FLEXIBILITY.

(a) REGULATIONS REQUIRED.—If the Commission determines to issue additional licenses for advanced television services, and initially limits the eligibility for such licenses to persons that, as of the date of such issuance, are licensed to operate a television broadcast station or hold a permit to construct such a station (or both), the Commission shall adopt regulations that allow such licensees or permittees to offer such ancillary or supplementary services on designated frequencies as may be consistent with the public interest, convenience, and necessity.

(b) CONTENTS OF REGULATIONS.—In prescribing the regulations required by subsection (a), the Commission shall—

(1) only permit such licensee or permittee to offer ancillary or supplementary services if the use of a designated frequency for such services is indivisible from the use of such designated frequency for the provision of advanced television services;

(2) limit the broadcasting of ancillary or supplementary services on designated frequencies so as to avoid derogation of any advanced television services, including high definition television broadcasts, that the Commission may require using such frequencies;

(3) treat any such ancillary or supplementary services for which the licensee or permittee solicits and receives compensation in return for transmitting commercial advertising as broadcast services for the purposes of the Communications Act of 1934 and the Children's Television Act of 1990 (47 U.S.C. 303a), and the Commission's regulations thereunder, including regulations promulgated pursuant to section 315 of the Communications Act of 1934 (47 U.S.C. 315);

(4) apply to any other ancillary or supplementary service such of the Commission's regulations as are applicable to the offering of analogous services by any other person;

(5) adopt such technical and other requirements as may be necessary or appropriate to assure the quality of the signal used to provide advanced television

services, including regulations that stipulate the minimum number of hours per day that such signal must be transmitted; and

(6) prescribe such other regulations as may be necessary for the protection of the public interest, convenience, and necessity.

(c) RECOVERY OF LICENSE.—

(1) CONDITIONS REQUIRED.—If the Commission limits the eligibility for licenses to provide advanced television services in the manner described in subsection (a), the Commission shall, as a condition of such license, require that, upon a determination by the Commission pursuant to the regulations prescribed under paragraph (2), either the additional license or the original license held by the licensee be surrendered to the Commission in accordance with such regulations for reallocation or reassignment (or both) pursuant to Commission regulation.

(2) REGULATIONS.—The Commission shall prescribe regulations establishing criteria for rendering determinations concerning license surrender pursuant to license conditions required by paragraph (1). Such regulations shall—

(A) require such determinations to be based on whether the substantial majority of the public have obtained television receivers that are capable of receiving advanced television services; and

(B) not require the cessation of the broadcasting if such cessation would render the television receivers of a substantial portion of the public useless, or otherwise cause undue burdens on the owners of such television receivers.

(d) FEES REQUIRED.—

(1) SERVICES TO WHICH FEES APPLY.—If the regulations prescribed pursuant to subsection (a) permit a licensee to offer ancillary or supplementary services on a designated frequency—

(A) for which the payment of a subscription fee is required in order to receive such services, or

(B) for which the licensee directly or indirectly receives compensation from a third party in return for transmitting material furnished by such third party (other than commercial advertisements used to support broadcasting for which a subscription fee is not required),

the Commission shall establish by regulation a program to assess and collect an annual fee or royalty payment.

(2) CRITERIA FOR REGULATIONS.—The regulations required by paragraph (1) shall—

(A) be designed (i) to recover for the public a portion of the value of the public spectrum resource made available for such commercial use, and (ii) to avoid unjust enrichment through the method employed to permit such uses of that resource;

(B) recover for the public an amount that is, to maximum extent feasible, equal (over the term of the license) to the amount that would have been recovered had such services been licensed pursuant to the provisions of section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) and the Commission's regulations thereunder; and

(C) be adjusted by the Commission from time to time in order to continue to comply with the requirements of this paragraph.

(3) TREATMENT OF REVENUES.—

(A) GENERAL RULE.—Except as provided in subparagraph (B), all proceeds obtained pursuant to the regulations required by this subsection shall be deposited in the Treasury in accordance with chapter 33 of title 31, United States Code.

(B) RETENTION OF REVENUES.—Notwithstanding subparagraph (A), the salaries and expenses account of the Commission shall retain as an offsetting collection such sums as may be necessary from such proceeds for the costs of developing and implementing the program required by this section and regulating and supervising advanced television services. Such offsetting collections shall be available for obligation subject to the terms and conditions of the receiving appropriations account, and shall be deposited in such accounts on a quarterly basis.

(4) REPORT.—Within 5 years after the date of the enactment of this section, the Commission shall report to the Congress on the implementation of the program required by this subsection, and shall annually thereafter advise the Congress on the amounts collected pursuant to such program.

(e) EVALUATION REQUIRED.—Within 10 years after the date the Commission first issues additional licenses for advanced television services, the Commission shall

conduct an evaluation of the advanced television services program. Such evaluation shall include—

(1) an assessment of the willingness of consumers to purchase the television receivers necessary to receive broadcasts of advanced television services;

(2) an assessment of alternative uses, including public safety use, of the frequencies used for such broadcasts; and

(3) the extent to which the Commission has been or will be able to reduce the amount of spectrum assigned to licensees in order to issue additional licenses for the provision of advanced television services.

(f) DEFINITIONS.—As used in this section:

(1) ADVANCED TELEVISION SERVICES.—The term "advanced television services" means television services provided using digital or other advanced technology to enhance audio quality and video resolution, as further defined in the opinion, report, and order of the Commission entitled "Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service", MM Docket 87–268, adopted September 17, 1992, and successor proceedings.

(2) DESIGNATED FREQUENCIES.—The term "designated frequency" means each of the frequencies designated by the Commission for licenses for advanced television services.

(3) HIGH DEFINITION TELEVISION.—The term "high definition television" refers to systems that offer approximately twice the vertical and horizontal resolution of receivers generally available on the date of enactment of this section, as further defined in the proceedings described in paragraph (1) of this subsection.

SEC. 205. INTERACTIVE SERVICES AND CRITICAL INTERFACES.

(a) FINDINGS.—The Congress finds that—

(1) the convergence of communications, computing, and video technologies will permit improvements in interoperability between and among those technologies;

(2) in the public switched telecommunications network, open protocols and technical requirements for connection between the network and the consumer, and the availability of unbundled customer equipment through retailers and other third party vendors, have served to broaden consumer choice, lower prices, and spur competition and innovation in the customer equipment industry;

(3) set-top boxes and other interactive communications devices could similarly serve as a critical gateway between American homes and businesses and advanced telecommunications and video programming networks;

(4) American consumers have benefited from the ability to own or rent customer premises equipment obtained from retailers and other vendors and the ability to access the network with portable, compatible equipment;

(5) in order to promote diversity, competition, and technological innovation among suppliers of equipment and services, it may be necessary to make certain critical interfaces with such networks open and accessible to a broad range of equipment manufacturers and information providers;

(6) the identification of critical interfaces with such networks and the assessment of their openness must be accomplished with due recognition that open and accessible systems may include standards that involve both nonproprietary and proprietary technologies;

(7) such identification and assessment must also be accomplished with due recognition of the need for owners and distributors of video programming and information services to ensure system and signal security and to prevent theft of service;

(8) whenever possible, standards in dynamic industries such as interactive systems are best set by the marketplace or by private sector standard-setting bodies; and

(9) the role of the Commission in this regard is—

(A) to identify, in consultation with industry groups, consumer interests, and independent experts, critical interfaces with such networks (i) to ensure that end users can connect information devices to such networks, and (ii) to ensure that information service providers are able to transmit information to end users, and

(B) as necessary, to take steps to ensure these networks and services are accessible to a broad range of equipment manufactures, information providers, and program suppliers.

(b) INQUIRY REQUIRED.—Within 6 months after the date of the enactment of this Act, the Commission shall commence an inquiry—

(1) to examine the impact of the convergence of technologies on cable, telephone, satellite, and wireless and other communications technologies likely to offer interactive communications services;

(2) to ascertain the importance of maintaining open and accessible systems in interactive communications services;

(3) to examine the costs and benefits of maintaining varying levels of interoperability between and among interactive communications services;

(4) to examine the costs and benefits of establishing open interfaces (A) between the network provider and the set-top box or other interactive communications devices used in the home or office, and (B) between network providers and information service providers, and to determine how best to establish such interfaces;

(5) to determine methods by which converter boxes or other interactive communications devices may be sold through retailers and other third party vendors and to determine the vendors' responsibilities for ensuring that their devices are interoperable with interactive networks;

(6) to assess how the security of cable, satellite, and other interactive systems or its service can continue to be ensured with the establishment of an interface between the network and a converter box or other interactive communications device, including those manufactured and distributed at retail by entities independent of network providers and information service providers, and to determine the responsibilities of such independent entities for assuring network security and for conforming to signal interference standards;

(7) to ascertain the conditions necessary to ensure that any critical interface is available to information and content providers and others who seek to design, build, and distribute interoperable devices for these networks so as to ensure network access and fair competition for independent information providers and consumers;

(8) to assess the impact of the deployment of digital technologies on individuals with disabilities, with particular emphasis on any regulatory, policy, or design barriers which would limit functionally equivalent access by such individuals;

(9) to assess current regulation of telephone, cable, satellite, and other communications delivery systems to ascertain how best to ensure interoperability between those systems;

(10) to assess the adequacy of current regulation of telephone, cable, satellite, and other communications delivery systems with respect to bundling of equipment and services and to identify any changes in unbundling regulations necessary to assure effective competition and encourage technological innovation, consistent with the finding in subsection (a)(6) and the objectives of paragraph (6) of this subsection, in the market for converter boxes or interactive communications devices and for other customer premises equipment;

(11) to solicit comment on any changes in the Commission's regulations that are necessary to ensure that diversity, competition, and technological innovation are promoted in communications services and equipment; and

(12) to prepare recommendations to the Congress for any legislative changes required.

(c) REPORT TO CONGRESS.—Within 12 months after the date of the enactment of this Act, the Commission shall submit to the Congress a report on the results of the inquiry required by subsection (b). Within 6 months after the date of submission of such report, the Commission shall prescribe such changes in its regulations as the Commission determines are necessary pursuant to subsection (b)(10).

(d) PRESERVATION OF EXISTING AUTHORITY.—Nothing in this section shall be construed as limiting, superseding, or otherwise modifying the existing authority and responsibilities of the Commission or National Institute of Standards and Technology.

SEC. 206. VIDEO PROGRAMMING ACCESSIBILITY.

(a) INQUIRY REQUIRED.—Within 180 days after the date of enactment of this section, the Federal Communications Commission shall complete an inquiry to ascertain the level at which video programming is closed captioned. Such inquiry shall examine the extent to which existing or previously published programming is closed captioned, the size of the video programming provider or programming owner providing closed captioning, the size of the market served, the relative audience shares achieved, or any other related factors. The Commission shall submit to the Congress a report on the results of such inquiry.

(b) CONTENTS OF REGULATIONS.—Within 18 months after the date of enactment, the Commission shall prescribe such regulations as are necessary to implement this section. Such regulations shall ensure that—

(1) video programming first published or exhibited after the effective date of such regulations is fully accessible through the provision of closed captions, except as provided in subsection (d); and

(2) video programming providers or owners maximize the accessibility of video programming first published or exhibited prior to the effective date of such regulations through the provision of closed captions, except as provided in subsection (d).

(c) CONTENTS OF REGULATIONS.—Such regulations shall include an appropriate schedule of deadlines for the provision of closed captioning of video programming.

(d) EXEMPTIONS.—Notwithstanding subsection (b)—

(1) the Commission may exempt by regulation programs, classes of programs, or services for which the Commission has determined that the provision of close captioning would be economically burdensome to the provider or owner of such programming;

(2) a provider of video programming or the owner of any program carried by the provider shall not be obligated to supply closed captions if such action would be inconsistent with contracts in effect on the date of enactment of this Act, except that nothing in this section shall be construed to relieve a video programming provider of its obligations to provide services required by Federal law; and

(3) a provider of video programming or program owner may petition the Commission for an exemption from the requirements of this section, and the Commission may grant such petition upon a showing that the requirements contained in this section would result in an undue burden.

(e) UNDUE BURDEN.—The term 'undue burden' means significant difficulty or expense. In determining whether the closed captions necessary to comply with the requirements of this paragraph would result in an undue economic burden, the factors to be considered include—

(1) the nature and cost of the closed captions for the programming;

(2) the impact on the operation of the provider or program owner;

(3) the financial resources of the provider or program owner; and

(4) the type of operations of the provider or program owner.

(f) ADDITIONAL PROCEEDING ON VIDEO DESCRIPTIONS REQUIRED.—Within 6 months after the date of enactment of this Act, the Commission shall commence an inquiry to examine the use of video descriptions on video programming in order to ensure the accessibility of video programming to persons with visual impairments, and report to Congress on its findings. The Commission's report shall assess appropriate methods and schedules for phasing video descriptions into the marketplace, technical and quality standards for video descriptions, a definition of programming for which video descriptions would apply, and other technical and legal issues that the Commission deems appropriate. Following the completion of such inquiry, the Commission may adopt regulation it deems necessary to promote the accessibility of video programming to persons with visual impairments.

(g) MODEL PROGRAM.—The National Telecommunications and Information Administration shall establish and oversee, and (to the extent of available funds) provide financial support for, marketplace tests of video descriptions on commercial and noncommercial video programming services.

(h) VIDEO DESCRIPTION.—For purposes of this section, "video description" means the insertion of audio narrated descriptions of a television program's key visual elements into natural pauses between the program's dialogue.

SEC. 207. PUBLIC ACCESS.

Within one year after the date of enactment of this Act, the Federal Communications Commission shall prescribe regulations to reserve appropriate capacity for the public at preferential rates on cable systems and video platforms.

SEC. 208. AUTOMATED SHIP DISTRESS AND SAFETY SYSTEMS.

Notwithstanding any provision of the Communications Act of 1934, a ship documented under the laws of the United States operating in accordance with the Global Maritime Distress and Safety System provisions of the Safety of Life at Sea Convention shall not be required to be equipped with a radio station operated by one or more radio officers or operators.

SEC. 209. CABLE TECHNICAL STANDARDS REVIEW.

Within one year after the date of enactment of this Act, the Commission shall review its standards under sections 624(e) and 624A of the Communications Act of 1934 (47 U.S.C. 544, 544a) to determine whether such standards may be revised to

ensure that neither the video programming, nor the accompanying audio signal, of any programming that is provided on a per channel or per program basis is able to be presented on the television receivers of subscribers unless the subscriber has requested that programming, whether or not that subscriber uses a converter or other device provided by the cable operator.

SEC. 210. EXCLUSIVE FEDERAL JURISDICTION OVER DIRECT BROADCAST SATELLITE SERVICE.

Section 303 of the Communications Act of 1934 (47 U.S.C. 303) is amended by adding at the end thereof the following new subsection:

"(v) Have exclusive jurisdiction over the regulation of the direct broadcast satellite service.".

TITLE III—PROCUREMENT PRACTICES OF TELECOMMUNICATIONS PROVIDERS

SEC. 301. FINDINGS.

The Congress finds the following:

(1) It is in the public interest for business enterprises owned by minorities and women to participate in procurement contracts of all providers of telecommunications services.

(2) The opportunity for full participation in our free enterprise system by business enterprises that are owned by minorities and women is essential if this Nation is to attain social and economic equality for those businesses and improve the functioning of the national economy.

(3) It is in this Nation's interest to expeditiously improve the economically disadvantaged position of business enterprises that are owned by minorities and women.

(4) The position of these businesses can be improved through the development by the providers of telecommunications services of substantial long-range and annual goals, which are supported by training and technical assistance, for the purchase, to the maximum practicable extent, of technology, equipment, supplies, services, material and construction from minority business enterprises.

(5) Procurement policies which include participation of business enterprises that are owned by minorities and women also benefit the communication industry and its consumers by encouraging the expansion of the numbers of suppliers for procurement, thereby encouraging competition among suppliers and promoting economic efficiency in the process.

SEC. 302. PURPOSE.

The purposes of this title are—

(1) to encourage and foster greater economic opportunity for business enterprises that are owned by minorities and women;

(2) to promote competition among suppliers to providers of telecommunications services and their affiliates to enhance economic efficiency in the procurement of telephone corporation contracts and contracts of their State commission-regulated subsidiaries and affiliates;

(3) to clarify and expand a program for the procurement by State and federally-regulated telephone companies of technology, equipment, supplies, services, materials and construction work from business enterprises that are owned by minorities and women; and

(4) to ensure that a fair proportion of the total purchases, contracts, and subcontracts for supplies, commodities, technology, property, and services offered by the providers of telecommunications services and their affiliates are awarded to minority and women business enterprises.

SEC. 303. ANNUAL PLAN SUBMISSION.

(a) ANNUAL PLANS REQUIRED.—

(1) IN GENERAL.—The Commission shall require each provider of telecommunications services to submit annually a detailed and verifiable plan for increasing its procurement from business enterprises that are owned by minorities or women in all categories of procurement in which minorities are under represented.

(2) CONTENTS OF PLANS.—The annual plans required by paragraph (1) shall include (but not be limited to) short- and long-term progressive goals and timetables, technical assistance, and training and shall, in addition to goals for direct contracting opportunities, include methods for encouraging both prime con-

tractors and grantees to engage business enterprises that are owned by minorities and women in subcontracts in all categories in which minorities are under represented.

(3) IMPLEMENTATION REPORT.—Each provider of telecommunications services shall furnish an annual report to the Commission regarding the implementation of programs established pursuant to this title in such form as the Commission shall require, and at such time as the Commission shall annually designate.

(4) REPORT TO CONGRESS.—The Commission shall provide an annual report to Congress, beginning in January 1995, on the progress of activities undertaken by each provider of telecommunications services regarding the implementation of activities pursuant to this title to develop business enterprises that are owned by minorities or women. The report shall evaluate the accomplishments under this title and shall recommend a program for enhancing the policy declared in this title, together with such recommendations for legislation as it deems necessary or desirable to further that policy.

(b) REGULATIONS AND CRITERIA FOR DETERMINING ELIGIBILITY OF MINORITY BUSINESS ENTERPRISES FOR PROCUREMENT CONTRACTS.—

(1) IN GENERAL.—The Commission shall establish regulations for implementing programs pursuant to this title that will govern providers of telecommunications services and their affiliates.

(2) VERIFYING CRITERIA.—The Commission shall develop and publish regulations setting forth criteria for verifying and determining the eligibility of business enterprises that are owned by minorities or women for procurement contracts.

(3) OUTREACH.—The Commission's regulations shall require each provider of telecommunications services and its affiliates to develop and to implement an outreach program to inform and recruit business enterprises that are owned by minorities or women to apply for procurement contracts under this title.

(4) ENFORCEMENT.—The Commission shall establish and promulgate such regulations necessary to enforce the provisions of this title.

(c) WAIVER AUTHORITY.—The requirements of this section may be waived, in whole or in part, by the Commission with respect to a particular contract or subcontract in accordance with guidelines set forth in regulations which the Commission shall prescribe when it determines that the application of such regulations prove to result in undue hardship or unreasonable expense to a provider of telecommunications services.

SEC. 304. SANCTIONS AND REMEDIES.

(a) FALSE REPRESENTATION OF BUSINESSES; SANCTIONS.—

(1) IN GENERAL.—Any person or corporation, through its directors, officers, or agent, which falsely represents the business as a business enterprise that are owned by minorities or women in the procurement or attempt to procure contracts from telephone operating companies and their affiliates pursuant to this article, shall be punished by a fine of not more than $5,000, or by imprisonment for a period not to exceed 5 years of its directors, officers, or agents responsible for the false statements, or by both fine and imprisonment.

(2) HOLDING COMPANIES.—Any provider of telecommunications services which falsely represents its annual report to the Commission or its implementation of its programs pursuant to this section shall be subject to a fine of $100,000 and be subject to a penalty of up to 5 years restriction from participation in lines of business activities provided for in this title.

(b) INDEPENDENT CAUSE OF ACTION, REMEDIES, AND ATTORNEY FEES.—

(1) DISCRIMINATION PROHIBITED.—No otherwise qualified business enterprise that are owned by minorities or women shall solely, by reason of its racial, ethnic, or gender composition be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in procuring contracts from telephone utilities.

(2) CIVIL ACTIONS AUTHORIZED.—Whenever a qualified business enterprise that is owned by minorities or women has reasonable cause to believe that a provider of telecommunications services or its affiliate is engaged in a pattern or practice of resistance to the full compliance of any provision of this title, the business enterprise may bring a civil action in the appropriate district court of the United States against the provider of telecommunications services or its affiliate requesting such monetary or injunctive relief, or both, as deemed necessary to ensure the full benefits of this title.

(3) ATTORNEYS' FEES AND COSTS.—In any action or proceeding to enforce or charge of a violation of a provision of this title, the court, in its discretion, may allow the prevailing party reasonable attorneys' fees and costs.

SEC. 305. DEFINITIONS.

For the purpose of this title, the following definitions apply:

(1) The term "business enterprise owned by minorities or women" means—

(A) a business enterprise that is at least 51 percent owned by a person or persons who are minority persons or women; or

(B) in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more persons who are minority persons or women, and whose management and daily business operations are controlled by one or more of those persons.

(2) The term "minority person" means persons who are Black Americans, Hispanic Americans, Native Americans, Asian Americans, and Pacific Americans.

(3) The term "control" means exercising the power to make financial and policy decisions.

(4) The term "operate" means the active involvement in the day-to-day management of the business and not merely being officers or directors.

(5) The term "Commission" means the Federal Communications Commission.

(6) The term "telecommunications service" has the meaning provided in section 3(mm) of the Communications Act of 1934 (as added by this Act).

TITLE IV—FEDERAL COMMUNICATIONS COMMISSION RESOURCES

SEC. 401. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—In addition to any other sums authorized by law, there are authorized to be appropriated to the Federal Communications Commission such sums as may be necessary to carry out this Act and the amendments made by this Act.

(b) EFFECT ON FEES.—For purposes of section 9(b)(2), additional amounts appropriated pursuant to subsection (a) shall be construed to be changes in the amounts appropriated for the performance of activities described in section 9(a).

PURPOSE AND SUMMARY

H.R. 3636, the "National Communications Competition and Information Infrastructure Act of 1994," as amended, seeks to promote a national communications and information infrastructure that will facilitate commerce, expand services and lower prices to consumers, spur economic development, and provide a medium for delivering governmental and societal services to all Americans. The bill accomplishes the goal of encouraging the deployment of advanced communications technologies to benefit all Americans by advanced communications technologies to benefit all Americans by injecting competition into the market for local telephone service and video programming, and video programming, and by establishing a mechanism to ensure that "universal service", which means high quality telephone service at just and reasonable rates, is preserved and enhanced.

The bill has three main components. First, the bill promotes competition in the market for local telephone service by requiring local telephone companies (or "local exchange carriers") to offer competitors access to parts of their networks. Second, the bill spurs competition in the multichannel video market by permitting telephone companies, through a separate affiliate, to provide video programming of its subscribers in its telephone service area. This policy change also will provide a strong incentive for local exchange carriers to invest in and upgrade their networks. Finally, the bill seeks to preserve and enhance the universal provision of telephone service, which has long been a hallmark of our Nation's communications policy. The legislation establishes a process to ensure that as change and competition are introduced into the local telephone

market, that the long-standing policy of universal service not only endures but is updated to evolve with the rapid changes in the communications industry.

BACKGROUND AND NEED FOR THE LEGISLATION

I. UNIVERSAL SERVICE

a. Definition

Universal service has long been a cornerstone of Federal and State telecommunications regulatory policies. The term "universal service" refers to the widespread availability of basic telephone service at affordable rates. From a regulatory standpoint, the term "basic" refers to those services that are essential for a minimally acceptable level of access to, and use of, the public network. As a practical matter, universal service consists of the local exchange telephone services provided by the Nation's local exchange companies, and is generally considered to be "dialtone" service or "plain old telephone service" (POTS). However, the precise technical characteristics, service features, and calling privileges included in the service may vary among the different exchanges. To illustrate, in some rural parts of the country party-line service is still the standard; whereas in most areas of the country single-line service is provided as basic service.

b. History of the public policy goal of universal service

The public policy goal of universal service is most commonly associated with the Communications Act of 1934 (or the "Act"). Although the concept of universal service is not specifically defined in the Act, the national goal of providing universal telephone service to all Americans can be found in section 1 of the 1934 Act, which directs the Federal Communications Commission (or the Commission) to, among other things, "make available, so far as possible, *to all the people of the United States* a rapid, efficient, Nation-wide and world-wide wire and radio communication service *with adequate facilities at reasonable charges.*"[1] This core language from the Act has served as the bedrock upon which the concept of universal telephone service has been built and expanded upon over time, to the point that it is now equated with ubiquitous geographic coverage, universal household penetration, and regulated tariffs at just and reasonable rates.

Pursuing universal service provides a number of benefits to the individual and society. For example, our Nation's communications network binds together our society as a whole and individual families and communities. Telephone contract with family and friends contributes to a person's quality of life. In many cases, particularly for the elderly, poor, and disabled, the telephone is regarded as a lifeline to the outside world. In addition, a ubiquitous communications infrastructure can contribute to a citizen's equality of opportunity. In short, access to basic telephone service is crucial to an individual's full participation in our society and economy, both of which are increasingly dependent upon the rapid exchange of information.

[1] 47 U.S.C. 151.

Moreover, a widely used telecommunications network promotes American economic efficiency and development. One of the main reasons public policymakers support assisting the connection of users to the network is to capture what economists call positive network externalities. In other words, the addition of each individual subscriber to the public switched network enhances the value of the entire network to all previously subscribed business and residential customers since the pool of persons to be called will have been expanded.

c. Status of universal service

The policy goal of universal service often is evaluated by appraising two benchmarks: availability and affordability.

(i) Availability

The most widely used measure of telephone availability is the percentage of households with telephone service, known as telephone "penetration." Based on data from the United States Bureau of the Census, telephone penetration in the United States has steadily risen over the years. In 1983, the Census Bureau, at the request of the Commission, began to calculate telephone penetration in its nationwide monthly survey of households.[2] According to this Census data (which, due to the use of a different collection method, cannot be compared with the penetration figures contained in the Bureau's decennial censuses), the percentage of United States households with a telephone rose from an annual average of 91.6 percent in 1984 to 94.2 percent in 1993—the highest level ever reported.

The Committee notes with concern that even with the universal service goal of "plain old telephone service," about 6 million homes in the United States still do not have direct access to a dialtone. The number of homes without phones varies by factors such as income geography, race, and household size. For example, according to a Commission report based on the Census data, the percentage of American households with direct access to a telephone varies dramatically by State. In 1993, telephone penetration rates ranged from an annual average of about 87 percent of all households in Mississippi to approximately 97 percent in Pennsylvania. In addition, according to a 1993 Rutgers University study, 50 percent of households headed by single women with small children at or below the poverty level and 16 to 18 percent of African-American and Hispanic households lack direct access to a dialtone. This situation exists even though individuals from the lower income brackets have seen the most dramatic increase in access since 1984.

(ii) Affordability

Based on the consumer price index (CPI), the affordability of telephone service in the United States has improved during the past decade. From 1984 to 1993, the annual average price for telephone services rose a total of 12.7 percent, while the annual aver-

[2]The Census Bureau asks telephone questions to survey participants once every four months, in the month that a household is first included in the sample and in the month that the household reenters the sample a year later. Aggregated summaries of the responses are reported to the FCC, based on the surveys conducted through March, July, and November of each year.

age price for all goods and services rose a total of 39.1 percent. This below-inflation price rise for telephone services stems partially from the fact that certainly since the mid 1980s the telecommunications industry has been a classic "declining cost industry." That means that the introduction of technology has led to a steady decrease in the marginal costs companies face in providing telecommunications services. As a result, the proportion of the average households' annual budget for telephone service has remained virtually the same over the years, while the quality of services (e.g., technical quality and the diversity of options) has increased dramatically. Services and products, such as long distance calling, touch-tone service, multiple phones, cordless phones and answering machines, that were once regarded as luxuries, now have become commonplace for many United States citizens.

d. Historical funding

Universal telephone service has virtually fulfilled its goal because local exchange carriers and Federal and State regulators have priced telephone service at levels most people can afford, even though the cost to provide such service consistently has been above the price charged residential ratepayers. Many regulators have sought to make up this shortfall by enabling the local exchange carriers to increase rates charged for other services. Historically, these other additional services have included: (1) "vertical" services (e.g., tough-tone, 3-way calling, and call-forwarding); (2) lease of customer premises equipment (CPE), such as private branch exchanges (PBXs), which are used by multi-line businesses on their premises to handle their telecommunications traffic, and extension telephones; and, most importantly, (3) long distance service.[3]

Prior to the 1970s, intrastate toll rates often were substantially higher than the Commission-regulated interstate rates, because of different pricing policies. This disparity caused States to begin taking aggressive actions to transfer some intrastate costs to interstate toll services through the "jurisdictional separations" process.[4] However, it was not until the Ozark Plan, recommended by a Federal-State Joint Board (Joint Board) and adopted by the Commission in 1970 and implemented in 1971, that the separations process resulted in the assignment of a significant and growing proportion of nontraffic-sensitive local loop costs to interstate toll operations.[5] The Joint Board instituted this policy because it concluded that significant parts of the network existed to facilitate long distance connections, and that even the local loop benefitted long distance customers (because it enables long distance customers to complete their calls). As a result of these considerations, regulators decided that such long distance customers should bear a higher portion of the costs of the local phone loop.

---

[3] Since large businesses are disproportionate users of long distance services, large businesses historically have been large contributors to universal service.

[4] "Separations" refers to the regulatory process whereby costs are allocated between the interstate and intrastate jurisdictions. Allocation decisions are made by a Federal-State Joint Board established under the auspices of the Commission.

[5] "Local loop" refers to the part of the telephone network which runs from the central office (CO) of the telephone company to the local subscriber. "Nontraffic-sensitive local loop costs" refer to the costs associated with the installation and maintenance of wires, poles and other facilities that link each telephone customer's premises to the public switched telephone network.

Since all costs assigned to the interstate jurisdiction were recovered in toll rates, the result of the separation process was that, beginning in the 1970s, interstate calling (long distance) began to contribute more to the funding of local service. When the old AT&T dominated both local and long distance services, such transfers were largely within the same firm. However, after the AT&T break-up, actual dollars began being transferred between unaffiliated companies. In addition, following its deregulation in the 1970s, CPE effectively became a commodity business, and the lease of PBXs, extension telephones and other CPE ceased to be a source of support for basic local rates. Though the CPE market is recognized generally as an unqualified success of the deregulatory process, nonetheless, these changes affected the economic picture facing local phone companies. With the break-up of AT&T and the development of a competitive CPE market, the rate structure supporting affordable local rates had to be revised.

Since the early 1980s, regulators have sought to reduce the contributions made by interstate toll rates through changes in the separations process and the implementation of subscriber line charges by the Commission.[6] The implementation of subscriber line charges has resulted in substantially lower rates for interstate calls (which has increased demand for long distance services). More importantly, much of the contribution toward supporting affordable local rates was shifted from the interstate toll rates to the rates local exchange carriers charge to long distance companies, or Interexchange Carriers (IXCs), such as AT&T, MCI and Sprint for access to the local network to originate and terminate long distance calls.

e. Current mechanisms to fund universal service

Although the universal service concept has long been a general policy goal in the United States, the mechanism now in place to finance it is relatively new. Presently, the provision of universal service involves a web of contributions and revenue flows. Commercial users subsidize residential users (although some groups contend that the opposite is true: that support for universal service comes almost exclusively from residential and small business users and not from big business customers.[7] There is greater consensus that urban users in low-cost areas subsidize rural users in high-cost areas. In short, the exact contributions made by various residential and business customers to support the public policy goal of universal service is unclear and widely contested. Nonetheless, the goal remains to provide quality phone service at just and reasonable rates for all Americans, and that goal is achieved through a system where those able to pay assist those unable to pay.

The mechanisms for funding universal service fall into three main categories: (1) carriers' internal and external funding mecha-

[6] Subscriber line charges (SLC) are monthly flat-rate charges directly assessed to end-users that recover a portion of the interstate share of local exchange costs. The SLC for residential and single line business customers has transitioned to a cap of $3.50 per line per month and $6.00 per line per month for multi-line businesses.

[7] According to proponents of this perspective, the LECs' short-haul (i.e., intraLATA) toll rates charged to residential and small business customers (who don't create enough volume to obtain preferential rates charged to high-volume, big business customers) and the switched access charges paid to local exchange carriers by the long-distance carriers serve as hidden or implicit support for affordable local rates for basic service.

nisms; (2) subsidy programs under Commission rules; and (3) direct Federal Government contributions. In addition, individual States have created their own funding mechanisms, though most of these are tied to the States' regulatory rate rulings.

(i) Carriers' internal and external cross-funding mechanisms

The following are examples of the mechanisms used by the telecommunications industry (as approved by the appropriate State and Federal regulators) to support universal service:

Interexchange Carrier Access Charges: As noted, long distance companies that interconnect to the local network must pay access charges to the local exchange carriers. The Commission and the States set these charges above the incremental or marginal cost of providing such access. The charges relieve the local exchange carriers from part of the cost of providing local network services by assigning some of those costs to long distance customers, who also utilize the local network. Overall access charges constitute about 20–30 percent of the local exchange carriers' revenues, and about 40–45 percent of interexchange carriers' expenses.

Inter-Customer Transfers within a Carrier: In many cases, regulators set rates for carriers in such a way that some end-users, in effect, defray the cost for other end-users. For example, subscription charges for multi-line businesses are higher than those for single-line businesses and residential customers, and above-cost charges are allowed on features such as touch-tone, call forwarding, Caller-ID, etc. In addition, short-haul long distance calls ("intraLATA toll") in some States are not subject to competition, and in most States the local exchange carriers overearn on intraLATA services to support local calls.[8]

Inter-Customer Transfers within a long distance company: Although not mandated by the Commission, long distance rates generally are geographically "averaged," no matter their point of origin or termination. In other words, the rates charged by a single long distance company are the same for a 500-mile interstate call regardless of whether it is made between two high-volume, metropolitan areas 500 miles apart, or two low-volume, rural areas covering the same distance. This policy provides low-cost long distance service to customers throughout the United States.

Alternative Local Access Providers' Access, Interconnection, and Collocation Charges: Local competitors, commonly known as Competitive Access Providers (CAPs) or Alternate Local Telephone Service providers (ALTS), that interconnect to the local exchange carrier's network contribute by paying (1) an access charge for the use of the carrier's networks (similar to what the interexchange carriers pay) and (2) an interconnec-

[8] Under the terms of the 1982 Consent Decree known as the Modification of the Final Judgment (MFJ) that settled the antitrust case *United States v. American Telephone and Telegraph,* 552 F. Supp. 131 (D.D.C. 1982), the Bell system service territory was divided into 164 geographic areas called "Local Access and Transport Areas" or LATAs. Though Bell operating companies (BOCs) generally serve more than one LATA, the MFJ prohibits BOCs from carrying traffic across LATA boundaries. The term "intraLATA interexchange" refers to toll calls (i.e., calls that a subscriber must pay extra for) made within the boundaries of a LATA, sometimes called "short-haul long distance."

tion charge and other regulatory assessment charges associated with the physical aspects of interlinking equipment, which is often collocated in local exchange carrier's central offices.

(ii) Subsidy programs under commission rules

Since the divestiture of AT&T in 1984, five subsidy programs have been established to offset the increases in local telephone costs associated with the Commission's decision to shift a large percentage of local loop costs allocated to the interstate jurisdiction away from interexchange carriers and to the subscriber. This pricing decision was made to encourage interexchange carriers to stay on the network (i.e., if regulators set access and other rates charged to the interexchange carriers too high, they risk providing the interexchange carriers with an economic incentive to bypass the public switched network and to set up an alternative network). As a result, subscribers pay a subscriber line charge so that the long distance companies pay lower carrier common line charges for use of the local exchange carriers' local loop facilities.

The National Exchange Carrier Association (NECA) administers the five Commission programs that keep local rates affordable.[9] They are the Universal Service Fund, two Lifeline Assistance Programs, the Long-Term Support program, and the Telecommunications Relay Services fund. The Universal Service Fund offsets the high cost of providing local telephone service to rural areas. The two Lifeline Assistance Programs, known as the Subscriber Line Charge Waiver and the Link-Up America program, help low-income subscribers pay for monthly phone service and telephone installation, respectively. The Long-Term Support program helps to maintain affordable common line rates and the Telecommunications Relay Service fund enables the 26 million individuals with speech and hearing impairments to use the telephone. The following is a brief description of how the five programs work:

Universal Service Fund: This fund was started in 1986; it is supported by fees NECA charges to the long distance companies. These fees provide explicit assistance to high-cost telephone companies, which typically are small independent telephone companies in rural and less densely populated areas of the Nation. All local exchange carriers' costs that are 15 percent above the national cost average per access line are subsidized by the Universal Service Fund. Interexchange carriers have to contribute on the basis of their respective share of presubscribed lines rather than revenues.

Subscriber Line Charge Waiver: This program (often referred to simply as the "Lifeline Program") was started in 1985; its primary goal is to lower the cost of basic telephone service. In States with Commission-certified telephone rate discount programs, the Commission matches the monthly State regulatory-provided discounts to qualified subscribers (limited, however, so that the total Federal subsidy per line does not exceed the amount of the Federally-mandated, monthly subscriber line

[9] NECA is a non-profit organization designed to ensure that telephone service remains available and affordable in all parts of the United States. It was formed in 1983 by all the nation's local telephone companies in response to a Commission mandate.

charge of $3.50). According to NECA data, as of October 1993, 35 States and the District of Columbia have implemented Subscriber Line Charge Waiver programs.

Link-Up America: This program was begun in 1987 and it helps offset the initial telephone installation charge and also defrays interest expense to encourage telephone companies to offer installment payments to qualified customers. No matching State regulatory contribution is required; as a consequence, some analysts believe, this program has been adopted by more States than the SLC waiver program. According to NECA data, as of October 1993, 48 States and the District of Columbia have implemented Link-Up America programs.

Long-Term Support: Since 1989, local telephone company participation in the NECA revenue distribution process has been voluntary.[10] Many large, local exchange companies (e.g., all of the Bell operating companies and GTE) have chosen to exit the revenue distribution process because they face strong competitive pressures and they want the freedom to formulate their own tariffs and access price levels without being tied to the type of nationwide average prices that NECA files with the Commission. However, the Commission requires the non-participating companies to continue paying "long-term support" to the NECA common line revenue distribution process. Without the large companies' support payments, it would be difficult to maintain a system of nationwide average prices for access service. If local exchange carriers' access charges vary widely, the interexchange carriers could be tempted to abandon their policy of offering geographically averaged long distance rates.

Telecommunications Relay Services Fund: In July 1993, the Commission issued an order requiring each common carrier providing voice transmission service to also provide interstate TRS, as mandated by Title IV of the Americans with Disabilities Act of 1990. The Commission also designated NECA as the administrator of the interstate fund, a shared funding mechanism to recover the costs of interstate telecommunications relay service. In contrast to other funding mechanisms, Congress authorized the Commission to recover the cost of this service from a broad range of different types of carriers, including those that traditionally have not made any contribution toward universal service (e.g., cellular companies).

(iii) Direct Federal Government contributions

In addition to the contribution mechanisms set up to finance universal service, the United States Government has a Federal program to help defray the costs of providing affordable telephone services. The Rural Electrification Administration, which is part of the Department of Agriculture, was authorized in 1947 to provide low-cost loans to rural telephone companies and cooperatives. It

[10] "Revenue Distribution" is a pooling mechanism that helps keep interexchange carriers' access rates for the use of facilities and equipment in the local exchange network within defined limits. During the year, long distance companies are billed for access to the local exchange. NECA manages a settlement process that allows local companies to recover those expenses associated with interstate investment from a pool of revenues generated from the interexchange carriers' payments.

provides two types of loans and one type of loan guarantee to rural telephone companies.

f. The need for new funding mechanisms

The introduction of competition into the CPE and long distance service markets has disrupted the system of support intended to maintain low local rates, the key component in achieving the universal service goal. Moreover, since the end of the 1980s, technological innovations have helped to create new local loop services and alternative local loop providers. Regulators have responded to this situation by increasingly replacing a regulatory system based on tariff regulation with competition. That process would be greatly accelerated by this legislation, which expands the opportunities for persons to compete with the local telephone company.

As competition (especially in the local and short-haul traffic markets) and technology continue to evolve in the next decade, pressures on the current funding system that supports low local rates may become totally unmanageable. In short, the universal service funding system (as described above) is becoming antiquated and it needs to be reexamined. This reexamination is all the more pressing in light of the fundamental importance of universal service, and given the other legislative changes to the telecommunications industry being proposed.

There are basically three reasons why Congress should act to preserve and enhance universal service. First, monopolies formerly bore the cost of internal cross-subsidies and invested to establish a critical mass of capital equipment and technology. Now, other service providers can tap into that critical mass at little cost to themselves, making it more difficult to maintain the system of internal cross-funding and to encourage those new providers to make long-term investments in the customers' interest. Second, competition reduces the likelihood of some customers subsidizing others because subsidy-paying customers who pay above-cost rates to cover the subsidies are likely targets for competitive service providers that charge lower rates. Third, if there is competition among carriers, then some carriers may be vulnerable to "cherry-picking" by firms that can reject or accept customers and use discriminatory pricing to underprice the local exchange carrier, which has to absorb the costs of subsidization as well as the direct costs of providing the service.

It is for these reasons that legislation is needed to establish a mechanism that ensures universal service is preserved as other fundamental changes in the telecommunications industry are taking place.

g. Universal service in an age of digital technology

Any new plan to reform the funding system for universal service will have to take into consideration the effect of the proliferation of digital technologies and the creation of the so-called "information superhighway" on the definition of universal service. Digital technologies allow information to be sent in the language of computers via various conduits (some more efficient than others), while the information superhighway refers to the creation of a seamless network of networks that will develop from the impending and un-

avoidable convergence of telecommunications, broadcast, cable, information services, and other communications technology. The information superhighway will serve as a platform that will be able to deliver this digitized information to schools, libraries, health care facilities, businesses, and homes throughout the Untied States. The exploitation of digital technology and the creation of the information superhighway is expected to revolutionize opportunities for learning, delivering health care, conducting business, providing government services, and enjoying leisure time. These developments will necessitate a rethinking of what services need to be included in the definition of universal service. In short, in an age of advanced digital capabilities policymakers and regulators have to determine what the basic "dialtone" will be that everyone should be entitled to receive at affordable rates.

As the definition of universal service expands, the Committee has a number of public policy concerns that will need to be addressed. First, in an economy that is, and in the future will be, more and more dependent on information, to be connected to digitized information, to be able to access and to use such information, will mean to be plugged into the economy. To be denied access will mean to be denied opportunity. If access to digitized information proves too costly for most Americans to obtain via the public network and/or beyond the means of public support, such information should be accessible through the schools and libraries in our communities.

Second, as basic health care services are provided more easily and readily via digitally-capable conduits—whether that is today's cooper wires, tomorrow's fiber cable or some hybrid—access to such services must be offered to all Americans, not simply out of a sense of equity but for sound economic reasons as well. As is currently being demonstrated in numerous States, health care provided to rural and/or poor communities via our Nation's telecommunications infrastructure saves lives and money.

Third, public access to the information superhighway is critical. As was noted in testimony submitted to the Committee, reserving a public right of way has deep roots in American culture and in the history of American education and public broadcasting. When the Federal Government was engaged in distributing public lands, it allocated portions for "land grant colleges" and when the Federal Government allocated radio and television frequencies for commercial broadcasting, it set aside a substantial number of channels for public radio and television stations.

Finally, the Committee recognizes that the approximately 6 million homes in the United States that do not have direct access to a telephone are precisely the homes that have the most to gain from universal service, especially if it is redefined and expanded to include health, education, and government services and benefit programs. Any new funding mechanism must consider new approaches to delivering universal service to all Americans who want, but cannot afford, basic telephone service.

h. The need for legislation

Legislation is needed at the Federal level due to the bifurcated nature of Federal and State regulatory oversight of the industry.

Specifically, all providers of telecommunications services should contribute to the preservation and enhancement of universal service. Legislation also should ensure that any mechanism to fund universal service consider how such service should evolve over time. Finally, the legislation should acknowledge and support the important role that State regulators have in ensuring the provision of universal service by guaranteeing that the State regulatory commissions will continue to play a significant role in establishing a new policy on universal service.

II. LOCAL COMPETITION

a. Background

Local telephone service exchange connects callers within an exchange area, and also connects subscribers to the long distance company of their choice. This service is provided by over 1,400 local telephone companies. However, the regional Bell operating companies control over 80 percent of the local telephone network. The top 10 telephone companies [11] control 92 percent of the local telephone network. The Committee found that in this vast market for local telephone service no instance where any of the top 10 telephone companies compete with one another.

For much of the past sixty years the provision of local telephone service has been a monopoly service, and the telephone companies operating today have been the monopoly supplier. Ironically, the monopoly nature of telephone service was not immediately obvious when Alexander Graham Bell's invention was offered to the public. In the early part of this century there was a period of active competition in local telephone service and in local telephone service markets. Unfortunately, competing systems in the 1900s were not interconnected, resulting in an office desk with five phones, and public dissatisfaction with this result led to the establishment of telephone as a monopoly service. Had Government intervened by establishing interconnection obligations among competing providers, the market for local phone service over the last 100 years may have been substantially different.

Today, local exchange carriers are subject to extensive government regulation of their business charges and practices. In addition, the carriers are frequently protected from competition by government barriers to entry. In fact, the Committee found that the majority of States restrict full and fair competition in the local exchange, either by statute or through the public utility commission's regulations. In return for this arrangement, customers receive an array of local services and associated prices, determined primarily by State Public Utility Commissions. In addition, local exchange carriers also have the obligation of "universal service" as established by the Communications Act of 1934, and administered by Federal and State regulators.

The Committee found that, despite some gradual erosion of the monopoly held by local exchange carriers, in the majority of mar-

[11] The top ten telephone companies are as follows in order of access lines: Bell Atlantic, Bell South, Ameritech, GTE, NYNEX, Pacific Telesis Group, U S West, Southwestern Bell, Sprint and Southern New England Telephone Company. These 10 companies have 131,824,000 access lines combined; there are 144,056,712 total lines in the United States.

kets today, local exchange carriers maintain control over the essential facilities needed for the provision of local telephone service. This control consists of the equipment and capability needed to originate or terminate a telephone call—the transmission, switching capabilities, routing, access, signalling, and network standards. The inability of other service providers to gain access to these functions and capabilities inhibits competition that could otherwise develop in the local exchange market.

b. Regulatory authority

The Communications Act of 1934 sets up a bifurcated regulatory scheme for United States telecommunications, giving jurisdiction over interstate and international telecommunications to the Federal Communications Commission, and leaving intrastate services to the States. Because the same equipment and facilities are increasingly being used to provide a wide range of different services used in both interstate and intrastate communications, attempts to subdivide those facilities as "intrastate" and "interstate" for regulatory purposes are becoming more and more difficult.

Because each State is authorized to regulate intrastate telecommunications, the United States has varying degrees of regulations for such services. Some States have issued rules on interconnection in order to promote competition. On the other hand, nearly half of the States prohibit any direct competition with the current local telephone monopoly, while other States consider it wasteful to duplicate facilities because of the inconvenience it would impose on the customer.

This checkerboard approach to telecommunications leads to inefficiencies and can frustrate national policy. Today, every part of the public switched telephone network is interconnected and enables a person living in one State to engage in commerce across the State and across the Nation. This seamless network benefits all Americans by promoting commerce, facilitating communications among persons across States, and advancing democratic ideals through a well-informed society. The Federal policy on communications, pursued over two decades or more, is to promote competition in the communications industry in order to further achieve these goals by making a richer variety of telecommunications services available to more Americans at affordable prices. That policy is significantly expanded in H.R. 3636. Yet if a State could interpose itself with prohibitions on entry into the communications business, then it could frustrate the Federal policy of promoting commerce by requiring open access and interconnection.

c. State actions

The Committee recognizes that some States have actively pursued a competitive local exchange environment. In particular, New York has aggressively unbundled the telephone networks and required interconnection and collocation of communications equipment. Illinois enacted legislation in 1992 designed to foster competition. California also has taken steps to promote competition for local telephone service. As Justice Louis Brandeis pointed out long ago, the States have been the laboratory, and the Committee has benefitted from their experience.

d. Regulatory action

In May 1991, the Commission, in response to a petition, issued a *Notice of Inquiry* and *Notice of Proposed Rulemaking* on establishing national policy on expanding interconnection requirements of local exchange carriers.[12] The petition requested interconnection to the local telephone network, and requested unbundling of services at tariffed rates for the competitive provision of special access and switched access local services.

On September 17, 1992, following many State-level precedents in New York, Massachusetts, Illinois, and California, the Commission decided to allow the competitive access providers to have physical interconnection to interstate special access telephone services.[13] The Commission's decision required Tier 1 local exchange carriers (those with revenues over $100 million annually) to file tariffs which allow competitors to connect their networks within a telephone company's central office. This interconnection allows competitors to serve certain end users not located on their fiber network.

e. Competition in the local exchange

Today, competition has developed for some local exchange services, for a few big customers in some geographic markets. For example, New York City, Chicago, Boston, Philadelphia and other major metropolitan areas have witnessed the first signs of competition. The development of new technology, and the concomitant decrease in the costs of today's technology, will enable several more companies to enter the market and foster still more competition in local telephony. Rapid changes in the telecommunications marketplace have created competitive alternatives to what had been considered "natural monopolies." This trend toward greater local competition will increase in scope and scale. Yet despite these developments, the competition represents, at most, a few percentage points of a carrier's overall market share. Consequently, if competition is to be widespread and benefit a broad range of customers, the Federal Government must develop a policy that recognizes that trend and builds upon it.

(i) Competitive access providers

There are some relatively new competitors in the local telephone market, known as competitive access providers (CAPs), which provide subscribers with access and transport to the long distance company of their choice. Initially, competitive access providers bypassed the local exchange carriers' facilities and connected their customers directly to long distance carriers. The 1992 Commission decision on interconnection eased the inherent problems facing competitive access providers by allowing them to install equipment on or near the local phone company switching centers and interconnect with local exchange carriers facilities using dedicated leased lines. Competitive access providers are still pushing for au-

[12] Competitive access providers (CAPs) use alternative technologies such as fiber optics and microwave-based networks to provide limited and specialized telephone services in competition to local exchange carriers.

[13] Expanded Interconnection Mandated for Interstate Special Access (CC Docket 91–141) (Sept. 17, 1992).

thority to compete fully with the local exchange carriers by offering facilities-based services.

The competitive access providers have been noted for their deployment of fiber optic cable. Competitive access providers have deployed fiber-optic networks or "fiber rings" in about 30 metropolitan areas, providing dedicated special access and local private-line service linking large business customers with long distance carriers. Two notable competitive access providers are Metropolitan Fiber Systems, and Teleport Communications Group.[14]

While competitive access providers are the leaders in bringing competition to the local exchange marketplace, they still maintain a fraction of the market that the local telephone companies maintain. The competitive access providers' revenues from 1992 were $200 million, compared to the combined total of the local telephone companies, estimated to be $89 billion. The difficulty competitive access providers have faced in penetrating the market can be attributed to a number of reasons. One such reason is the regulatory system which protects the local telephone exchange. Many States prohibit access to the networks through statute or regulation; others offer merely limited connection. Because some States have become more progressive in their interconnection policies, and the disparity between the States' regulation is growing, it has become ever more important to adopt a national policy to ensure that all consumers enjoy the benefits of competition.

(ii) Local exchange carriers

Within the past year, two local exchange carriers have proposed plans to open up their local exchange to competition. Ameritech proposes in its "Customers First" plan to open up its network in exchange for access to the long distance market. Rochester Telephone has proposed to the New York Public Service Commission its "Open Market Plan" which would enable telecommunications providers to utilize Rochester Telephone's network to provide local service. Rochester seeks to split its company into a wholesale provider and a retail provider. The wholesale provider would offer features and functions of the network on an unbundled basis to all wholesale customers.

While such plans are noteworthy as an additional indicator of the trend in the industry toward competition, and the first of their kind, they do not alleviate the need for Federal action because these plans take only partial steps toward development of facilities-based competition.

---

[14] Teleport started out in 1983 by providing satellite communications earth station facilities on Staten Island for Merrill Lynch, and it required connecting fiber optic links to serve Manhattan's financial district businesses. Teleport has since sold the earth station facilities. Teleport was purchased by TeleCommunications Inc. (TCI), the nation's largest cable company, Continental Cablevision, the nation's third largest cable company, Comcast Corporation, the nation's fourth largest cable company, and Cox Enterprises, a newspaper/broadcasting/cable television holding company. Metropolitan Fiber Systems (MFS) was founded in 1988 to provide competitive local access communications on fiber-optic networks that it installs and operates locally in major metropolitan areas. MFS provides dedicated special access to long-distance carriers and local private-line service between customer buildings located on the MFS fiber optic urban network. Though the competitive access providers started with a niche market, the deployment of fiber with the ability to carry high-capacity voice, data, and video has prompted the RBOCs to deploy similar fiber rings in areas subject to their competition.

(iii) Spectrum based technology

The expansion of digital technology has increased the capacity of spectrum-based service providers, such as cellular, Personal Communications Services (PCS), and enhanced specialized mobile radio (ESMRs). For example, digital technology will allow cellular radio systems to carry 10 times as many calls as analog transmissions permit, thus increasing the ability of cellular and other wireless companies to compete in the local exchange market.

A number of reasons explain why commercial mobile service providers have yet to offer serious competition to local exchange carriers. For one, cellular and future personal communications service carriers use the local telephone monopoly facilities to complete more than 90 percent of their calls. The bottleneck facilities the long distance and alternative providers complain about also exist for cellular and other wireless carriers. Second, cost is substantially higher for cellular service than for traditional wireline service. Until the cost and the quality of wireless services approach that of existing telephone service, many consumers will not view cellular as a meaningful substitute for wireline telephone service.

(iv) Other potential competitors

Cable companies are beginning to upgrade their plant and equipment to offer telephony. Time Warner, for example, has announced plans to upgrade its facilities with fiber optic trunks to enable them to carry voice, video, and data services directly to consumers. Several other cable companies have made similar announcements. The upgrade of fiber increases the likelihood that cable companies will provide local telephone service in direct competition to local exchange carriers.

Though the cable industry may have the technology deployed to offer competitive telephone service, State and local laws, as well as the actions of the local exchange carriers, may stifle genuine competition. That is because cable companies, like other providers, may be barred from fully entering the local telephone market by State or local laws, rules, or regulations. Moreover, an incumbent telephone company clearly has no incentive to provide functions and services to a competitor, although such access is critical for competition to develop. Consequently, Federal legislation is necessary to accomplish the goal of promoting competition by cable companies and other providers to incumbent local exchange carriers.

Electric utility companies also may have the technological capacity to provide local telephone service. They already have a wire going into every home, a sophisticated distribution network, and are experienced in providing an essential service reliably to the public. One basis for the interest from electric utilities is their direct concern with energy conservation. Many utilities believe telecommunications holds the key to significant advances in energy load management and energy conservation. However, entry by electric utilities into the telecommunications markets necessitates a review of collateral issues involving energy and securities laws.

f. The need for legislation

The Committee believes that competition in the local telephone exchange market will accomplish three important purposes: (1) cre-

ate a variety of services offerings for consumers; (2) develop and upgrade the communications infrastructure; and (3) create a system of competitive prices that will benefit consumers. Alternative local service providers have created the race for deployment of fiber networks and have placed 34,000 miles of fiber. This has been a prod to telephone companies to expand their investment in these same markets. Legislation is necessary to foster and establish the ground rules for that competition, and to protect consumers. Consequently, legislation must address the following policy issues.

(i) Interconnection

As discussed above, there is no economic reason for a local exchange carrier to permit a competitor to use its equipment at reasonable prices. yet without such access, competition may never develop. Therefore, interconnection and access arrangements must be mandated for all competing local exchange carriers on an unbundled basis. Though the Commission and some States have taken steps in this direction, only Federal legislation can fully accomplish the scope of changes that must take place.

(ii) Preemption of barriers to entry

Many States and local governments, either through statute or regulation, prohibit competition to local exchange companies operating within their States.[15] Other States and local governments impose barriers limiting the extent of competition in the local exchange market. Some entry restrictions were imposed in an effort to protect consumers. Only through full competition and open interconnection will consumers have more choices, better service and lower rates. To accomplish this goal, one Federal policy must ensue. H.R. 3636 preempts those States and local governments prohibiting competition, while maintaining for States the ability to enforce consumer protection laws, protect public safety and welfare, and regulate interstate rates and quality of telephone service.

(iii) Unbundling

At the January 27, 1994 hearing, Assistant Attorney General for Antitrust Anne K. Bingaman testified in support of H.R. 3636 and focused on the need for unbundling of services and number portability in order to promote a truly competitive local exchange marketplace. Unbundling is critical to local exchange competition, because competitors must not be required to purchase services which they have the capacity to provide, and consumers must not be required to pay for functions they do not need. Local telephone networks are still bundled together, including various elements of transmission, switching, access, and transport under one price. The advent of affordable communications technology has enabled competitors to provide some or most of these services. However, competitors still depend on the local exchange carrier for terminating the calls going to the local exchange carriers' end users and other

[15] Examples of those States with laws prohibiting competition in the local exchange are: Alaska, Stat. Section 42.05.221; New Mexico, Stat. Ann. Section 63–9A–6 NMSA (1985); and Utah Code Ann. Section 83–999–11 (1985). See also *National Association of Regulatory Utility Commissioners Report on the Status of Competition in Intrastate Telecommunications* (Nov. 9, 1993) (compilation of State laws affecting local exchange competition).

functions and features. Consequently, unbundling is necessary to enable competitors to purchase only the network functions they need.

(iv) Universal service

The maintenance of universal service in a competitive local telephone environment is critical, and competitors must also contribute to universal service. The preservation of universal service is critical and establishing a process that ensures universal service is preserved and enhanced as other changes are introduced in the communications industry is also important.

Moreover, expanded local exchange competition and universal service are entirely consistent. In fact, one may advance the other. Great Britain has introduced competition to the local telephone company, and that a number of American firms are providing local telephone service in that competitive market. In this environment, the penetration rate of universal service has gone up as competitors have sought new customers. This illustrates the benefits of local competition.

(v) Court decisions

Legislation also is necessary to promote local competition because a recent court decision indicates that the Commission lacks authority to order physical collocation on its own. *Bell Atlantic Tel. Co.* v. *Federal Communications Comm'n,* No. 92–1619 (D.C. Cir. June 10, 1994). Since the Committee finds physical collocation is a necessary element of promoting local phone competition, because it provides efficient and high-quality connection to the facilities of local exchange carriers, the powers of the Commission must be expanded to accomplish the goal of physical collocation.

III. TELEPHONE COMPANY/CABLE CROSS-OWNERSHIP

Under current law, telephone companies are prohibited from offering cable service within their telephone service area. The statutory prohibition codified long-standing Commission policy keeping telephone companies out of the cable business. As a result of this separation, our Nation now enjoys two wires passing nearly every home in America, each highly advanced and backed by a mature industry seeking innovations in both equipment and services.

a. Evolution of cable industry

Cable television service was introduced in this country in the early 1950s, originally marketed as a means of providing antenna service to communities that had difficulty receiving television broadcast signals. Cable technology continued to serve almost exclusively as an antenna service for many years, and was considered a fledgling industry until the early 1970s.

In the early 1970s, largely because cable had served primarily in this ancillary capacity, no national policy had been established to guide the development of the cable industry. Local authorities in charge of awarding franchises had asserted regulatory control over the cable companies, and as a result, cable regulatory policy had been dictated on a case-by-case basis according to the needs of each community. As the industry began to grow and develop, cable sys-

tems expanded channel capacity and began to supplement the service of improved reception for local television broadcast signals with the importation of television signals from other cities and new programming services designed specifically for cable television. With the availability of these new services, the cable television industry experienced a new round of growth and expansion, increasing their channel capacity and their base of subscribership.

While there were varying degrees of State and Federal involvement in the local franchise process, the terms of the franchise contracts themselves were left largely to the discretion of local authorities. As service offerings increased, franchise authorities began adopting new rules to address such issues as rate regulation, amount of franchise fees, public access and customer service requirements. These rules varied from community to community, establishing an inconsistent approach to cable regulation. Moreover, as franchise authorities began to recognize the growth potential for cable subscribership, cities began to award exclusive franchise contracts to bidders who, in turn, were over-promising services and channel capacity to the authorities in order to obtain contracts. As subscription to cable television increased, this piecemeal approach to awarding franchises was eventually seen by regulators as detrimental to the development of the cable industry, and, more importantly, as harmful to competition in the delivery of video programming and more costly to consumers.

b. The 1984 Cable Act

By the early 1980s, this haphazard system was regarded as inhibiting the development of the industry. Congress recognized the need for a national policy to develop guidelines for the future of the cable television industry. The Committee held a first set of hearings on this issue beginning in May 1983, and by October 11, 1984, the "Cable Communications Policy Act of 1984"[16] (1984 Cable Act) was enacted. While the primary function of the Act was to develop a national policy for the cable industry, the Act was also intended to deregulate the industry, thereby encouraging competition within the video programming industry. Congress believed that deregulation would enable the industry to prosper, benefitting both consumers and industry participants alike.[17]

One of the purposes for deregulating the industry was to facilitate further expansion of the cable industry and to allow the industry to improve its competitive edge against new arrivals. Beginning with the Communications Act of 1934, Congress has consistently favored policies that foster robust competition between and among industries as the best way to ensure economic growth, product innovation, and consumer protection. Included in the effort to promote a greater variety of media sources must be policies which encourage a wide diversity of ownership of cable systems. To facilitate this goal for the cable industry, in 1970 the Commission adopted a number of restrictions on cable ownership and control by other media interests. The Commission banned: local cross-ownership of cable and television stations, the provision of cable service by the

[16] Cable Communications Policy Act of 1984, P.L. No. 98–549, 98 Stat. 2779 (1984).
[17] H. Rept. No. 98–934, Second Sess., at 19–20.

local telephone system serving that community, and the ownership of any cable systems by the national television networks.[18]

By 1984, the need to maintain overall cross-ownership restrictions between cable and telephone companies was still strong. While the cable industry had evolved into a formidable communications force, the local telephone industry still maintained a strong competitive advantage in terms of its financial resources, monopoly control, and reach into every home. The Commission's regulations, as promulgated in the 1970 rules[19] and as modified in 1981,[20] were included into the 1984 Cable Act so as to preserve and enhance the viability of the cable industry and to limit the monopoly-reach of the telephone industry.

Specifically, Section 613 defined ownership rules designed to prohibit the development of local media monopolies, and to encourage a diversity of ownership and communications outlets. Common carriers were thus barred from providing video programming directly to subscribers within their telephone service areas, either directly or indirectly through an affiliate. Rules governing common carrier provision of video programming in rural areas were also clarified.

c. History of cable/telco cross-ownership rules

The original cable/telephone company cross-ownership ban was imposed by the Commission for two reasons. First, in the late 1960s, the Commission grew increasingly concerned about allegations of anticompetitive behavior by telephone companies with regard to the poles, ducts, and conduit they controlled. At that time, several telephone companies, such as GTE and United Telephone had cable operations. Many observers, including cable companies, alleged that the telephone companies either charged unaffiliated cable companies discriminatory high rates for access or denied them access entirely.[21]

In addition, the Commission's rules also stemmed from the desire of the Nixon Administration to expedite the development of two-way interactive services to compete with telephone company services. The Administration and the Commission believed that such services were more likely to emerge if telephone and cable services were provided by separate industry groups and that, eventually the rules would encourage cable companies to compete with the telephone companies in the provision of local phone service.[22] According to the Commission's 1970 rules, "The Justice Department and most of the independent CATV parties argue that the telephone companies have been seeking to extend their regulated telephone

---

[18] In addition, prior to the Commission's rules, the 1956 Consent Decree generally was interpreted as prohibiting the Bell System from providing cable television service. *United States* v. *Western Electric Co.*, 1956 Trade Cas. (CCH) para. 68, 246 (D. N.J. 1956).

[19] FCC Rules and Regulations, 47 C.F.R. Sec. 63.54–63.58, 22 FCC 2d 746 (1970).

[20] Report and Order in CC Docket No. 80–767, 88 FCC 2d 564, (1981).

[21] See *General Telephone Co.* v. *United States*, 449 F.2d 846 (D.C. Cir. 1971) (early case which provoked Commission review of the anti-competitive potential of telephone company-CATB system affiliation.

[22] In November 1981, the Commission's Office of Plans and Policy released a staff report on cable cross-ownership policies, recommending the retention of the ban until four criterion were met. These included: (1) a competitive environment for the local loop; (2) assurance of equal access to poles and conduits; (3) it was evident that cable television would not be a viable competitor for the provision of local loop service; or (4) the ban is obviously hindering the development of new technologies and services. (Cited in FCC Notice of Inquiry, FCC CC Docket No. 87–266, (1987).

monopoly into the areas of CATV and broadband coaxial cables, primarily to assure themselves of control over the services broadband coaxial cable will perform in the future."[23]

Perhaps surprisingly, the rules were not considered controversial, at least in part because the dominant telephone company, AT&T, had no cable holdings. In addition, prior to the advent of fiber optics, telephone and cable service required different technologies, copper wire and coaxial cable, respectively. As such, these cross-ownership rules were not viewed as creating inefficiencies.

Beginning in 1976, various telephone companies began to petition the Commission for waivers of these restrictions, specifically as they applied to rural areas. While the Commission was willing to explore the effects of relaxing the cross-ownership restrictions, they were concerned with the overall implications of offering general waivers to these rules. In 1979, the Commission amended the existing cross-ownership rules to allow for exemptions in rural areas where low housing densities make provisions of cable unlikely unless it is offered by the telephone systems.[24] In such cases, where fewer than 2,500 people reside outside an "urbanized area," telephone companies may apply for waivers from the Commission.

d. Evolution of the rules since the 1984 Act

In July 1987, the Commission initiated an inquiry to reexamine its cross-ownership rules.[25] The original docket questioned the continued need to preserve an environment where, in light of the steady growth and high penetration of the cable industry, full competition between cable and telephone companies was limited. Specifically, the Commission questioned "whether the cable television industry [had] not matured to the point where telephone company competition in the provision of local cable service may spur, rather than impede, the offering of a variety of video programming at reasonable rates.[26]

This docket remained inactive until October 1991, when the Commission, based upon the findings of a second Notice of Inquiry, asserted that while there was still a strong need to maintain certain cross-subsidization limitations and pole and conduit control restrictions, changes within the marketplace may warrant a review of the cross-ownership rules. In an effort to provide the public with the greatest access to cable television, it became apparent that a relaxation of some of the restrictions was necessary.[27]

(i) Video dialtone

The Commission took the first significant step to ease the cross-ownership rules with its 1992 video dialtone decision permitting local telephone companies to provide "video dialtone."[28] This decision authorized local telephone companies to provide a platform so

[23] FCC Final Report and Order, 21 FCC 2d, page 324, January 28, 1970.
[24] Report and Order in CC Docket No. 78–219, 82 FCC 2d 233 (1979).
[25] FCC Notice of Inquiry in the Matter of Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54–63.58, CC Docket No. 87–266, FCC 87–243 (1987).
[26] Id., at 2.
[27] See also NTIA Telecom 2000: Charting the Course for a New Century (Oct. 1988) (study by the National Telecommunications and Information Administration which recommended reform of the cross-ownership restrictions).
[28] FCC Second Report and Order, Recommendation to Congress and Second Further Notice of Proposed Rule Making, FCC 92–327 and CC Docket 87–266 (1982).

that competing service providers could transmit a wide variety of video or any future telecommunications services to their subscribers. Under the video dialtone concept, the local telephone company would become the transmission link between providers of video services and potential users. The telephone companies are not allowed to produce their own shows; however, they are allowed to own up to 5 percent of any program provider. Those phone companies that choose to offer such services are then required to provide access to their networks to all video programmers on a common carrier basis (without discrimination among users in terms and conditions and under regulated rates, or tariffs). Between the July 1992 video dailtone order and January of 1994, seven proposals to provide service under those rules have been filed, two of which have been approved.

The Commission included in its decision a recommendation that Congress repeal the cable-telephone cross-ownership rules, citing a changed communications environment. The Commission further asserted that the marketplace had evolved to a level where it was capable of facilitating equitable competition between the cable and telephone industries, largely due to the fact that the cable television industry had developed to a point where it could effectively compete against the monopoly-telephone provider in the delivery of video service.

e. The need for legislation

The original rationale for adopting the prohibition of telephone company entry into video services has been satisfied, and given the changes in technology and the evolution of the cable industry, the prohibition is no longer valid. Concern over the need to upgrade our Nation's telecommunications networks, the need to ensure the United States' competitive position internationally, and the rising costs of cable television rates, has provided a major impetus for lifting the restrictions.

Telephone company entry into the delivery of video services would provide incentives for telephone companies to modernize their communications infrastructure. Specifically, the deployment of broadband, switched networks would be accelerated if telephone companies were permitted to offer video programming. These networks would be capable of transmitting voice, data, and video to consumers. Without this incentive, telephone companies will build advanced networks more slowly, connecting businesses and affluent regions long before poorer ones. Moreover, telephone companies entry into cable would encourage technological innovation, and help prevent society from becoming an information rich and information poor society.

Telephone company entry into cable also would create a healthier communications marketplace. Telephone company competition to the entrenched cable operators would enable consumers to benefit from lower rates, better quality service, improved maintenance, and a larger diversity of new information services. Moreover, telephone companies are better positioned than other video delivery systems to provide timely competition to cable operators since they have expertise in deploying wires and delivering an essential service reliably to consumers.

However, given the long history behind the cable-telephone company restriction, a number of issues must be resolved prior to entry by the telephone companies, or else many of the policies developed over the past twenty years would be placed at risk. Moreover, these concerns require legislation to protect consumers, ensure public access to communications systems, and promote a competitive marketplace, in the face of court decisions simply invalidating the cable-telco prohibition. Consequently, the Committee believes that any legislation lifting the cable-telco restriction must address the following concerns.

(i) Cross subsidization

Concern over the telephone companies' potential to capitalize on their position as a monopoly service provider, their ability to cross subsidize illegally to finance any new cable plant, and their potential to stifle competition to the growing video and information services industry has been the thrust of the argument against telephone company entry into new lines of business. For many years, one of the most convincing arguments for maintaining the cross-ownership ban has been the fear of cross-subsidization within a telephone system interested in delivering cable television. Opponents of relaxing the prohibition warn of the possibility of telephone companies using their regulated business to subsidize their unregulated business operations. Critics fear, for example, that allowing telephone companies to phase in a fiber optic network too rapidly would require accelerated deprecation of the existing copper system. In essence, critics charge, telephone consumers who do not subscribe to cable would be forced to pay for the deployment of fiber from which they derive no additional benefit. Moreover, many fear that the local exchange companies would use their revenues from their monopoly service to subsidize their new ventures, such as cable services.

Those who support the expanded role of local telephone companies as video providers claim that existing regulatory safeguards are sufficient to ensure that cross-subsidization will not occur. In addition, supporters claim that the growing number of alternative local telephone service providers and the erosion of the local loop monopoly diminishes the likelihood of local exchange carriers from using revenues from their telephone service to subsidize their cable ventures.

(ii) Discrimination

Another concern worthy of attention is the potential for telephone companies to use their control over the local network to gain and control access to customers through network discrimination. Examples of discrimination include providing inferior connections to competing cable providers or programmers; designing the networks to favor telephone company services or affiliated or favored providers; preferential access to proprietary information; and withholding technical information related to the operation of the network. Another potential danger is the ability of the telephone company to discriminate against independent programmers in favor of programmers in which they hold an economic interest.

(iii) Public benefits

Legislation is necessary to ensure that the Nation's information and communications networks are available for educational, public, and governmental use in addition to commercial use, and are widely available to all Americans. For over forty years the Federal Government has supported the public's access to educational and informational programming. As new telecommunications systems are developed, they should abide by a commitment to serve the educational, informational and cultural needs of the American people. In addition, it is critically important that schools, libraries and non-profit hospitals are connected as the network evolves so that these institutions may provide greater service to the citizens of our Nation. That these advanced telecommunications systems must be available to all Americans, and not deployed in a discriminatory manner just to high income areas. Finally, the convergence of telecommunications technology and high speed networks could lead to greater participation by citizens with disabilities in employment, commerce, education, health care, entertainment, and democratic government. Access for hearing impaired and visually impaired persons should be pursued through the provision of closed captioning and video description technologies. These disability access requirements will promote access to the public switched telephone network for persons with disabilities.

HEARINGS

The Committee's Subcommittee on Telecommunications and Finance held 7 days of hearings on H.R. 3636 and the related bill H.R. 3626. Testimony was received from 53 witnesses, representing 57 organizations, with additional material submitted by 7 individuals and organizations.

On January 27, 1994, the Administration testified in support of H.R. 3636. Representing the Clinton Administration was: The Honorable Larry Irving, Assistant Secretary for the National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce; The Honorable Reed E. Hundt, Jr., Chairman, Federal Communications Commission; and The Honorable Anne K. Bingaman, Attorney General for Antitrust, U.S. Department of Justice.

On February 1, 1994, the Subcommittee held a hearing on interactive video systems and set-top boxes. Witnesses included: Mr. John Hendricks, CEO, Discovery Channel; Mr. Edward D. Horowitz, CEO, Viacom; Mr. Hal Krisberg, President, General Instrument; Mr. Andrew P. Lippman, Associate Director of the Media Laboratory, Massachusetts Institute of Technology; Mr. Wayne Rosing, President, Sun Microsystems Laboratories; and Dr. Nathan Myrhvold, Senior Vice President, Microsoft Corporation.

On February 2, 1994, the Subcommittee held a hearing on Title II of H.R. 3636 addressing the telephone company entry into the video programming distribution market. Witnesses included: The Honorable Marilyn Praisner, Montgomery County, representing National League of Cities, National Association of Counties, and National Association of Telecommunications Officers and Advisors; Mr. Jeffrey Chester, Executive Director for the Center for Media

Education; Mr. Decker Anstrom, President and CEO, National Cable Television Association; Mr. Al Devaney, Chairman of the Board. Association of Independent Television Stations; Mr. Edward T. Reilly, President, McGraw-Hill Broadcasting, representing the National Association of Broadcasters; Mr. David D. Kinley, President of Sun Country Cable and Chairman of the Small Cable Business Association; Mr. Bill Reddersen, Senior Vice President, Bell South Corporation, representing the United States Telephone Association; and Mr. Anthony Riddle, Chairman, Alliance for Community Media.

On February 3, 1994, the Subcommittee held a hearing on H.R. 3636 and specifically the provisions relating to the preservation and enhancement of universal service. Witnesses included: Mr. Morton Bahr, President, Communications Workers of America; Dr. Mark Cooper, Director of Research, Consumer Federation of America; Mr. James Q. Crowe, CEO and Chairman, MFS Communications Company; Mr. Mitchell Kapor, Chairman, Electronic Frontier Foundation; Mr. Gary McBee, Chairman, United States Telephone Association; Dr. Eli M. Noam, Professor of Finance and Economics and Director Columbia Institute for Tele-Information, Columbia University School of Business; and Mr. Henry P. Becton, Jr., President and General Manager, WGBH Educational Foundation, representing the Association of Public Television Stations.

On February 9, 1994, the Subcommittee held a hearing on Title I of H.R. 3636. Witnesses included: The Honorable Lisa Rosenblum, Deputy Chair, New York Public Service Commission, testifying on behalf of the National Association of Regulatory Utility Commissioners; Mr. Ivan Seidenberg, Vice Chairman, NYNEX Corporation, testifying on behalf of the United States Telephone Association; Mr. Alex Mandl, Executive Vice President, AT&T; Mr. Brian L. Roberts, President, Comcast Corporation; Mr. Gary Lasher, President, Eastern TeleLogic, testifying on behalf of the Alternative Local Telecommunications Services; Mr. Lawrence C. Ware, Manager, Garden Valley Telephone Company, testifying on behalf of the Rural Telephone Coalition; Mr. John K. Purcell, Corporate Vice President, Rochester Telephone Corporation; Mr. Ronald J. Binz, Director, Colorado Office of Consumer Counsel, testifying on behalf of the National Association of State Utility Consumer Advocates; Mr. Richard Notebaert, CEO, Ameritech; and Mr. Ralph Nader, The Center for the Study of Responsive Law.

RELATED HEARINGS IN THE 103D CONGRESS

The Subcommittee held a four-part series of oversight hearings (National Communications Infrastructure, Serial No. 103–12) at the start of the 103rd Congress on the potential for a National Communications Information Infrastructure (NCII) and the possible benefits that society could enjoy from such an infrastructure. On January 19, 1993, the Subcommittee's investigation of the issues began with representatives from the computer industry who testified for the need for interoperability and interconnection. On February 23, 1993, the Subcommittee explored how telecommunications can help solve the health care problems facing our country. On March 24, 1993, the Subcommittee heard testimony from the perspective of communications carriers including local and long dis-

tance companies, cable companies, and cellular providers. On March 31, 1993, the Subcommittee explored the benefits of a communications infrastructure to the educational community and the small business and manufacturing sectors.

COMMITTEE CONSIDERATION

On Tuesday, March 1, 1994, the Subcommittee on Telecommunications and Finance met in open session and ordered reported the bill H.R. 3636, as amended, voice vote, a quorum being present. On Wednesday, March 16, 1994, the Committee met in open session and ordered reported the bill H.R. 3636, as amended, by a recorded vote of 44–0, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clauses 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Subcommittee held oversight hearings and made findings that are reflected in the legislative report.

COMMITTEE ON GOVERNMENT OPERATIONS

Pursuant to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Operations.

COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee believes that the net cost incurred in carrying out H.R. 3636 would be approximately $1 million.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 24, 1994.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3636, the National Communications Competition and Information Infrastructure Act of 1994.

Because enactment of H.R. 3636 would affect direct spending and receipts, and therefore pay-as-you-go procedures would apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM.
(For Robert D. Reischauer).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 3636.

2. Bill title: National Communications Competition and Information Infrastructure Act of 1994.

3. Bill status: As ordered reported by the House Committee on Energy and Commerce on March 16, 1994.

4. Bill purpose: Title I of H.R. 3636 would permit cable television operators to offer telephone services. It would require the Federal Communications Commission (FCC) to perform numerous studies, rulemakings, reviews, and reports and would direct the FCC to encourage telecommunications companies to provide advanced services to educational and health facilities and to public libraries. Title I would require the FCC to establish several joint federal/state boards. It also would require the National Telecommunications and Information Administration (NTIA) to conduct an annual survey of the availability of advanced telecommunications services to educational and health care institutions and public libraries.

Title II would permit telephone companies to offer cable television services. The title would require the FCC to perform several studies, rulemakings, and reports, and would permit the FCC to levy fines against common carriers who violate certain provisions of the tile. Title II would require the FCC to charge a royalty or fee to a television broadcaster that receives additional spectrum for the purpose of broadcasting high-definition television services and chooses to use that spectrum for some other commercial purpose. Title II also would require the NTIA to create a model program to conduct marketplace tests of audio descriptions of television programs designed to aid the visually impaired.

Title III would require that each telecommunication provider submit to the FCC an annual plan for increasing the provider's procurement from certain disadvantaged firms and to submit a report on the plan's implementation. The FCC would be required to provide an annual report to the Congress on the progress made by each provider. The title also would require the FCC to promulgate and implement regulations for determining the eligibility of firms claiming to qualify as disadvantaged. It would establish fines for false representation by a business claiming to qualify, and would provide civil penalties for qualified firms that are discriminated against.

Title IV would authorize appropriations to carry out the provisions of the bill, and would allow the FCC to increase regulatory fees to pay for the costs incurred in implementing the bill's provisions.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1995	1996	1997	1998	1999
Authorizations of appropriations:					
Estimated Authorizations	5	5	5	3	3
Estimated outlays	4	5	5	3	3
Revenues	(1)	(1)	(1)	(1)	(1)
Direct spending:					
Estimated budget authority	0	(1)	(1)	(1)	(1)
Estimated outlays	0	(1)	(1)	(1)	(1)

[1] Less than $500,000.

The costs of this bill fall within budget function 370.

Basis of estimate: CBO assumes that the full amounts estimated to be authorized would be appropriated for each fiscal year. Outlay estimates are based on historical spending patterns for the NTIA and the Judiciary.

FCC. H.R. 3636 would require the FCC to promulgate and enforce numerous regulations and to prepare various studies and reports. Based on information from the FCC, CBO estimates that implementing the provisions of H.R. 3636 would result in costs to the FCC of approximately $44 million in 1995, and from $25 million to $29 million a year over the next four years. Costs in the first year would be divided between personnel costs associated with rulemakings, and studies and overhead costs associated with acquiring space, furnishing, hardware, and software necessary to carry out the required tasks. Costs in later years are primarily for personnel costs associated with continued enforcement. H.R. 3636 would permit the FCC to increase regulatory fees to recover these costs, resulting in no net increase in outlays.

The FCC would be permitted to levy fines for violations of certain provisions of the bill. Administrative fines collected by the FCC would be governmental receipts and would count for pay-as-you-go scoring. Based on information from the FCC, we estimate that any increase in collections for administrative fines would not be significant.

The bill would require the FCC to charge a royalty or fee to a television broadcaster that receives the right to sue additional spectrum for the purpose of broadcasting high-definition television services and chooses to use that spectrum for some other commercial purpose. Based on information from the FCC, CBO does not expect that broadcasters would use such spectrum for other purposes. Therefore, we do not expect any additional revenue as a result of implementing this provision.

NTIA. H.R. 3636 would require the NTIA to conduct an annual survey and to create a model program to conduct market testing of visual descriptions of television programs to aid the visually impaired. Based on information from the NTIA, CBO estimates that implementing these requirements would cost the agency about $1 million annually over the next five years.

The Courts. Based on information from the FCC and the Administrative Office of the United States Courts, CBO estimates that costs to the federal judiciary would be about $4 million a year in the first 3 years, and would decline to approximately $2 million a year in later years as the number of civil and criminal claims decreased.

6. Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. H.R. 3636 would make criminally liable anyone who knowingly violates certain provisions of the bill. Fine collections would be governmental receipts (revenues) and would count for pay-as-you-go scoring. Based on information from the FCC, CBO estimates that the increase in fine collections would not be significant.

Criminal fines would be deposited in the Crime Victims Fund and spent in the following year as direct spending. The increase in

direct spending would be the same as the amount of fines collected with a one-year lag. Therefore, additional direct spending would also be negligible.

Finally, the bill would authorize the FCC to increase fees to cover the costs of implementing this bill. The net effect on outlays would be negligible in each year. The following table summarizes the pay-as-you-go impact of the bill.

[By fiscal year, in millions of dollars]

	1994	1995	1996	1997	1998
Change in receipts	0	0	0	0	0
Change in outlays	0	0	0	0	0

7. Estimated cost to State and local governments: H.R. 3636 would require the FCC to establish a number of joint federal/state boards. States could incur some personnel and travel costs to participate in meetings of these boards. We expect that such costs would not be significant.

8. Estimate comparison: None.

9. Previous CBO estimate: None.

10. Estimate prepared by: John Webb and Melissa Sampson.

11. Estimate approved by: Paul Van de Water, for C.G. Nuckols, Assistant Director for Budget Analysis.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee makes the following statement with regard to the inflationary impact of the reported bill: H.R. 3636 will result in decreased rates for both telephone and cable services, and therefore will have a deflationary impact.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1. Short title

Section 1 designates the short title as the "National Communications Competition and Information Infrastructure Act of 1994."

TITLE I—TELECOMMUNICATIONS INFRASTRUCTURE AND COMPETITION

Section 101. Policy definitions

Subsection (a) adds new purposes to section 1 of the Communications Act of 1934. The Committee included these purposes to set forth the broad policy goals that this legislation seeks to achieve and to give guidance to the Commission as it seeks to administer this legislation. The purposes reflect the Committee's commitment to universal service; to continued development of telecommunications networks that are reliable, seamless, and open; to ensure costs are allocated fairly to consumers and competitors; to use competition, where appropriate, as a safeguard for consumers; and to make available, as far as possible, a switched, broadband telecommunications network.

Paragraph (3) was adopted by the Committee during markup. This paragraph contains an additional purpose that the Commission should pursue, along with, and in balance with, the other purposes enumerated in this subsection. For the purposes of this para-

graph, "switched broadband telecommunications network" means a switched, digital transmission system capable of the integrated transmission of information in all forms. The Committee recognizes that this goal may not be achievable in the near term without sacrificing the goals included in paragraph (1) concerning just and reasonable rates; nevertheless, it should remain a long term goal for our Nation. It is not the intent of the Committee to mandate when the achievement of such a universal network is to occur or describe the specific technology to be used to achieve it. In fact, switched, broadband capability may be achieved by a number of transmission media, and the Committee does not intend to prejudice the use of existing technology or yet-to-be developed technology to meet this goal.

Paragraph (4) states another purpose: competition should be used to constrain costs whenever possible. The market for telecommunications services of all types can and should accommodate sufficient diversity so that technical advances will lead to opportunities for many providers. Thus, by insuring access for all providers—whether providers of local exchange service or other telecommunications services, information service providers, or video programming providers—the bill seeks to preserve and promote competition.

Subsection (b) adds new definitions to the Communications Act, including definitions for "information service" "telecommunications", "telecommunications service", "local exchange carrier", "telephone exchange access service", "open platform service", and "equal access". "Information service" and "telecommunications" are defined based on the definition used in the Modification of Final Judgment.[29] The definition of "telecommunications" refers to transmission "by means of an electromagnetic transmission medium." The Committee is aware that there is some disagreement whether "an electromagnetic transmission medium" encompasses fiber optic transmission technology. The Committee intends that a transmission that utilizes fiber optics and that would otherwise qualify shall be covered by this definition.

By "equal access" the Committee intends to afford to any person seeking to provide a telecommunications service or information service reasonable and nondiscriminatory access on an unbundled basis to those facilities, functions, or information that are integral to the efficient transmission, routing, or other provision of telephone exchange service or telephone exchange access service. The definition also includes poles, ducts, conduits, and rights-of-way as being subject to reasonable and nondiscriminatory access on an unbundled basis. The definition also refers to subscriber numbers; the Committee intends that any provider may be able to obtain a block of numbers, consistent with the Commission's management of the North American Numbering Plan established in section 201(c)(9), so that such a provider would be able to assign to a subscriber a number. The Committee includes "efficient" in the definition to emphasize that the access must be in such a form as to enable a provider which utilizes the functions and facilities of the local exchange carrier to do so efficiently. The Committee includes

[29] 522 F. Supp. at 229.

"databases" to ensure that a competing provider has access to the intelligence in the switch and in the network that is integral to the efficient transmission of a telephone service. The Committee does not intend that local exchange carrier databases unrelated to the efficient transmission of telephone service, such as an employee payroll database, would be covered.

Paragraph (2) of the definition of equal access underscores that the access must be equal in type, quality, and price to the access which the carrier affords to itself or to any other person. Consequently, a carrier must give at least equal treatment to a competing provider, and if the carrier makes available to itself certain functions or facilities that enable it to provide a certain service or provide certain access to a service, then it shall make those same functions and facilities available to others.

Paragraph (3) of the equal access definitions adds the requirement that the reasonable and nondiscriminatory access on an unbundled basis must be sufficient to ensure the full interoperability of the carrier and the provider seeking access. This provision points to one of the primary objectives of access—interoperatbility.

The term "open platform service" is defined as a switched, end-to-end digital telecommunications service that provides subscribers with sufficient network capability to transmit and receive multimedia information and that is available on a single line basis. The requirement to provide services on a "single line" basis is intended to exclude Centrex or other bundled services arrangements which would, in practice, make open platform service inaccessible or unaffordable to residential and/or small business users.

The term "local exchange carrier" does not include a person insofar as such person is engaged in the provision of commercial mobile service under section 332(c) of the Communications Act, except to the extent that the Commission finds that such service as provided by such person in a State is a replacement for a substantial portion of the wireless telephone exchange service within such State. As part of the Omnibus Budget Reconciliation Act of 1993, Congress enacted section 332(c), which establishes the statutory framework for commercial mobile services. Section 332(c) would continue to govern the offering of commercial mobile services after the enactment of H.R. 3636, until such time as the Commission finds a commercial mobile service has became an effective substitute for wireline service. When, or if, the Commission makes such a finding, the provider of such a mobile service shall be considered a local exchange carrier for purposes of the bill and subject to section 201(c).

By defining "telecommunications service" as those services and facilities offered on a "common carrier" basis, the Committee recognizes the distinction between common carrier offerings that are provided indifferently to the public or to such classes of users as to be effectively available to a substantial portion of the public, and private services. Therefore, private communications systems, or communications systems internal to a narrowly defined entity, would not be covered by this definition.

Section 102. Equal access and network functionality

This section adds a new subsection to section 201 of the Communications Act, subsection (c), entitled "Equal Access." Section 201(c)(1) sets forth the duty of all common carriers to be subject to such rules of openness and accessibility as the Commission may require. This provision grants considerable discretion to the Commission, and the Committee finds that such discretion is necessary because the scope of coverage of the provision, "all common carriers," is so broad. The Committee expects the Commission will use this discretion to promote the overall purposes of this legislation, to ensure a seamless and open nationwide telecommunications network and to promote competition as a means of constraining costs. However, the Commission should recognize the tremendous variation in common carriers, and also recognize that the marketplace may be accomplishing on its own many of the purposes behind this provision.

Section 201(c)(1)(B) establishes the obligations of local exchange carriers. The duty of a local exchange carrier includes the duty to provide equal access, to and interconnection with, its facilities to any other carrier or person reasonably requesting such access. The provision further states that the equal access and interconnection shall result in full interoperability between the carrier and the person seeking access and interconnection. Clause (ii) adds the obligation to offer unbundled features, functions, and capabilities whenever technically feasible and economically reasonable. This provision also directs the Commission to prescribe requirements for the offering of unbundled features, functions, and capabilities, either under this subsection or other laws. In establishing requirements on unbundling, access and interconnection generally whenever "technically feasible and economically reasonable," the Committee expects the Commission to consider the potential impact of such access and interconnection on security and reliability of the local exchange carrier's network.

Paragraph (2) directs the Commission to establish within 1 year regulations requiring reasonable and nondiscriminatory equal access to and interconnection with the facilities and capabilities of a local exchange carrier wherever technologically feasible and economically reasonable, and on reasonable terms and conditions. Subparagraph (A) also requires the Commission to consult with the Joint Board established under section 201(c)(2)(D); the purpose of this consultation is to involve State regulators in the formulation of equal access and interconnection regulations.

Paragraph (2)(A) further mandates actual collocation, or physical collocation, of equipment necessary for interconnection at the premises of a local exchange carrier, except that virtual collocation, which means that the equipment is not within the central office, is permitted where the local exchange carrier demonstrates that actual collection is not practical for technical reasons or because of space limitations. The Committee finds that actual collocation is both important and preferable to accomplish the goals of this legislation, namely reasonable and nondiscriminatory access, and that the duty to provide actual collocation is an obligation that flows from the ability of the local exchange carrier to itself interconnect with the interstate network of telecommunications. The experience

at the Commission, with its proceeding on expanded interconnection,[30] and the experience in some of the States on implementing interconnection, leads the Committee to conclude that the risk of discriminatory interconnection grows the farther one gets away from the central office of the carrier. It is for this reason that the legislation mandates actual, or physical, collocation, with the exception noted above. The Committee intends that the requirements of this paragraph shall only apply to the provision of telecommunications service. Finally, the Committee believes that the carrier providing space should be fully compensated for providing such space, and such compensation is provided for in subsection (c)(2)(B).

This provision, which gives the Commission explicit authority to order physical collocation, is necessary to promote local competition because a recent court decision indicates that the Commission lacks authority under the Communications Act to order physical collocation. See *Bell Atlantic Tel. Co.* v. *Federal Communications Comm'n,* No. 92–1619 (D.C. Cir. June 10, 1994). The Committee intends that the Commission have such authority, since physical collocation is a necessary element to provide efficient and high-quality connection to the facilities of a local exchange carrier.

Section 201(c)(2)(B) directs the Commission to establish regulations requiring just and reasonable compensation to the local exchange carrier providing services related to equal access and interconnection. Subparagraph (B) further requires a carrier, to the extent it provides a telecommunications service or an information service, to impute to itself the charge for access and interconnection that it charges other persons pursuant to the regulations of this paragraph. The Committee included this provision for two reasons: One, it helps to ensure that the compensation rates established by the carrier are in fact just and reasonable; second, it helps to guard against anticompetitive behavior by a local exchange carrier which could possibly use a shifting of costs to gain an advantage in a competitive market for information services or other telecommunications services.

The Committee intends that the carriers offering interconnection, and in particular carriers offering physical collocation, receive full and complete compensation for the offering of space and services to other persons. The Committee expects that the level of compensation established by the Commission should fully compensate the local exchange carrier for making its space available, and that therefore no other remedy would be needed for those carriers offering interconnection and physical collocation.

Subsection (c)(2)(C) sets forth exemptions and modifications to the general access and interconnection requirements in subsection (c). The first sentence contains a general exemption providing that rural telephone companies shall be required to provide equal access and interconnection to another carrier. The second sentence clarifies that the Commission shall apply the equal access and interconnection and unbundling requirements to rural telephone companies only to the extent that the Commission determines that com-

[30] Expanded Interconnection Mandated for Interstate Special Access (CC Docket 91–141) (Sept. 17, 1992).

pliance would not be unduly economically burdensome, unfairly competitive, technologically infeasible, or otherwise not in the public interest. The Committee included the second sentence to give the Commission the authority to extend the requirements of section 201(c) if it determines that the standard for extending the requirements has been met. It is the intent of the Committee that the Commission would have to carry the burden of showing that the standard has been met. In fact, the Committee adopted this approach, instead of a waiver process, out of concern for the burden on rural telephone companies. It is further the intent of the Committee that the Commission should consider, as part of determining "unfairly competitive," whether, and the extent to which, rural telephone companies are providing cable service. Thus, it would be relevant that those persons seeking interconnection to the rural telephone company to provide telephone service are cable companies, and the rural telephone companies not giving such access are providing cable service.

Section 201(c)(2)(C) further grants to the Commission the authority to modify, in whole or in part, the requirements of subsections 201(c)(1) and (2) for any carrier that has, in the aggregate nationwide, fewer than 500,000 access lines installed, to the extent that the Commission determines the full effect of the requirements would be economically burdensome, technologically infeasible, or otherwise not in the public interest. The Committee included this modification authority because it recognizes that new entrants into the market for telephone exchange service will face tremendous obstacles since they will be competing against an entrenched service provider. The Committee further recognizes that saddling these requirements immediately on new entrants will discourage persons from ever entering the market. This provision gives the Commission the authority to modify any requirements so as to achieve the policy goal of encouraging competition in the provision of telephone exchange service and exchange access service. However, the Committee further recognizes that there comes a point when the new competitors have grown and expanded and obtained customers so that they are no longer in need of special treatment. The Committee selected that point as when a carrier has 500,000 access lines installed in the aggregate nationwide. This number effectively separated small local exchange carriers from large ones that should have the interconnection and equal access obligations.

Lastly, paragraph (2)(C) gives the Commission the discretion to include in its regulations a procedure to modify requirements for any feature, function, or capability that the Commission determines is generally available to competing providers of telecommunications services at the same or better price, terms, and conditions. The Committee recognizes that the telecommunications industry is undergoing rapid technological change. The Committee, accordingly, expects that, over time, some facilities and functions that are currently only available from local exchange carriers may be provided by other carriers on prices, terms and conditions that are equal to or better than what the local exchange carrier provides. Section 201(c)(2)(C) therefore authorizes the Commission to establish in its regulations a process to revise and adjust the interconnection and access requirement adopted pursuant to paragraph

(1)(B) based upon a determination that the feature, function or capability offered by the local exchange carrier is offered at the same or better price, terms, and conditions. When determining whether features, functions, or capabilities are competitive for purposes of its unbundling requirements, the Commission should consider a reasonably sized geographic market, not a state or local region. Generally, once the FCC determines that a feature, function or capacity is competitive, that determination should be applied to that component part of the feature, function or capacity.

Subsection (c)(2)(D) directs the Commission to convene a Federal-State Joint Board to advise the Commission regarding access rules, and subparagraph (E) provides that the Commission may use existing rules if they are applicable. The Committee believes that to the extent the Commission finds that existing regulations, in whole or in part, fulfill the requirements of this subsection, then it shall have the authority to use those existing regulations.

Subsection (c)(2)(F) defines the term "rural telephone company" to mean a local exchange carrier to the extent that such carrier serves low density areas, or any territory defined by the Bureau of the Census as a rural area; or if such carrier has fewer than 50,000 or fewer access lines; or if such carrier provides telephone exchange service to a local exchange study area with fewer than 100,000 access lines. This defined term is used in the exemptions and modification provisions in subsection (c)(2)(C). The Committee included in the definition "to the extent that" to emphasize that a carrier is a rural telephone company only to the extent it meets the criteria set forth in this subparagraph. For example, if a company has more than 500,000 access lines installed nationwide, but it serves several exchange study areas, only two of which have fewer than 100,000 access lines, then such company would be rural telephone company, and thereby covered by the first two sentences of subparagraph (C), only in those two local exchange carrier study areas; for the rest of its operations, such company shall be fully subject to the equal access and interconnection requirements of subsections 201 (c) (1) and (2).

Section 201(c)(3) provides that no State or local government may have regulations, rules, or laws in place after one year that effectively prohibit the offering of interstate or intrastate telecommunications or information services, or effectively prohibit the entry of persons into the business of providing such services. Clauses (ii)–(iii) of paragraph (3)(A) reflect the Committee's intent that the equal access and interconnection requirements established in this subsection shall be paramount, and that States or local governments shall not prohibit or limit application of those requirements, nor shall they prohibit or limit persons who want to make use of the services made available by those requirements.

Subsection (c)(3)(B) stipulates that subparagraph (A) shall not be construed to prohibit a State from imposing certain terms or conditions on telecommunications providers, if such terms and conditions are not inconsistent with subparagraph (A) and are necessary and appropriate to protect the public safety, ensure continued quality of intrastate telecommunications, ensure just and reasonable rates, and ensure that a person's business practices are consistent with State consumer protection laws and regulations. By "public

safety and welfare" the Committee means, among other things, making certain that emergency services are available to the public, and issuing construction permits or regulating how and when construction is conducted and roads and other public rights-of-way are disturbed.

The Committee furthers notes that subsection (c)(3)(B)(iii) references telecommunications services only; the Committee does not intend to confer new rate authority for information services on States. Thus, subparagraphs (A) and (B) can be read together to permit a State to impose terms and conditions in certain areas so long as such terms and conditions are not so burdensome that they amount to an effective bar on entry or participation in the business of providing telephone exchange service.

Subsection (c)(3)(C) was added by the Committee to ensure that nothing in this paragraph be construed to establish a different system of State preemption than was adopted as part of the Omnibus Reconciliation Act of 1993 and codified at section 332(C)(3) of the Communications Act of 1934.

Section 201(c)(3)(D) prohibits a local government, one year after enactment, from imposing a franchise fee or its equivalent for access to public rights-of-way in a manner that distinguishes among providers of telecommunications services (including the local exchange carrier).

The purpose of this provision is to create a level playing field for the development of competitive telecommunications networks. Harmonizing the assessment of fees in all providers is one means of creating this parity. It is not the intent of the Committee to deny local governments their authority to impose franchise fees, but rather require such fees to be imposed in a nondiscriminatory manner. This paragraph is not intended to affect local governments' franchise powers under title VI of the Communications Act.

Subsection 201(c)(3)(D) also provides local governments with a one year transition period to develop an appropriate fee structure that does not distinguish between telecommunications service providers. The paragraph affirms the authority of local governments to impose or collect fees from telecommunications service providers in a manner that does not distinguish between or among providers. Local governments can remedy any fee structures that violate this subsection by expanding the application of their fees to all providers of telecommunications services, including local exchange carriers. Moreover, this subsection does not invalidate any general imposition that does not distinguish between or among providers of telecommunications services, nor does it apply to any lawfully imposed tax.

Section 201(c)(4) requires local exchange carriers, within 18 months, to file tariffs with respect to the services to elements offered to comply with the equal access and interconnection regulations. In requiring the filing and support of such tariffs, the Committee believes that, until such time as sufficient competition for a service within a given area exists, it is necessary to have regulatory controls over prices to prevent price gouging or other abuse of consumers, including consumers of individual services.

The requirements of section 201(c)(4) do not apply to existing access services currently tariffed under the Commission's "price cap"

rules, or to existing state incentive regulatory regimes. Nor does it require repricing existing services, but rather, it requires local exchange carriers to file tariffs for new equal access and interconnection services, in the same way they file tariffs for new services under existing FCC Price Cap rules. Subparagraph (A) provides that the user of the feature or function shall pay for that feature or function, and that the Commission shall review such tariffs to ensure that the tariff is in compliance with this requirement, and that the tariffs do not bundle together separable elements, features, or functions offered by the carrier. Subparagraph (B) requires carriers to submit supporting information with its tariffs, in such form as the Commission may require, to enable the Commission to determine compliance with the requirements of this subsection.

Paragraph (5) establishes a process by which a local exchange carrier may obtain permission from State or Federal authorities to have pricing flexibility in the offering of telecommunications services. The Commission is required to establish criteria for determining when pricing flexibility is appropriate, and then directs the Commission and States to use this criteria in reviewing applications for pricing flexibility. The Commission is required to respond to any application within 180 days. Subparagraph (C) exempts commercial mobile services, since the provisions of section 332(c)(1) of the Communications Act, adopted as part of the Omnibus Reconciliation Act of 1993, establishes a pricing flexibility system for such services.

A primary objective of this legislation is to foster competition for local exchange and exchange access services. The Committee believes that the development of competition for these services will produce substantial public interest benefits, including the provision of innovative services, improved service quality, and lower prices. The Committee also recognizes that as local competition develops, local exchange carriers will require flexibility in establishing prices for their services. Requiring these carriers to adhere to costing and pricing methodologies mandated by regulators may disserve the interest of consumers by maintaining prices at artificially high levels and attracting inefficient new entrants. Accordingly, the legislation authorizes the Commission to establish flexible pricing procedures when a telecommunications service or provider is subject, or is substantially certain to become subject, to competition, either within a geographic area or within a class or category of services, and the Commission determines that such competition will effectively prevent unjust or unreasonable rates, or rates that are unjustly or unreasonably discriminatory.

The Committee intends that pursuant to section 201(c)(5)(B), the Commission grant flexibility to carriers that is commensurate with the level of competition. The Committee believes that affording carriers such pricing flexibility will both foster competition in emerging markets and enable the Commission to ensure that incumbent exchange carriers have the ability to respond to competitive entry. In establishing regulations pursuant to this paragraph, the Commission is broadly authorized to adopt flexible pricing procedures that are in the public interest, including, but not limited to, streamlined tariff requirements, informational tariff requirements,

annual reports, pricing schedules that list maximum and minimum rates for service, or some combination of these requirements, and other requirements and procedures that will promote competition, while protecting consumers. Finally, pursuant to section 201(c)(2)(E), nothing in this paragraph shall be construed to prohibit the Commission from enforcing regulations prescribed prior to the date of enactment of this legislation in fulfilling the requirements of this paragraph, to the extent that the Commission determines such regulations are consistent with the provisions of this paragraph.

Section 201(c)(6) establishes a Federal-State Joint Board, pursuant to section 410(c) of the Communications Act of 1934, for the purpose of recommending actions the Commission and the States should take to preserve universal service. The Committee recognizes that the changes in the telecommunications industry being made by this legislation, and evolution of technology generally, will affect the current system of providing universal service. As a result, the Committee seeks to put in place a mechanism that will guarantee universal service is preserved and enhanced as other policies are being altered. The Committee also recognizes that this accomplishment has been achieved by a Federal-State partnership, and therefore seeks to build upon that partnership as a new plan for universal service is developed.

Section 201(c)(6)(A) directs the Joint Board to survey providers and users of telephone exchange service, and to consult with State commissions, to determine the cost of providing universal service and the price determined to be appropriate for such service. The Committee requires the Board to survey State Public Utility Commissions, industry users, large and small consumers, as well as State consumer advocates, to enable the Board to make an independent assessment of the costs of providing such service.

Subpargraph (B) sets forth nine principles upon which the Board shall base its policies for the preservation of universal service. The Committee intends that these principles shall form the basis of the deliberations of the Joint Board. The Committee also recognizes that though these principles will shape the Joint Board's recommendations, the ultimate decision making authority rests with the Commission and with State regulators. Therefore, the Joint Board serves an important function by assessing the current condition of universal service and how it should evolve over time, and by formulating a set of recommendations, taking into account the principles enumerated here, on how to preserve and enhance universal service. Subsection (c)(6)(D) requires the Commission to act upon any such recommendations within one year. Consequently, the Committee expects the Joint Board recommendations to carry much weight with the Commission. This subparagraph permits the States to adopt regulations that are not inconsistent with the Joint Board's recommendations and the Commission's regulations.

Clause (ii) states the Joint Board should define the nature and extent of universal service. The Committee included this provision to make certain that universal service is updated and upgraded as the functions and capabilities of the telephone network are updated and upgraded. Clause (ii) also reflects an amendment adopted by the Committee to include "open platform services" as one of the ad-

vanced services to which the plan should seek to promote access. Clause (ii) also acknowledges the balancing act confronting the Joint Board (and the Commission and State regulators)—the plan should seek to promote access to advanced services while maintaining just and reasonable rates.

Section 201(c)(6)(B)(iv) indicates that all providers of telecommunications services should contribute to preservation of universal service. That the obverse is also true: All providers of telecommunications services shall be eligible to receive a contribution from any funds used to support universal service.

Section 201(c)(6)(B)(v) was adopted by the Committee during markup. This provision states that the Joint Board should seek to ensure that residential customers who wish to subscribe only to traditional voice telephone service, may continue to do so at just, reasonable, and affordable rates. Just and reasonable rates are ensured through the requirement that any rate increase granted for a reason other than general inflation may only be recouped in phased-in increases. The five years following enactment have been selected as the period for the phase-in and the time period which is of greatest concern to the Committee. As further protection, any increases for basic service during the five year period must be limited to increases necessary to prevent competitive (or economic) disadvantage for one or more service provider. It is the intent of the Committee "to minimize to the greatest extent practical" during this five-year period the effect on such subscribers of any rate increase authorized by the Commission or the States.

In paragraph (6)(B)(v), the use of the language "permit residential customers to continue to receive only basic voice grade local telephone service" is intended to direct the Joint Board to ensure that all local exchange carriers continue to offer residential service to residential customers as such service is being offered on the date of enactment. Additional services or elements, not now part of basic voice grade telephone service, are not intended to be included in the basic service. However, that clause does not seek to limit any residential customers ability to subscribe to residential services other than basic voice local telephone service.

Subsection (c)(6)(B)(vi) was adopted during Committee consideration, and provides that the Joint Board should include in its recommendations a provision requiring common carriers, when their advanced telecommunications services are established and operational and when it is economically reasonable to do so, to promote public access by offering preferential rates to certain nonprofit and governmental entities with educational, health-related, and cultural information. The provision states that such access must be available to these entities as both users and producers of information. For the purpose of this paragraph, a "preferential rate" should recover no more than the added cost of providing the service and reflect only the actual operating costs of providing transmission for this service. The Committee intends that such a preferential rate will result in neither profit or loss for the common carrier.

Clause (vi) also provides that entities eligible for preferential rates could use the service to communicate information directly to the public. For example, a State government could use the service to list State services and contacts. The State government could not,

however, use these rates for intra-government communication or for the telephone exchange service it uses in the normal course of business. The information conveyed at these preferential rates would be only general information for the general public.

Clause (vi) specifically excludes such preferential rates for advanced telecommunications services required to be offered through a video platform. However, the Committee does not intend that this exclusion cover other advanced telecommunication services that are not required to be offered on a video platform. Finally, the term "educational institutions" for purposes of this clause shall include elementary, secondary, and nonprofit higher educational institutions, as the latter is defined in section 1201 of the Higher Education Act of 1965, 20 U.S.C. 1141; the term "library" shall include public, college, university and research libraries, as defined by the Library Services and Construction Act, 20 U.S.C. 351a.

Section 201(c)(6)(B)(viii) also was adopted during Committee consideration, and it states that the Joint Board should include in its recommendations to the Commission and the States a provision requiring common carriers with more than 1.8 million access lines in the aggregate nationwide to be subject to alternative or price regulation, and not cost-based rate of return regulation, by the Commission (for interstate services) and the States (for intrastate services), when such carrier has implemented the equal access and interconnection requirements of sections 201(c) (1) and (2). By distinguishing alternative and price regulation from cost based rate of return regulation, the Committee recognizes that alternative regulation encompasses a variety of regulatory schemes. Finally, this language reflects the Committee's intent that price or other alternative regulation not become effective until the equal access and interconnection regulations have been promulgated, pursuant to section 201(c)(2), or equivalent state regulations are in effect, and, in the case of Federal regulations, implemented, pursuant to section 201(c)(4).

Section 201(c)(6)(C) requires the Joint Board, in defining universal service pursuant to subparagraph (B)(ii), to consider the extent to which a telecommunications service has been subscribed to by customers, whether denial of access unfairly affects educational and economic opportunities, whether such services are deployed in the public switched network, and whether inclusion of such service is consistent with the public interest, convenience, and necessity. The Committee included this language to give some direction to the Joint Board on when a service should be included into a definition of universal service. The factors included in subparagraph (C) serve as markers in walking the fine line between including new services too fast, and risk increasing prices dramatically and "gold plating" the network, and being slow to include new services, and thereby leaving the poor and less well off without advanced services. An example of how these factors work in practice is Touch Tone service. The pulses emitted by Touch Tone service make available a variety of interactive services with computers and other advanced services. When this service was first introduced some 30 years ago, it was considered an extra service, and subscribers were charged an extra increment. Over time, more people signed up for the service, and its usefulness expanded, until at some point, depending on the ju-

risdiction, it became so essential that in at least many jurisdictions, Touch Tone service is required to communicate with the local government. Consequently, Touch Tone service is now part of basic telephone service in most jurisdictions. The Committee finds this example a useful illustration of how universal service can be expanded, and relied on this experience in drafting this subparagraph.

Paragraph (7) requires the Commission to prescribe regulations prohibiting common carriers from including in rates for telephone exchange service or exchange access service any expenses associated with the provision of competing telecommunications services or information services. This paragraph also requires competing providers of telecommunications, information, or video programming services to bear a reasonable share of the joint and common cost of facilities. Subsection (c)(7) is intended to prevent a local exchange carrier from using its market power to subsidize its competitive telecommunications services, information services, or video services by including the costs of providing such services in the rates for basic service. If a local exchange carrier offers competitive telecommunications service, information services, or video services, the rates for those services must bear a reasonable share of the network and other facilities used jointly or in common to provide basic telephone service and those other services.

The Committee further intends to prevent any assignment of direct costs associated with the provision of competing telecommunications services, information services or video programming services by a common carrier or affiliate to the provision of telephone exchange or telephone exchange access service. The prevention of such cross-subsidization shall ensure that telephone rates for basic service reflect only the cost of providing such service, and shall further ensure that as quality telecommunications technology is deployed in both urban and rural areas future cost efficiencies are reflected in those rates. The cost-allocation principles included in this legislation are designed to improve the ability of the Commission to identify and prevent cross-subsidization and to allow network efficiencies to result in a benefit to consumers. To that end, providers that use the telecommunications network to reach their customers shall pay for all the direct costs such services incur, as well as a reasonable share of joint and common costs of the network. Such a reasonable share of joint and common costs should be determined taking into account a number of factors, including the particular demand each service places on the network, the equipment and technology that are necessary to provide a particular service, and the share of network capacity such service uses.

Section 201(c)(8) provides that the Commission and the States shall not prohibit resale of telecommunications services. This provision is designed to promote competition by preventing unreasonable restrictions on the resale of such services, and to avoid endless litigation on this question, which is what occurred in the 1970's between the Commission and AT&T. This paragraph does not prohibit reasonable restrictions on resale, and therefore would permit restrictions on a person that, for example, seeks to purchase service at residential rates, which could be priced at below costs, and then seeks to resell such service at business rates. It is the Committee's

intent that resale can be limited to ensure that the benefits of universal service are limited to the intended beneficiaries, and consequently the resale of subsidized services could be prohibited under this provision.

Section 201(c)(9) directs the Commission to prescribe regulations that ensure telecommunications number portability shall be available upon request as soon as technically feasible and economically reasonable. The Committee finds number portability to be one of the fundamental building blocks upon which a competitive market for telephone exchange service will be built. The term "telecommunications number portability" is defined as the ability of users to retain their number when switching providers. The intent of the Committee is that the switching of providers would occur while the user remained in the same location. Thus, number portability means carrying your number from provider to provider while remaining in the same location; it does not mean carrying the number across town when one moves. The latter is certainly an inconvenience for customers, and the Committee anticipates the day when technology can resolve this problem. But this is not a competitive issue, but rather a customer convenience issue, which all providers have a strong incentive to resolve. Paragraph (9) also directs an impartial entity to administer telecommunications numbering on an equitable basis. Finally, subsection (c)(9) grants the Commission exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States.

Paragraph (10) directs the Commission to review its rules established under this subsection at least once every three years to determine whether the goals of this legislation are being met. Paragraph (11) requires the Commission to conduct a study of rural phone service and the effects of competition on service in rural areas.

Section 201(d) addresses network functionality and quality. Paragraph (1) sets forth general functionality and reliability obligations of common carriers. Paragraph (2) directs the Commission to establish procedures for coordinating network planning and for establishing procedures for the development of standards for interconnection and interoperability. The Committee adopted this language to reflect the vital Commission role in making certain that standards for interconnection, interoperability, and access are established.

Section 201(d)(3) directs the Commission to initiate an inquiry on the regulations and policies necessary to make open platform service, which is defined in section 3(ii), as added by this legislation, available to the public. This paragraph further directs the Commission to prescribe regulations, as necessary, for the provision of open platform service when such service is economically and technically feasible. The report must be completed 180 days after the date of its initiation. Subparagraph (C) allows for a temporary waiver if the local exchange carrier can demonstrate that compliance with the open platform requirements would be economically or technically infeasible, or would materially delay the deployment of new facilities with improved capabilities that will be used to meet the requirements of open platform services. The petition shall be decided by the Commission within 180 days of the date of its submis-

sion. Subparagraph (D) provides that any regulations shall provide for the allocation of all costs. Subparagraph (E) states that nothing in this section shall affect State authority.

The intent of paragraph (3) is to provide affordable, widely available switched, digital telecommunications service. The Committee intends that service may be provided over any type of network facility. It may be delivered on a stand-alone basis or in conjunction with a range of services on an integrated broadband platform. The service is by no means limited to narrowband Integrated Service Digital Network (ISDN) if other affordable alternatives are available. The provision of open platform service is not expected to require substantial new investment in existing facilities. Rather, it is expected that such service can be provided by leveraging existing investment in digital switching capability. Where substantial new investment is found to be necessary to make the service available because of technical limitations associated with existing facilities, the local exchange carrier will be free to decide how best to provide open platform service, and could upgrade facilities or deploy new more capable facilities. By "standards" the Committee means standards accepted or approved by a recognized standards-setting body.

The Committee intends that the Commission may determine economic feasibility under paragraph (3) by considering whether it is possible to earn a reasonable rate of return on any additional network investment required to provide open platform service, or by assessing whether the investment is economically justified using other methods of analysis, subject to statutory and regulatory cost allocation rules. The Commission should ensure that when economic feasibility is at issue, all parties to the proceeding have access to technical and economic data regarding cost of service and projected demand.

In addition, the Commission shall recognize that open platform service may not be available in all parts of a given State. Where that is the case, phased deployment and compliance with the requirements should be allowed.

When considering a waiver application under subsection (d)(3)(B) (i) or (ii), the Commission shall waive all or part of the regulations to the extent necessary, as demonstrated by a carrier's petitions and after consideration of comments filed by interested parties. Waiver of "specific parts" may include all parts of the regulations, if justified, or just a portion of the regulations. For example, if the carrier receives a waiver under (B)(ii) to delay open platform requirements in order to build more advanced facilities, that waiver would not exempt the carrier from compliance in other parts of its serving area.

Section 201(d)(4) directs the Commission within one year to establish regulations designed to make network capabilities and services accessible to individuals with disabilities.

Paragraph (5) directs the Commission to designate or otherwise establish performance measures or benchmarks for the purpose of ensuring the continued reliability of communications equipment and services. The Committee included this provision out of concern with the number of outages in the telephone industry, both in local exchange service and interexchange service, and the number of

lines affected, over the last three years. This provision is designed to involve the Commission in working with carriers, service and equipment providers, users (including large and small users and State consumer advocates), and State regulatory bodies, to establish procedures to monitor the performance of individual carriers, to measure the performance of various carriers, and to resolve reliability and service quality problems.

Section 201(d)(6) grants the Commission authority to waive or modify any of the requirements of subsection (d) for those companies serving rural areas.

Section 201(e) was adopted during Subcommittee markup, and it requires the Commission to prescribe regulations that require local exchange carriers to make their public switched network infrastructure, technology, and facilities available to a qualifying carrier to provide telecommunications services. Paragraph (2) defines "qualifying carrier" as a local exchange carrier lacking economies of scale or scope. By defining "qualifying carrier" as one that lacks certain economies, the Committee intends to include those carriers that serve rural areas.

The basic premise of this subsection is that some local exchange carriers will have the economies of scale or scope that will allow them to offer advanced services and technologies to their customers. However, other carriers will lack these economies of scale or scope so that the cost of providing these services to their customers will be prohibitively expensive. Thus, this subsection seeks to promote the availability of advanced telecommunications services to customers located in sparsely populated and other rural areas, since such areas often do not offer economies of scale or scope to attract the provision of advanced telecommunications services.

A carrier entitled to request infrastructure sharing is called a "qualifying carrier." In order to be a qualifying carrier, the carrier must be a local exchange carrier that lacks economies of scale or scope for a particular service or technology in a given geographic area, as further defined by the Commission by regulation. The carrier also must be a provider of all universal services including telephone exchange service and exchange access service. Finally, the carrier must offer these universal services to all customers throughout the corresponding exchange area that existed on the date of enactment. This last requirement means that the carrier cannot limit its service to a specific geographic area within an exchange area, such as a suburb or business district, nor can it offer service to only a class of customers, such as business customers. The carrier must hold itself out as a provider of these universal services to all customers without preference.

Subsection (e)(3) requires the Commission to prescribe the terms and conditions that will govern infrastructure sharing, and states that the Commission shall not require a local exchange carrier to take any action that is economically unreasonable or that is contrary to the public interest. By this the Committee intends to preclude a providing carrier from being required to provide a facility or establish capacity in a manner or to a degree that would not be cost-effective. The Committee further finds that it would be economically unreasonable to require a local exchange carrier to share

network technology and information and telecommunications facilities and functions with every qualifying carrier in the county. Rather, the Commission should impose reasonable limits on the ability of qualifying carriers to seek access, and should consider enabling a qualifying carrier to engage in infrastructure sharing only with a local exchange carrier that was reasonably proximate contiguous to the qualifying carrier's service area. Otherwise, requiring a local exchange carrier to "share" its infrastructure with any qualifying carrier—or perhaps subjecting a local exchange carrier with advanced technology to share with every qualifying carrier in the country—would impose a significant financial and technical burdens on the local exchange carrier, and would be contrary to the public interest.

Paragraph (4) requires the local exchange carrier to provide any integral information to the qualifying carrier once the local exchange carrier enters into an agreement. This last component of infrastructure sharing is equally important and involves information on the deployment and planned deployment of telecommunications service, equipment, and facilities. In order for infrastructure sharing to be effective, the carriers which have entered into an agreement must have timely information about these equipment and service deployments.

Section 102(b) contains an amendment adopted by the Committee, which adds a new paragraph to sections 621(b) and 622(b) of the Communications Act of 1934.

The new section 621(b)(3)(A) states that to the extent a cable operator is engaged in a telecommunication service other than cable service, it shall not be required to obtain a franchise and the provisions of title VI of the Communications Act shall not apply.

Subparagraph (B) provides that a franchising authority may not impose any requirement that has the effect of prohibiting or limiting the provision of telecommunications service by a cable operator.

Subparagraph (C) states that a franchising authority may not terminate an operator's offering of a telecommunications service (other than cable service), nor may the franchising authority discontinue the cable system's operations for failure of the operator to obtain a franchise for provision of telecommunications services. Subparagraph (D) establishes that franchising authorities may collect franchise fees under section 622 of the Communications Act solely on the basis of the revenues derived by an operator from the provision of cable service.

The Committee intends that this section precludes a local government from imposing a franchise obligation on provision of telecommunications services, but this provision does not otherwise limit the right of local governments to impose fees and other charges pursuant to section 201(c)(3)(D), nor limit the rights of local governments with respect to franchise obligations applying to cable service.

In addition, this section does not restrict the right of franchising authorities to collect franchise fees on revenues from cable services and cable-related services, such as, but not limited to, revenue from the installation of cable service, equipment used to receive cable service, advertising over video channels, compensation received

from video programmers, and other sources related to the provision of cable service over the cable system.

The intent of this provision is to ensure that regulation of telecommunications services, which traditionally has been regulated at the Federal and State level, remain a Federal and State regulatory activity. The Committee is aware that some local franchising authorities have attempted to expand their authority over the provision of cable service to include telecommunications service offered by cable operators. Since 1934, the regulation of interstate and foreign telecommunications services has reserved to by the Federal Communications Commission; the State regulatory agencies have regulated intrastate services. It is the Committee's intention that when a person, whether it is a cable operator or some other entity, enters the telephone exchange service business, that it should be subject to the appropriate regulations of Federal or State regulators.

The Committee does not intend that section 102(b) be used by cable operators to escape their obligations under title VI *qua* cable operators. For that reason, paragraph (3)(A) begins, "to the extent that a cable operator or affiliate is engaged in the provision of telecommunications services * * *." This language makes clear that a cable operator does not escape from all of its title VI obligations, including franchise fees, simply because it begins to offer a telecommunications service other than cable service. Rather, the force of paragraph (3) only falls on that portion of the cable operator's business related to telecommunications services.

Finally, the Committee does not intend to exempt a cable operator's intrastate telecommunications services or facilities from regulation by a State regulatory body.

Section 103. Telecommunications services for educational institutions

This section amends the Communications Act by adding a new section 229 that seeks to promote advanced telecommunications services for educational institutions, health care facilities, and libraries. Section 229 directs the National Telecommunications and Information Administration (NTIA) to conduct a nationwide survey to determine the number of educational institutions, classrooms, health care facilities, and public libraries that have access to advanced telecommunications services.

Following the inquiry, the Commission must prescribe regulations that enhance the availability of advanced services, when technically feasible and economically reasonable, to those designated entities by the year 2000. In its regulations, the Commission shall ensure that appropriate functional requirements and interoperability standards are established that interconnect these institutions with the public switched network. The Commission also shall conduct a study to assess the feasibility of including post-secondary educational institutions under the regulations promulgated under this section.

Section 104. Discriminatory interconnection

This section amends section 208 of the Communications Act to require that the Commission respond to any complaint on unreasonable or discriminatory interconnection within 180 days.

Section 105. Expedited licensing of new technologies and service

This section amends section 7 of the Communications Act to provide for expedited licensing of new technologies.

Section 106. New extended lines

This section amends section 214 of the Communications Act of 1934 to require that a provider of telephone exchange service must address the means by which new or extended lines will meet the network access needs of individuals with disabilities.

Section 107. Pole attachments

This section, which was adopted by the Committee during markup, amends section 224 of the Communications Act of 1934 to require the Commission to prescribe regulations for ensuring that utilities charge just and reasonable and nondiscriminatory rates for pole attachments provided to all providers of telecommunications services. Subsection (a)(4) of Section 224 of the Act currently defines the term "pole attachment" to mean any attachment by a cable television system to a pole, duct, conduit, or right-of-way owned or controlled by a utility. The amendment expands the definition of the term to include attachments by other "provider[s] of telecommunications service" as well.

When Congress enacted Section 224 in 1978, cable television systems were the only entities seeking the right to attach to utility poles. This change recognizes that as competition develops in telecommunications markets, entities other than cable television systems may attach to utility poles, ducts, conduits, or rights-of-way.

Subsection (c)(1) of section 224 currently states that, in instances were pole attachments are regulated by a State, the Commission has no authority with respect to rates, terms, and conditions for pole attachments. Subparagraphs (c)(2) (A) and (B) direct States that regulate pole attachments to certify to the Commission that they regulate rates, terms and conditions and in doing so, consider the interests of cable subscribers, as well as the interests of the consumers of utility services.

The amendment adopted by the Committee conforms subparagraph (c)(2)(B) to paragraph (a)(4) and directs States that regulate pole attachments to consider the interests of all subscribers of services offered via pole attachments, not just the interests of cable subscribers. Subsection (d) sets forth the method by which the Commission, when it regulates pole attachments, is to determine whether a rate is just and reasonable and defines what is meant by the term "usable space." The amendment adopted by the Committee replaces paragraph (d)(1) in its entirety and directs the Commission to prescribe regulations, not later than one year after enactment, ensuring that utilities charge just and reasonable and nondiscriminatory pole attachment rates to all providers of telecommunications services.

This language also instructs the Commission to apportion the cost of the entire pole, duct, conduit, right-of-way, other than usable space, equally to all who attach to the pole, duct, conduit, or right-of-way. Similarly, the Commission is instructed to apportion the usable space according to the percentage required by each attaching entity, recognizing that those who attach to poles, ducts, conduits and rights-of-way enjoy proportional benefits from their attachment. Finally, the Commission is instructed to allow for reasonable terms and conditions relating to health, safety and the provision of reliable utility service. The amendment also states that regulations promulgated by the Commission are not intended to apply to pole attachments used by a cable television system solely to provide cable service as defined by section 602(6) of the Act. In those instances, a just and reasonable rate is the same as was set forth in subparagraph (d)(1) of the 1978 Act.

The Committee intends that under this section, a cable operator that does not offer telecommunications services would still be entitled to a pole attachment rate under the just and reasonable standard set forth under existing law. A cable operator that offered telecommunications service, as well as cable service, would be required to pay a pole attachment rate as established under the standard added by this section. It is not the intention of the Committee to require a cable operator to pay twice for a single pole attachment if the operator is providing cable and telecommunications services. This section ensures that a cable operator would only be required to pay for a single attachment. Examples of a single pole attachment are: if a cable operator offers cable and telecommunications services through a single wire; if the operator incorporates two wires at a single attachment; or if the operator over-lashes a second wire for telecommunications service.

The Committee amendment contains an exception that states for all providers of telecommunications services, except members of the exchange carrier association established in 47 C.F.R. 69.601 as of December 31, 1993, upon enactment of this legislation and until the Commission promulgates its final rate regulations required by this section, the pole attachment rate will be adjusted to one of two rates. First, if a joint use pole attachment agreement containing a rate formula is in effect on January 1, 1994, between an electric utility and the largest local exchange carrier in that electric utility's service territory, a rate based on that formula shall apply in the electric utility's service area. Second, if no joint use agreement containing a rate formula exists, the pole attachment rate is the rate applicable to cable television systems' pole attachments which are used solely to provide cable service.

Section 108. Inquiry on civil participation

Section 108(a) directs the Commission, in consultation with NTIA, to conduct an inquiry into policies that will enhance civic participation through the Internet. The inquiry shall address the question of whether common carriers should be required to provide citizens with a flat rate for service for granting access to the Internet. The Committee adopted this provision to explore how those entities over which the Commission has jurisdiction interact

with the Internet, and how those entities could meet the goals of bringing advanced telecommunications services to all Americans.

Subsection (b) directs the Commission, in consultation with the United States Office of Consumer Affairs, to conduct a study of how to encourage citizen participation in regulatory issues. The results of the study are due within 120 days after the date of enactment. The Committee believes that the ability of the public to use Internet and the ability of citizens to participate in public affairs through the use of the Internet can serve the public's interest in participatory democracy.

Section 109. Competition by small business and minority-owned business concerns

This section, which was adopted by the Committee during mark-up, amends the Communications Act of 1934 to add a new section 230, which articulates a new policy of the Commission: To promote whenever possible the ownership of information service and telecommunications services by small business and minority business interests.

TITLE II—COMMUNICATIONS COMPETITIVENESS

Section 201. Cable service provided by telephone companies

This section amends section 613(b) of the Communications Act to provide that any common carrier subject to title II of the Communications Act may provide video programming to subscribers within its telephone service area if it provides video programming through a separate affiliate and otherwise complies with part V of title VI of the Communications Act, as added by this legislation. This section also makes a conforming change to section 602 to define "telephone service area" and to add "or use" to the definition of "cable service," reflecting the evolution of video programming toward interactive services.

Paragraph (3) provides that any affiliate of a common carrier that provides video programming in the telephone service area of such a carrier but does not utilize the local exchange facilities or services of the carrier, shall not be subject to the requirements of part V, but shall be treated as a cable operator and subject to all the requirements of title VI. The Committee added this provision to make clear that a telephone company can be treated as a cable operator if it completely divorces its cable operations from its telephone operations and makes no use of the services or facilities of the local exchange carrier, thereby creating a completely separate infrastructure for the delivery of video programming. In addition to investing in and building a cable system, this provision recognizes the ability of a telephone company to purchase a cable system within its service territory. Section 613(b)(3)(A) makes it clear, however, that the prohibitions on in-region buy-outs contained in section 656 limit the ability of a telephone company to make such purchases. Finally, the Committee does not intend by this provision to subject telephone companies that use wireless facilities, such as direct broadcast satellites (DBS), to the same requirements as cable operators.

This section also amends title VI of the Communications Act to add a new "Part V—Video Programming Service Provided by Telephone Companies" and adds a number of new sections to title VI, which are discussed below.

Section 651 contains the definitions.

Section 651(1)(A) defines "control" as including an ownership interest in which an entity has the right to vote more than 50 percent of the outstanding common stock or other ownership interest.

In adopting the definition of "actual working control " in new section 651(1)(B), the Committee anticipates that the Commission will continue its fact-specific examinations in considering whether actual working control exists, in whatever manner exercised, just as it has committed to do in its order entitled "Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competitive Act of 1992–Horizontal and Vertical Ownership Limits, Cross-Ownership Limitations, and Antitrafficking Provisions," MM Docket 92–264, (adopted September 23, 1993). In determining whether actual working control exists, the Committee expects the Commission to continue to assess all relevant factors including, but not limited to, whether there exist partnership and limited partnership interests, direct or indirect ownership interests, voting stock interests, interests held in trust, and any interests of officers and directors. The Commission may aggregate ownership interests for purposes of determining when actual control exists.

In general, the Committee endorses the approach that the Commission has used to determine whether actual working control exists. This provision permits the Commission to continue to have flexibility to consider whether factors are relevant to serve the purposes of this legislation and the Communications Act. The Committee does not intend that an attributable interest in an entity, as defined in the Commission's broadcast or cable-telco cross ownership rules would automatically confer "actual working control."

Section 652 states that a common carrier subject to title II of the Communications Act of 1934 shall provide video programming directly to its telephone subscribers through a separate affiliate. Subsection (b) sets forth rules on separation, including requirements to maintain separate books, not own in common real or personal property, and maintain separate marketing and product or service specific advertising.

Paragraph (2) permits a carrier to provide inbound telemarketing or referral services related to the provision of video programming if it provides the same service on the same terms, conditions and prices to its affiliates as to non-affiliates. By "inbound telemarketing," the Committee means inbound telemarketing or referral services that occur during a call initiated by a customer or a potential customer of such service. The Committee intends that a carrier should be able to refer a customer who seeks information on a competitive service. The Commission's rules should limit the inbound telemarketing or referral services provided by the carrier to a listing, on a rotating basis, of video programmers and cable operators, including the carrier's video program affiliate, that choose to purchase such listing services.

In addition, to prevent a carrier from using its inbound telemarketing referral services in a manner that disadvantages a

video programmer or cable operator, a carrier engaged in furnishing such service should not be permitted to include any information about the price, terms, or conditions of service offered by video programmer or cable operator, and should be prohibited from engaging in comparing among video programmers and cable operators. An example of the listing of video programmers and cable operators made available through a carrier's inbound telemarketing or referral service could include a telephone number that the calling party may use to contact such programmers or cable operators for additional information. These limitations are analogous to the policies adopted by the Commission in its rules governing the joint marketing of local telephone service and customer premises equipment by local telephone companies.

Paragraph (3) states that if a cable company is jointly marketing video and telephone services, then the common carrier may petition the Commission for relief from the general joint marketing prohibition. The Commission must grant or deny the petition within 180 days.

Section 652(c) requires that transactions between a video programming affiliate and a common carrier with respect to the sale, exchange, or lease of property; the furnishing of goods and services; and the transfer to or use of any asset or resource of such carrier, shall be subject to certain Commission rules. Such rules shall ensure that the transaction is auditable, which means that it adheres to generally accepted accounting principles; that it is fully compensatory, by which the Committee means the value paid for the property, goods and services, or asset or resource at minimum covers all costs of obtaining such property, goods and services, or asset or resource and be consistent with the fair market value, if applicable; and that such transaction shall be without cost to telephone ratepayers. In addition, the contract or agreement or any other memorialization of the arrangement must be on file with the Commission and in a form that enables the Commission to assess the compliance of any transaction with these requirements. The "transfer of asset or resource" covers both tangible assets, e.g., capital or equipment, as well as intangibles, e.g., goodwill or human resources. The requirement on furnishing goods and services applies to transmission services and other access services, as well as goods, which might include telecommunications equipment if a local exchange carrier is permitted to manufacture or provide such equipment.

Subsection (d) permits the Commission to grant small or rural telephone companies waivers from these requirements if the Commission finds that telephone ratepayers will not be harmed and that granting the waiver will have no effect on the ability of the Commission to enforce its rules on cross-subsidization and access. By "small telephone company" the Committee means telephone companies that are similar in size and scope to rural telephone companies but which might fall outside that definition. The Committee intends that in no event shall such term include any carrier classified as Tier I by the Commission.

Subsection (d)(3) clarifies that if a common carrier obtains a waiver and no longer is required to have a video programming affiliate then the carrier itself must meet the obligations of section 659. This provision ensures that the vital issues addressed by the appli-

cation of numerous title VI requirements in section 659 will not be rendered ineffectual in the absence of a video programming affiliate. It is the Committee's intent that these requirements apply to one or the other aspect of a common carrier's organizational structure regardless of how the carrier chooses to provide or offer video programming to its customers.

Section 653 requires that a common carrier that provides video programming shall establish a video platform. The Committee intends that the video platform be the sole source of capacity for all entities, including any video programming affiliate, and that such affiliate must obtain transmission capacity at rates, terms and conditions equal to those made available to unaffiliated or independent programming providers.

Section 653(a)(2) imposes a requirement on common carriers seeking to establish a video platform to submit a notice to the Commission of its intention to establish channel capacity to meet all *bona fide* demands of video programmers as well as meet any channel capacity required pursuant to section 659. The notice shall conform to the regulations established by the Commission pursuant to subsection (b), and shall specify how, within what reasonable time period, and in what form a person seeking to use such channel capacity should submit its requirements for capacity to the carrier.

Subsection (a)(C) further requires the notice to specify the procedures the carrier will use to determine whether a request for capacity is *bona fide.* This requirement ensures that all parties understand how the carrier will administer the Commission's regulations, issued under subsection (b)(1)(B), for determining whether a request is *bona fide.* The Committee expects the Commission to set forth the criteria for determining the *bona fides* of a request, and for the carrier to apply those criteria in an objective way. The Committee further expects that the Commission will establish procedures for review of any denial or effective denial of carriage of a particular programmer. This includes issues regarding carriage and related issues arising out of the protections provided throughout this section. Any such review shall be undertaken within an expedited timeframe in order to avoid prejudice to the programmer's opportunity to obtain carriage. In its review of any denial, the Commission should exercise its full range of remedies, including mandating carriage by the common carrier. Paragraph (a)(2) also directs the Commission to submit notices that comply with the Commission's regulation to the Federal Register for publication within five working days. The Committee does not intend for publication of such notices in the Federal Register to give legal effect to any notice that fails to comply with the Commission's regulations under subsection (b), or for such publication to restrict in any way the Commission's authority to require the common carrier to amend its notice or otherwise comply with Commission regulations.

Paragraph (3) states that the common carrier shall, subject to section 214 approval, establish channel capacity that is sufficient to meet: all *bona fide* requests submitted in response to the notice; all requirements imposed under section 659 (including carriage of commercial and non-commercial television stations, and capacity of public, educational, and government use as well as for commercial

use); and any additional channels required by the Commission under subsection (b)(1)(C).

The Committee's intent in adopting this provision is to balance the interest of programmers, who would prefer always to have channel capacity available, and the concern of consumers and telephone companies, who do not want to see excessive channel capacity lay fallow, since that would represent wasted investment and excessive costs. The process established here attempts to catalogue the legitimate demand for capacity, add in carriage requirements from section 659, add in a suitable margin for growth (as carriers presently do for voice service), and then require that the carrier build a system to meet the sum of this calculus.

Paragraph (4) builds on the system established in paragraph (3) by imposing requirements after a platform has been constructed. In many ways, it seeks to codify certain elements of the general practice of common carriers. In the Committee's view, these elements are so fundamental to the requirement of access that they have been included in the legislation. First, subparagraph (A) directs a carrier to notify immediately the Commission if a request for carriage by any programmer has been delayed or denied. If a carrier fails to notify immediately the Commission, the Commission may take official notice of any complaint submitted by an affected programmer. Subparagraph (B) makes explicit that the requirements in paragraph (3) with respect to extending carriage to *bona fide* request persists one the video platform is operating. Thus, an operating video platform has an ongoing obligation to extend carriage to *bona fide* programmers as long as capacity is available.

Subparagraph (C) imposes on carriers the obligation to notify the Commission when it becomes apparent to the carrier that there will be no available excess capacity reasonably soon. In making this determination, the carrier should consider initial *bona fide* demands, the rate at which *bona fide* requests have been received and granted pursuant to subparagraph (B), and general trends among all programmers, including those utilizing PEG, for additional capacity. Subparagraph (C) further requires the carrier to file with the Commission the manner and date by which such carrier will provide sufficient capacity to meet such excess demand. This provision requires the carrier to submit a plan either to construct additional capacity in a timely fashion, or make other accommodations, i.e., voluntary reallocation or sharing of capacity, so as to meet the excess demand. Subparagraph (D) states that a carrier that establishes a video platform shall construct, subject to section 214 approval, such additional capacity as may be necessary to meet excess demand.

Paragraph (5) authorizes the Commission to resolve these disputes, and to prescribe necessary regulations for resolution of carriage-related disputes. The Commission is directed to resolve these disputes within 180 days. The Commission may require carriage or award damages, or both. Moreover, the paragraph clarifies that an aggrieved party may seek any other remedy that it may have under the Communications Act of 1934.

Section 653(b)(1) requires the Commission to prescribe regulations. Section 653(b)(1)(A) states that such regulations shall prohibit a carrier from discriminating among video programming pro-

viders. This subparagraph also requires regulations to ensure that rates, terms, and conditions for carriage are just, reasonable, and nondiscriminatory. The Commission has long experience in making those sorts of determinations, and the Committee expects the Commission will apply that experience to this new field. The Committee recognizes, however, that Section 659 (a)(2) and (b)(1) require unique carriage and payment requirements that reflect the obligations applicable to cable systems under the 1992 cable act, including retransmission consent rights and must carry, and thus, the carriage of such video programming providers to section 659 on terms, rates and conditions as required by sections 614, 615 and 325 of the Communications Act will not be a violation of this subsection. One aspect of the terms and conditions for carriage is service, transmission, interconnection, and interoperability. Subparagraph (E) amplifies the general nondiscrimination requirement in subsection (b)(1)(A) by requiring such services be offered by the common carrier to unaffiliated programming providers on an equivalent basis as is offered to an affiliate.

Subparagraphs (B) and (C) require regulations on determining when a carriage request is *bona fide*, and on establishing a suitable margin of unused channel capacity to accommodate reasonable growth in *bona fide* demand. With respect to criteria for determining a *bona fide* request, the Committee intends that the Commission look carefully to a number of factors indicating the *bona fides* of the request, and develop criteria that do not just favor current programmers which have an established business. The Committee recognizes that the Commission may establish different sets of criteria for commercial and non-commercial programmers. The Commission also should seek to develop, to the maximum extent possible, regulations that are objective and therefore easily administered by the carrier.

Subparagraph (D) extends the Commission network non-publication (47 C.F.R. 76.92 *et seq.*) and syndicated exclusivity (47 C.F.R. 76.151 *et seq.*) to video platforms.

Subparagraph (E) requires video platforms to provide services and facilities to unaffiliated video programming providers that are equivalent to those provided to the common carrier's video programming affiliate.

Subparagraph (F) addresses another potential source of discrimination: information given to the subscriber for purposes of selecting programming on the video platform. This subparagraph requires regulations that prohibit discrimination among programmers with regard to information given to the subscriber on programming selection. The Committee intends the Commission to consider the ability of a common carrier to discriminate in favor of programming (or programming services) in which the carrier has a financial ownership or interest. The Commission's regulations should also ensure that a programmer can identify their product, and have their unique identification passed through to the subscriber.

Subparagraph (G) was adopted by the Committee to ensure that, as common carriers develop video platform services, they do not totally exclude areas which have large number of low income or minority residents. The Committee is convinced that our country will only reap many benefits and advantages of video platform services

if those services are available to all citizens. Further, the Committee finds that inequities in providing video platform service along the lines of race, ethnicity, or income would threaten to divide our society among "information haves" and "have nots." Many of the likely efficiencies and social benefits of video platform service would be negated unless all our citizens have access to the means of communication. The initial applications to provide video dialtone services have tended to target communities that are wealthier than average; that have substantially fewer minority residents, and that are not rural. The Committee believes this provision is necessary to ensure that common carriers recognize an affirmative obligation to build-out new video dialtone service in a manner that does not disadvantage communities on the basis of the ethnicity, race, or income of the residents of a geographic service area. The Commission is also required to provide for public comments on the adequacy of the proposed service areas in meeting this criteria.

It is the intent of the Committee that the Commission has remedial authority under section 653(b)(1)(G) to adopt complaint procedures; to condition authorizations, permits, licenses and other benefits upon compliance with such section; and to revoke such authorizations, permits, licenses and other benefits, or deny applications or other requests in the event of non-compliance.

Paragraph (2) requires the Commission to extend the requirements of this section to those specific cable systems that have installed a switched, broadband video programming delivery system. This paragraph also recognizes that some of the requirements included in this section with respect to requests for carriage overlap with the requirement in section 612 (channels for commercial use), and that the requirements in this section would supplant section 612 requirements. However, the requirements included in this section are broader than section 612, and should be applied to such cable operators, except in cases where such regulations would be clearly inappropriate or duplicative.

Subsection (c) directs the Commission to study whether the requirements of this section should be applied to all cable operators, and to report to Congress within 2 years of enactment. The Committee has required this study to determine whether it is in the public interest to extend the requirements of this section on access and nondiscrimination to those cable operators who are not covered by subsection (b)(2).

Section 654. This section establishes compliance requirements with section 201(c), as added by this bill, and a certification process to ensure compliance with section 201(c). Subsection (a) states that a common carrier subject to title II of the Communications Act, and which seek to provide video programming directly to subscribers in its telephone service area, shall certify to the Commission that it is in compliance with the requirements of section 201(c) and all the regulations on equal access, interconnection and unbundling prescribed pursuant to section 201(c). The Committee believes that such a requirement of interconnection and equal access compliance prior to entry will promote the growth of local competition and is in the public interest.

The Committee intends the certification requirement to be a serious and rigorous one that involves the carrier certifying to the

Commission that it has reviewed the Commission's regulations; that it has altered, where necessary, its switches, transmission equipment, central offices, and any other aspect of the carrier's operations to comply with the requirements of section 201(c); and that any person seeking equal access or interconnection would find the carrier in compliance with the requirements of section 201(c)(1) and (2) and the regulations promulgated pursuant to those paragraphs. The Committee expects the Commission to elaborate further on the certification process to ensure that the Commission has adequate information to determine the accuracy of the certification.

Section 654(a)(2) states that a common carrier may provide video programming to subscribers prior to the promulgation of final regulations on a conditional basis if the carrier certifies to the Commission that it is in compliance with State laws and regulations on interconnection and unbundling that are substantially similar to and fully consistent with the interconnection, access and unbundling requirements in title I of this legislation. The Committee intends this exception from the compliance requirement to be applicable only where States have already authorized local competitions, and have implemented interconnection requirements. In these instances, where a state does not effectively prohibit, restrict or condition entry by any person or carrier into the business of providing telephone exchange and exchange access services, the Committee believes that competition will be fostered by permitting telephone common carriers to provide directly video programming immediately to subscribers in their service area.

Paragraph (2) also creates an exception if there is no statutory prohibition against a carrier providing video programming directly to subscribers in its telephone service area. This paragraph clarifies the Committee's intent not to prohibit the provision of video programming directly to subscribers by common carriers that are presently authorized to do so. Thus, for example, if a telephone company is permitted to provide video programming directly to subscribers within its service area pursuant to the rural exemption set forth in section 633(b)(3) of the Communications Act, the bill authorizes the carrier to continue to do so without prior certification to the FCC. Similarly, for example, Bell Atlantic, which prevailed in *Chesapeake & Potomac Telephone of Virginia* v. *United States*[31] to have the cable/telco prohibition struck down as unconstitutional on its face, as applied to Bell Atlantic in its service area, would have no need to precertify.

The last sentence of paragraph (2) makes clear that any carrier that is providing video programming pursuant to authority in paragraph (2) must certify to the Commission that such carrier is in compliance with the Commission's rules on equal access and interconnection, once such rules take effect.

Subsection (b) sets forth the process for certification and application approval. This subsection clarifies that in addition to filing a certification a carrier still must obtain section 214 approval from the Commission for authority to establish a video platform. An application under section 214 may be filed any time after the date of

[31] 830 F. Supp. 909 (E.D.VA. 1993).

enactment of this section, and the Commission must act upon the application within 180 days. The Committee adopted an amendment to this subsection that states the Commission may approve an application prior to the filing of the certification required in subsection (a), but that such approval would not be effective until such certification is filed.

Section 655 directs the Commission to prescribe regulations prohibiting common carriers from including in telephone rates any expenses associated with the provision of video programming. The Commission is also directed to prescribe regulations prohibiting cable operators from including in the cost of cable service any expenses associated with the provision of telephone service.

Section 655(a) is similar to section 201(c)(7), as added by this legislation, and the Committee's comments with respect to that section are incorporated herein by reference. Section 655(b) reflects an amendment adopted by the Committee that recognizes that the cost allocation and cross-subsidization issue with respect to cable operators warrants a different treatment than how it is applied to common carriers.

The Committee notes that Section 655(b) prohibits "improper" cross-subsidization. Even as to those cable operators found to be operating under a regulatory regime that offers the incentive and opportunity to cross-subsidize, in the specialized meaning of the term, it is not the Committee's intent to prohibit a cable operator from using any revenues derived from the provisions of regulated cable service at lawfully established cable rates to fund the provision of telecommunications services. Such a use of earnings would not be improper. Rather, the intent is to prevent a cable operator from misallocating to its regulated cable business an improper share of the joint and common cost of facilities used for cable telecommunications services.

Section 656 contains a general prohibition on buyouts by a common carrier of a cable system within its service territory. Subsection (b) provides exceptions (1) for those systems serving rural area; (2) that would permit a common carrier to purchase a cable system or systems so long as the total number of subscribers served by such systems add up to less than ten percent of the households served by the carrier in that State, and where no such system or systems serve a franchise area with more than 35,000 inhabitants for an affiliated system, or 50,000 inhabitants for any system that is not affiliated with any system whose franchise area is contiguous; and (3) that would permit a carrier to obtain, by contract with a cable operator, use of the "drop" from the curb to the home that is controlled by the cable company, if such use was reasonably limited in scope and duration as determined by the Commission.

In determining whether the scope and duration is reasonably limited, the Commission should look to the underlying policy goals of this legislation: to promote competition both in services and facilities, and to encourage long term investment in the infrastructure. Consequently, for example, a contract providing, for use of 90 percent of the cable operator's capacity by the telephone company would not only defeat the policy goal of competition but also would enable the carrier to circumvent effectively the prohibitions on buy-

outs contained in this section. Such an arrangement on scope would not be reasonably limited. By contrast, an arrangement that provides a carrier with the same or similar capacity as used by the cable operator granting the capacity would tend to be reasonably limited in scope. Similarly, the Commission should look to the same policy goals when assessing reasonableness of duration. An arrangement that, for example, runs for 50 years, given the rapid change in technology in the communications industry, on its face appears to not be reasonably limited. By contrast, an arrangement for 5 years, given the need for some predictability in the market, would tend to be reasonable.

Subsection (c) also contains a waiver process from the buy-out provision, under which the Commission may grant a waiver upon a showing of undue economic distress by the owner of the cable system if a sale to a telephone company is blocked. By "nature of the market served" the Committee intends the Commission to review the particular facts of each case, and to pay particular attention to geographic circumstances that would lead to making a franchise area a high cost area. By "undue economic distress" the Committee does not mean that the owner is simply failing to obtain the highest possible price. Rather, the Committee intends this provision to be limited to genuine hardship cases. The Commission is directed to act on waiver applications within 180 days after it is filed.

Section 657 directs the Commission to establish penalties for knowing violations of this Part.

Section 658 sets forth consumer protection provisions, including the formation of a Joint Board to ensure proper jurisdictional separation and allocation of costs of establishing a video platform.

Section 659 provides which sections of title VI will apply to a video affiliate or a video platform. Subsection (a) requires that all video programming affiliates must comply with the rules on ownership restrictions, carriage agreements, sales of systems prohibiting unfair and discriminatory practices in the sale of video programming, subscriber privacy, customer service obligations, and equal employment opportunity requirements.

This section also states that existing provisions of title VI requiring the carriage of public, educational and governmental channels, cable channels for commercial use, and local commercial and noncommercial educational television signals apply to video programming affiliates.

All rules presently imposed upon multichannel video programming distributors as required under section 325 of title III also apply. In applying section 325 of the Communications Act of 1934 to operations of the video programming affiliate of a common carrier, the Committee notes that the plain language of section 325 already covers to any multichannel video programming distributor. Section 659 of this Act makes clear which sections of current law will apply to the operation of the video programming affiliate. The fact that section 325 was included specifically in this Act should not be interpreted to suggest that the Committee in any way intends to limit the application of section 325 to any other multichannel video programming distributor. To the extent that third party packagers assemble multiple channels of programming for distribution on a common carrier's video platform, they also would

fall clearly within the plain language of section 325. Paragraph (a)(3) specifies the portions of title VI regulation that will not apply to video programming affiliates.

Section 659(b)(1) directs the Commission to prescribe regulations requiring a video programming affiliate to comply with the rules on capacity for public, educational, and governmental use (PEG), capacity for commercial use, carriage of commercial and non-commercial educational television signals and retransmission consent obligations. These regulations shall impose obligations on video programming affiliates that are equivalent to the obligations imposed on cable operators. Paragraph (b)(1) also addresses the circumstance where a carrier has established a video platform but, for whatever reason, has no video programming affiliate. The Committee intends that the obligations enumerated here always fall on some entity—either the carrier's video programming affiliate or its video platform.

The Committee believes it is critical that advanced telecommunications systems include both the ability to receive and the ability to create and provide information. PEG access has provided groups and individuals who generally have not had access to the electronic media with the opportunity to become sources of information in the electronic marketplace of ideas.

In considering how to implement the capacity, services, facilities, and equipment requirements for PEG use pursuant to paragraph (b)(1), the Committee intends that the Commission give substantial weight to the input of local governments, which have long-standing and extensive experience in establishing and implementing such requirements. Moreover, where appropriate, the Commission shall permit, but not require, States and local governments to implement and enforce the PEG requirements the Commission adopts pursuant to this section. The Committee intends for the PEG requirements to be substantially equivalent to those to which cable operators typically must meet in cable franchise areas across the country. Nothing in section 659 or in the Commission's regulations should prevent or discourage voluntary offers of capacity, services, facilities and equipment by either cable operators or common carrier programming affiliates that exceed any requirements imposed pursuant to either section 611 or section 659.

Section 659 also applies to video programming affiliates the same mandatory carriage obligations that were applied to cable operators in the Cable Competition and Consumer Protection Act of 1992 (the 1992 Cable Act) (P.L. 102–385). The Commission shall prescribe regulations that adopt the requirements of sections 614 and 615 of the Communications Act so as to impose obligations that are no greater than nor less than those that apply to cable operators.

In 1992, the Committee set forth in great detail the economic, historical, and constitutional justifications for imposing mandatory carriage obligations on cable operators in the 1992 Cable Act. Since the Committee is imposing functionally similar obligations on a common carrier's video programming affiliate, the Committee expressly incorporates and reaffirms the underlying justifications originally set forth by reference in H. Rept. No. 102–628, Second Session, at 47–74 (1992).

Although section 659 effectively precludes a local government from requiring that a video programming affiliate obtain a cable franchise pursuant to section 621 in order to provide cable service, the Committee does not intend to prohibit a local government from exercising its authority pursuant to sections 613, 617, 631, and 632 of title VI to impose requirements, pursuant to a local ordinance, statute, regulation, permit, license, contracts or other authorization.

Subsection (b)(2) requires the video programming affiliate of a carrier or a competing video programming provider to pay a fee equivalent to a franchising fee that cable operators are required to pay to the local franchising authority under section 622. It clarifies the right of a local government to collect fees from the video programming affiliate of a common carrier and from any multichannel video programming distributor offering video programming over a video platform. The Committee does not intend for paragraph (2) to prohibit a local jurisdiction from collecting fees pursuant to paragraph (2) if no cable operator serves the jurisdiction. Such a jurisdiction shall have the right to collect fees at a rate which does not exceed the maximum rate at which a franchising authority may impose franchise fees under section 622 of title VI. The fees shall be determined in a manner consistent with section 622(g) and therefore shall be in addition to (a) any tax, fee, or assessment of general applicability and (b) any provision of services, facilities and equipment which, as explained in the House Report accompanying the 1984 Cable Act, are not monetary payments included in the definition of "fee" in section 622.[32] The same House Report further notes that any payments which a cable operator makes voluntarily to support public, educational and governmental access and which are not required by the franchise would not be subject to the five percent franchise fee cap. This understanding also should apply to paragraph (b)(2).

The Committee intends for such fees to be collected by the local government that franchises the cable operator in the local jurisdiction, or, in jurisdictions where there is no cable operator, the local government authority that would have the right to grant a franchise to a cable operator. The Committee intends for a video programming affiliate or multichannel video programming distributor using a video platform to pay fees to the local government in each locality where it provides video programming. Each local jurisdiction shall have the discretion to determine, consistent with this subsection, the method of collecting fees, the frequency of payment, and other matters related to such authority's right to collect fees pursuant to this section. In order to be consistent with section 659(b)(2), the method, frequency and other matters determined by the local government that franchises the cable operator must be essentially similar to and no greater or lesser than the requirement imposed on cable operators in the same locality.

The Committee adopted an amendment during markup that extended the fee requirement beyond the video programming affiliate to any multichannel programming distributor offering a competing service. The amendment was adopted to ensure franchise authori-

[32] H. Rept. No. 98–234, Second Sess., at 64–65 (1984).

ties receive appropriate compensation, and to establish horizontal equity among competing programmers. By "competing service" the Committee does not intend mathematical exactitude whereby the multichannel video distributor must have the same number or type of channels as the carrier's affiliate. Rather, the Committee expects the Commission to use a practical test to determine which multichannel services are competing with the video programming affiliate.

Section 660 stipulates that several of the provisions added by this legislation (sections 652, 653, 654, and 656) do not apply to common carriers providing service in rural areas.

Section 202. Review of broadcasting ownership restrictions

This section directs the Commission to review its local and national ownership restrictions for radio and television broadcasters. Free over-the-air broadcasting is already a nearly universal service, providing the primary means by which millions of Americans receive their news and information. Local broadcasters hold a unique position among video distributors in that they must serve in the public interest. The industry's continued viability is of great importance in ensuring that the creation and expansion of new video and information distribution systems do not lead to the creation of a society divided between the "information rich" and the "information poor."

The Commission's local and national cross-ownership rules have been principally responsible for helping to create a diversity of outlets and voices within the television industry, and have precluded large concentrations of local market power. Since the passage of the Communications Act of 1934, the goals of localism, diversity, and service in the public interest have been the foundation of this Nation's broadcasting industry. These policy goals should underscore the Commission's review of its local and national ownership restrictions.

It is also the policy goal of the Committee to encourage fair competition in the video marketplace. The Committee acknowledges that with the arrival of competing video distribution systems such as cable, direct broadcast service, and broadband telephone networks, the video marketplace has and will continue to become increasingly competitive. The Committee recognizes that emerging competition in the video marketplace merits a review of these regulations in order to encourage competition and preserve a diversity of information sources. It is the intent of the Committee that the Commission balance these goals in any review of its broadcast ownership regulations, with an eye towards fostering competition without undermining the goals of diversity, location and service in the public interest.

The Committee does not envision wholesale changes in the Commission's review but rather anticipates incremental changes that are more likely to foster competitiveness without undermining the goals of diversity, localism, and service in the public interest. Moreover, the Committee's direction to review the local and national ownership restrictions should not be seen to mandate the use of any previous or pending Commission proceeding.

Section 203. Review of statutory ownership restriction

This section directs the Commission to review the statutory restriction on common ownership of cable systems and television stations contained in Section 613(a)(1) of the Communications Act, and to report to Congress whether such restrictions continue to serve the public interest. In preparing its report, the Commission should specifically consider what, if any, protections are needed to prevent coercive or discriminatory treatment by any cable system under common ownership with a local television broadcast station. If the Commission recommends changes to the law in its report, it also should include recommendations to address the legitimate carriage and channel positioning needs of local television stations.

Section 204. Broadcaster spectrum flexibility

This section authorizes the Commission to adopt regulations that would permit broadcasters to use spectrum for ancillary or supplementary services, if the Commission decides to issue additional licenses for advanced television services. The Committee believes that permitting broadcasters more flexibility in using their spectrum assignments is consistent with the public policy goal of providing additional services to the public. Such a policy not only promotes more efficient spectrum use, but also encourages innovation. This action in no way precludes the Commission's decision-making in developing standards and requirements for advanced television services. Apart from the restrictions contained herein, this section leaves the final determination of the uses of spectrum assigned to broadcasters to the Commission. This section restricts any potential use of spectrum apart from the main channel signal to "ancillary and supplementary" uses, the signals for which are transmitted as an indivisible part of a licensee's main channel signal.

Within each 6 megahertz (Mhz) assignment, a variety of digitally transmitted services can be offered by a broadcast licensee. The characteristics of a digital transmission permit it to be used for an intermixed, commingled flow of data. Given the dynamic nature of the data blow, these services probably cannot be separated or segmented. Therefore, these different digital services are "indivisible" within the 6 (mhz) assignment, and these services are to be provided along with the signal that the licensee broadcasts ATV programming.

Nothing in this provision, however, is intended to prevent licensees from providing such other services as the Commission may permit during those periods when the licensee is not actually transmitting a main broadcast signal. For example, if during the initial transition to digital broadcast, a licensee is transmitting only four hours of ATV service, the licensee could deliver ancillary or supplementary services across the entire 6 Mhg during other times of the day.

Paragraph (b)(2) requires that the Commission prescribe regulations that avoid the derogation of any advanced television services, including high definition television (HDTV) services. It is not the intent of the Committee to in any way undermine the considerable efforts expended by the Commission and private industry over the past several years to develop high definition television. The Commission should ensure that if it issues additional licenses for ad-

vanced television, adequate transmission capacity shall be retained to support the primary use of the spectrum for advanced television services.

Paragraph (b)(3) clarifies which ancillary and supplementary services will be treated as broadcast services. It requires that advertiser-supported programming services carried on broadcast frequencies should be subject to all regulations applicable to broadcast services generally.

Paragraph (b)(4) is designed to ensure that the Commission not be required to prescribe new regulations for services offered by broadcasters that are analogous to existing services offered by other spectrum users under other Commission regulations. It empowers the Commission to include new service offerings by broadcast licensees under existing regulations for analogous services.

Paragraph (b)(5) requires, *inter alia,* that the Commission review and update its requirements concerning minimum broadcast hours for television broadcasters for both NTSC and ATV services. This section should not result in any reduction in the number of hours broadcast by any station except where the Commission might find it to be in clearly the public interest. The Commission should set reasonable minimum hour standards reflecting current reasonable expectations by consumers for the availability of television service. The Committee recognizes that, particularly at the inception of ATV service, there may not be a sufficient supply of ATV programming to permit full service. The Committee recognizes that it may be appropriate for the Commission to establish a requirement that increases as the supply of programming increases.

Subsection (c) provides that if the Commission issues licenses for advanced television services, it shall precondition such issuance on the requirement that one or the other of the licenses be surrendered to the Commission pursuant to its regulations. This provision is designed to ensure that licensees' use of 12 megahertz would be for temporary simulcast purposes only, and that in due course one of the licensed channels revert to the Commission. It also requires that the Commission must base its decision regarding the surrender of the license on public acceptance of the new technology or on potential loss of reception for a substantial portion of the public.

Subsection (d) requires the Commission to establish a fee program for any ancillary or supplementary services if subscription fees or any other compensation fees apart from commercial advertisements are required in order to receive such services.

The Committee notes that the Commission has already decided it will not allow stand alone subscription ATV services separate from a free NTSC service. Thus, if the Commission were to allow subscriber-supported services under its advanced television proceeding, subsection (d) would permit the Commission to designate such services as ancillary and supplementary services subject to the payment of a fee.

The Committee intends that the Commission establish fees which are, to the maximum extent feasible, equal to the amount the public would have received had the spectrum for such services been auctioned publicly under section 309(j) of the Communications Act, and which avoid unjust enrichment of the license for such use of the spectrum.

Subsection (e) requires the Commission to conduct an evaluation within 10 years after the date it issues its licenses for advanced television services.

In subsection (f) the Committee adopts the Commission's definition of high definition television which defines it as systems that offer approximately twice the vertical and horizontal resolution of NTSC receivers with picture quality approaching that of 35 mm film and audio quality equal to that of compact discs. The Committee notes that high definition television is a subset of advanced television services.

Section 205. Interactive service and critical interfaces

As indicated by the finding set forth in section 205(a)(2), the Committee believes that the availability of unbundled customer premises equipment through retailers and other third party vendors has broadened consumer choice, lowered prices and spurred competition and innovation in the customer equipment industry. It is important that those benefits of an unbundled customer premises equipment and services environment be maintained as interactive and other services evolve.

With this in mind, section 205(b)(10) directs the Commission, as part of the inquiry required by section 205(b), to assess its current regulation of telephone, cable, satellite, and other communications delivery systems with respect to the bundling of equipment with services and to identify such changes in the regulation of bundling as may be necessary to assure effective competition and encourage technological innovation in the market for converter boxes, interactive communications devices and other customer premises equipment. Such unbundling is a key requirement for the development of the NII.

The Committee recognizes that, with respect to paid programming services, one reason service providers have insisted on providing the customer access equipment along with services is concern over signal security—unauthorized access to paid services. This is a valid and important concern. The Committee believes, however, that with the Commission's mandate and guidance through regulatory proceedings as contemplated in this subsection, the private sector will be able to develop standard interface protocols that will allow consumer hardware, responsive to appropriate conditional access encoding of access providers, to be made and sold by manufacturers and vendors unaffiliated with any access provider. The Commission may then mandate adherence to these interface specifications in the design of the consumer access appliances.

Section 205(c) requires the Commission, after submitting the report required by section 205(b), to prescribe within six months changes to regulations necessary to implement conclusions reached pursuant to its inquiry under section 204(b)(10). It is the intent of the Committee that these regulations reflect fully the findings set forth in section 205(a).

This section requires the Commission to commence an inquiry to examine the importance of open and accessible systems in interactive communications, and to examine the costs and benefits of maintaining interoperability and open interfaces. The Commission shall determine how converter boxes or other interactive commu-

nications devices should be sold through third party vendors, and what the vendors' responsibilities are for ensuring interoperability. The Commission also must assess how the security of cable and other interactive systems can continue with the establishment of a public or open interface between the network and the converter box or other device. Subsection (c) requires the Commission to submit to Congress the results of the inquiry. Within 6 months after the date of its report, the Commission shall prescribe changes in its regulations to ensure effective competition from a variety of sources and consumer choice in the converter box market. Subsection (d) states that this section does not limit or supersede the existing authority and responsibilities of the National Institute of Standards and Technology (NIST).

Section 205(d) clarifies that nothing in this section alters the jurisdiction of the Commission. Title II of the Communications Act of 1934, as amended, establishes the Commission's jurisdiction over common carriers. Using this authority, the Commission has acted to ensure that key elements of common carrier networks conform with Commission or industry standards. Section 205 directs the Commission to use this general authority to bring the critical network interfaces within the Commission's established power to regulate the interfaces for network services. The Commission has insured that existing phone service interfaces are open under its existing title II authority, and subsection (d) clarifies that the Commission has authority to prescribe regulations that are necessary to ensure that critical network interfaces, such as those described in section 205(b)(4), are also open.

In seeking to meet these goals, section 205 instructs the Commission to conduct a study of two main issues: first, to ascertain whether it is necessary to make certain critical interfaces in future interactive systems available to information and content providers and others who seek to design, build and distribute devices for these networks; and second, to ascertain how best to meet the unbundling objective noted above and to prescribe changes in regulations to achieve that objective.

With respect to the first issue, the Committee believes it is not in a position to know precisely which, or how many, interfaces should be made available and open. Rather, it seeks to have the Commission conduct an inquiry on these questions and to seek comment from interested companies, industry groups, trade associations, public interest groups, and independent experts. In asking the Commission to conduct this inquiry, the Committee understands that open and accessible systems may include proprietary technologies and does not intend to prohibit the use of proprietary technologies in interactive communications services. The Committee understands that protection of intellectual property is necessary to spur investment and innovation in the market for these devices.

However, the Committee believes certain interfaces must be accessible to ensure diversity and to thwart anticompetitive practices; thus, they must be either open public interfaces or, where proprietary technologies are present, available at reasonable terms and on a nondiscriminatory basis to all information providers, equipment suppliers, and others who seek to make interactive products or provide services. In all cases, the Commission is asked, as noted

in subsection (b)(3), "to examine the costs and benefits of maintaining varying levels of interoperability between and among interactive communications services."

The Committee intends the Commission to limit its inquiry to those interfaces which could be used to restrict or impede access to public communications networks and restrict competition in interactive services carried over those networks. It does not intend to impose policies or regulations on entities, products, or services, as they exist independent of, or wholly apart from, public communications networks.

The Committee does not believe that a Commission standard-setting process is necessary to achieve these goals. The Committee believes standards are, in most cases, best set by the marketplace or by industry standard-setting organizations, particularly in dynamic and growing industries. However, the Committees believe the Commission must play a role in ensuring that interactive communications devices are open enough to allow independent service and equipment providers to make their products available to consumers. Further, the Commission should act to prevent access problems in these services before they develop rather than wait to remedy them after the fact.

With respect to the unbundling issue, the goal of subsection (b)(10) and the related requirement in section (c) is to create a competitive third-party market for set-top boxes or other interactive communications devices. The Committee notes in its findings that "the availability of unbundled customer equipment [in the public switched telecommunications network] through retailers and other third party vendors, [has] served to broaden consumer choice, lower prices, and spur competition and innovations in the customer equipment industry." In seeking to adopt this model for the interactive communications services market, the Commission should note several concerns raised by the Committee, including:

> It is not the intent of the Committee to undermine the legitimate needs of owners and distributors of video programming and information service to ensure system and signal security and to protect against theft of service. Network security and consumer privacy must be ensured before these services are unbundled.
>
> The Commission shall carefully consider the effect of any changes in regulations on signal leakage and interference.
>
> The regulations prescribed should not impede the deployment or interference with the capabilities and operations of newly emerging technologies or industries such as direct broadcast satellite (DBS).
>
> Nothing in this section is intended to give retailers or any other third party vendors a competitive advantage vis-a-vis any other alternative distribution outlet, including mail order, home shopping, or distribution directly through network providers or information service providers.
>
> Nothing in this section is intended to preclude the Commission from allowing these devices to be built into a television set or other piece of customer equipment.

Section 206. Video programming accessibility

Section 206 is designed to ensure that video services are accessible to hearing impaired and visually impaired individuals. Advances in communications technology and communications networks have dramatically improved opportunities for independence, productivity, and integration for people with disabilities. The convergence of telecommunications technology and high speed networks could lead to enormous new opportunities for full and equal participation by citizens with disabilities in employment, commerce, education, health care, entertainment, and democratic government. Yet if accessibility for people with disabilities is not a priority during the development of new technologies and services, it can be expensive and difficult to retrofit. For this reason, the Committee states its clear goal that access for people with disabilities be considered and pursued at the outset of the development of the information technologies and in the creation of products and services that will be available using these technologies.

The Committee recognizes that there has been a significant increase in the amount of programming that has been closed captioned since the passage of the Television Decoder Circuitry Act of 1990. In particular, many network programs aired during primetime are captioned. Nevertheless, the Committee is concerned that video programming through all delivery systems be accessible, and that new products and services offered using the information networks of the future be accessible to people with disabilities.

Subsection (a) requires the Commission to complete an inquiry within 180 days of enactment of this section, to ascertain the level at which video programming is closed captioning. In its Inquiry, the Commission should examine the level of closed captioning for live and pre-recorded programming, the extent to which existing or previously published programming is closed captioned, the type and size of the provider or owner providing the closed captioning, the size of the markets served, the relative audience shares achieved, or any other relevant factors. The Commission also should examine the quality of closed captioning and the style and standards which are appropriate for the particular type of programming. Finally, the Commission should examine the costs of closed captioning to programs and program providers.

Subsection (b) provides that consistent with the results of its the inquiry, the Commission is instructed to establish an appropriate schedule of deadlines and technical requirements regarding closed captioning of programming. While the goal of the Committee is to ensure that video programming is accessible to the hearing impaired, the Committee recognizes that the cost to caption certain programming may be prohibitive given the market demand for such program and other factors. Accordingly, the Commission shall establish reasonable timetables and exceptions for implementing this section. Such schedules should not be economically burdensome on program providers, distributors or the owners of such programs.

It is clearly more efficient and economical to caption programming at the time of production and to distribute it with captions than to have each delivery system or local broadcaster caption the program. Therefore, the Committee expects that most new pro-

gramming will be closed captioned, and that preexisting programming will be captioned to the maximum extent possible. The Committee intends for the previously produced programming to be captioned to the fullest extent possible, with the recognition that economic or logistical difficulties make it unrealistic to caption all previously produced programming. In general, the Committee does not intend that the requirement for captioning should result in a previously produced programming not being aired due to the cost of the captions.

Section 206(d) allows the Commission to exempt specific programs, or classes of programs, or entire services from captioning requirements. For example, the Commission may determine that it is economically burdensome to require captioning for certain types of programming, such as locally produced or regionally distributed program. Any exemption should be granted using the information collected during the inquiry, and should be based on a finding that the provision of closed captioning would be economically burdensome to the provider or owner of such programs.

The term "provider" contained throughout section 206(d) refers to the specific television station, cable operator, cable network or other service that provides programming to the public. When considering such exemptions, the Commission should focus on the individual outlet and not on the financial conditions of that outlet's corporate parent, nor on the resources of other business units within the parent's corporate structure.

When considering exemptions under paragraph (d)(1), the Commission shall consider several factors, including but not limited to: (1) the nature and cost of providing closed captions; (2) the impact on the operations of the program provider, distributor, or owner; (3) the financial resources of the program provider, distributor, or owner and the financial impact of the program; (4) the cost of the captioning considering the relative size of the market served or the audience share; (5) the cost of the captioning considering whether the program is locally or regionally produced and distributed; (6) the non-profit status of the provider; (7) the existence of alternative means of providing access to the hearing impaired, such as signing.

Paragraph (d)(2) recognizes that closed captioning should not be required where it would be inconsistent with programming contracts between program owners, distributors, or providers, already in effect as of the date of enactment of this section, or inconsistent with copyright law. In addition, cable operators and common carriers establishing video platforms may not refuse to carry programming or services which are required to be carried under the carriage provisions of title VI of the Communications Act or pursuant to retransmission consent obligations due to closed captioning requirements.

Paragraph (d)(3) authorizes the Commission to grant additional exemptions, on a case-by-case basis, where providing closed captions would constitute an undue burden. In making such determinations, the Commission shall balance the need for closed captioned programming against the potential for hindering the production and distribution of programming.

Nothing in this section shall be construed to undermine or impact negatively on existing Federal grants which have been successful in promoting closed captioning.

Subsection (e) directs the Commission to initiate an inquiry within six months of the date of enactment, regarding the use of video descriptions on video programming in order to ensure the accessibility of video programming to persons with visual impairments. The Commission shall report to Congress on its findings. The report shall assess appropriate methods for phasing video descriptions into the marketplace, technical and quality standards for video descriptions, a definition of programming for which video descriptions would apply, and other technical and legal issues. Following the completion of this inquiry the Commission may adopt regulations it deems necessary to promote the accessibility of video programming to persons with visual impairments. It is the goal of the Committee to ensure that all Americans ultimately have access to video services and programs, particularly as video programming becomes an increasingly important part of the home, school, and workplace.

Video description technology holds the promise of providing many visually impaired Americans with access to new programs and services. Subsection (f) therefore directs the National Telecommunications and Information Administration to establish and oversee marketplace tests designed to spur the development of this technology and accelerate the availability of video descriptive programming.

Section 207. Public access

The section requires the Commission to prescribe regulations to provide access for the public at preferential rates on cable systems and video platforms. Congress has previously found that it is in the public interest for the Federal Government to ensure that all citizens of the United States have access to public telecommunications services through all appropriate available telecommunications distribution technologies. The purpose of this section is to further that intent by insuring that capacity on cable systems and on video platforms is made available for services to the public. With respect to public broadcaster, it is the intent of this section to afford noncommercial broadcasters with a means of obtaining access to cable systems and video platform in the event their carriage rights under current law are invalidated.

The Commission should determine "appropriate capacity" in ways consistent with the intention of the Committee that sufficient bandwidth and switching capacity be made available, and, consistent with the build-out requirements of section 653 for the establishment of a video platform, so that capacity for the delivery of public services on these systems is guaranteed. In determining who should have access to cable systems and video platforms at preferential rates, the Commission may be guided, where appropriate, by the entities deemed eligible for preferential rates for advanced telecommunications services in section 201(c)(6)(B)(vi), as added by this legislation. The prescribed rates, terms, and conditions shall be consistent with the intent of maintaining access to public services. Nothing in section 207 is intended to prevent the Commission

from determining that capacity should be made available to eligible entities at no cost.

Section 208. Automated ship distress and safety systems

This section states that notwithstanding the Communications Act of 1934, a ship shall not be required to be equipped with a radio station operated by one or more radio officers or operators.

Section 209. Cable technical standards review

This section directs the Commission to review its standards under sections 624(e) and 624A of the Communications Act of 1934 to determine whether customers who do not subscribe to services offered on a per channel or per program basis can be assured of not receiving these signals, whether or not the subscriber uses a converter box or other device provided by the cable operator.

Section 210. Exclusive Federal jurisdiction over direct broadcast satellite service

This section amends the Communications Act of 1934 to state that the Commission has exclusive jurisdiction over the regulation of direct broadcast satellite (DBS) service. DBS is a new direct-to-home satellite broadcasting service which utilizes a Ku-Band satellite. The Commission currently regulates and issues licenses for DBS service pursuant to its authority contained in title III of the Communications Act to regulate radio communications. Section 210 reaffirms and clarifies that the Commission has exclusive authority over the regulation of DBS service.

TITLE III—PROCUREMENT PRACTICES OF TELECOMMUNICATIONS PROVIDERS

Section 301. Findings

Section 301 contains the findings.

Section 302. Purposes

Section 302 states the purposes of this title is to encourage and foster economic opportunities for business enterprises owned by minorities and women and to further create competition among telecommunications suppliers and providers.

Section 303. Annual plan submission

Section 303 requires the Commission to require each telecommunications provider to submit a plan outlining its plans for increasing procurement from business that are owned by minorities and women. The Commission shall provide an annual report to Congress, beginning January 1995.

Section 304. Sanctions and remedies

Section 304 authorizes punishment for those entities falsely representing themselves as a qualified enterprise.

Section 305. Definitions

Section 305 contains the definitions.

TITLE IV—FEDERAL COMMUNICATIONS COMMISSION RESOURCES

Section 401. Authorization of operations

This section authorizes appropriations for the Commission such sums as may be necessary to carry out this Act, and provides that additional amounts appropriated to carry out this Act shall be construed to be changes in the amounts appropriated for the performances of the activities described in section 9(a) of the Communications Act of 1934.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934

TITLE I—GENERAL PROVISIONS

PURPOSES OF ACT, CREATION OF FEDERAL COMMUNICATIONS COMMISSION

SECTION 1. *(a)* For the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense, for the purpose of promoting safety of life and property through the use of wire and radio communication, and for the purpose of securing a more effective execution of this policy by centralizing authority heretofore granted by law to several agencies and by granting additional authority with respect to interstate and foreign commerce in wire and radio communication, there is hereby created a commission to be known as the "Federal Communications Commission," which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this Act.

(b) The purposes described in subsection (a), as they relate to common carrier services, include—

(1) to preserve and enhance universal telecommunications service at just and reasonable rates;

(2) to encourage the continued development and deployment of advanced and reliable capabilities and services in telecommunications networks;

(3) to make available, so far as possible, to all the people of the United States, regardless of location or disability, a switched, broadband telecommunications network capable of enabling users to originate and receive affordable high quality voice, data, graphics, and video telecommunications services;

(4) to ensure that the costs of such networks and services are allocated equitably among users and are constrained by competition whenever possible;

(5) to ensure a seamless and open nationwide telecommunications network through joint planning, coordination, and service arrangements between and among carriers; and

(6) to ensure that common carriers' networks function at a high standard of quality in delivering advances in network capabilities and services.

APPLICATION OF ACT

SEC. 2. (a) * * *

(b) Except as provided in sections *201(c) and (d),* 223 through 227, inclusive, and section 332, and subject to the provisions of section 301 and title VI, nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier, or (2) any carrier engaged in interstate or foreign communication solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (3) any carrier engaged in interstate or foreign communication solely through connection by radio, or by wire and radio, with facilities, located in an adjoining State or in Canada or Mexico (where they adjoin the State in which the carrier is doing business), of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (4) any carrier to which clause (2) or clause (3) would be applicable except for furnishing interstate mobile radio communication service or radio communication service to mobile stations on land vehicles in Canada or Mexico; except that sections 201 through 205 of this Act, both inclusive, shall, except as otherwise provided therein, apply to carriers described in clauses (2), (3), and (4).

DEFINITIONS

SEC. 3. For the purposes of this Act, unless the context otherwise requires—

(a) * * *

* * * * * * *

(r) "Telephone exchange service" means *(A)* service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, *or (B) service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service within a State but which does not result in the subscriber incurring a telephone toll charge.*

* * * * * * *

(gg) "Information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of

any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

(hh) "Equal access" means to afford, to any person seeking to provide an information service or a telecommunications service, reasonable and nondiscriminatory access on an unbundled basis—

(1) to databases, signaling systems, poles, ducts, conduits, and rights-of-way owned or controlled by a local exchange carrier, or other facilities, functions, or information (including subscriber numbers) integral to the efficient transmission, routing, or other provision of telephone exchange services or telephone exchange access services;

(2) that is at least equal in type, quality, and price to the access which the carrier affords to itself or to any other person; and

(3) that is sufficient to ensure the full interoperability of the equipment and facilities of the carrier and of the person seeking such access.

(ii) "Open platform service" means a switched, end-to-end digital telecommunications service that is subject to title II of this Act, and that (1) provides subscribers with sufficient network capability to access multimedia information services, (2) is widely available throughout a State, (3) is provided based on industry standards, and (4) is available to all subscribers on a single line basis upon reasonable request.

(jj) "Local exchange carrier" means any person that is engaged in the provision of telephone exchange service or telephone exchange access service. Such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under section 332(c), except to the extent that the Commission finds that such service as provided by such person in a State is a replacement for a substantial portion of the wireline telephone exchange service within such State.

(kk) "Telephone exchange access service" means the offering of telephone exchange services or facilities for the purpose of the origination or termination of interexchange telecommunications services to or from an exchange area.

(ll) "Telecommunications" means the transmission, between or among points specified by the subscriber, of information of the subscriber's choosing, without change in the form or content of the information as sent and received, by means of an electromagnetic transmission medium, including all instrumentalities, facilities, apparatus, and services (including the collection, storage, forwarding, switching, and delivery of such information) essential to such transmission.

(mm) "Telecommunications service" means the offering, on a common carrier basis, of telecommunications facilities, or of telecommunications by means of such facilities. Such term does not include an information service.

* * * * * * *

NEW TECHNOLOGIES AND SERVICES

SEC. 7. (a) * * *

* * * * * * *

(c) LICENSING OF NEW TECHNOLOGIES.—

(1) EXPEDITED RULEMAKING.—Within 24 months after making a determination under subsection (b) that a technology or service related to the furnishing of telecommunications services is in the public interest, the Commission shall, with respect to any such service requiring a license or other authorization from the Commission, adopt and make effective regulations for—

(A) the provision of such technology or service; and

(B) the filing of applications for the licenses or authorizations necessary to offer such technology or service to the public, and shall act on any such application within 24 months after it is filed.

(2) REVIEW OF APPLICATIONS.—Any application filed by a carrier under this subsection for the construction or extension of a line shall also be subject to section 214 and to any necessary approval by the appropriate State commissions.

* * * * * * *

TITLE II—COMMON CARRIERS

SERVICE AND CHARGES

SEC. 201. (a) * * *

* * * * * * *

(c) EQUAL ACCESS.—

(1) OPENNESS AND ACCESSIBILITY OBLIGATIONS.—

(A) COMMON CARRIER OBLIGATIONS.—The duty of a common carrier under subsection (a) to furnish communications service includes the duty to interconnect with the facilities and equipment of other providers of telecommunications services and information services in accordance with such regulations as the Commission may prescribe as necessary or desirable in the public interest with respect to the openness and accessibility of common carrier networks.

(B) ADDITIONAL OBLIGATIONS OF LOCAL EXCHANGE CARRIERS.—The duty under subsection (a) of a local exchange carrier includes the duty—

(i) to provide, in accordance with the regulations prescribed under paragraph (2), equal access to and interconnection with the facilities of the carrier's networks to any other carrier or person providing telecommunications services or information services reasonably requesting such equal access and interconnection, so that such networks are fully interoperable with such telecommunications services and information services; and

(ii) to offer unbundled features, functions, and capabilities whenever technically feasible and economically reasonable, in accordance with requirements prescribed by the Commission pursuant to this subsection and other laws.

(2) EQUAL ACCESS AND INTERCONNECTION REGULATIONS.—

(A) REGULATIONS REQUIRED.—Within 1 year after the date of enactment of this subsection, the Commission shall establish regulations that require reasonable and nondiscriminatory equal access to and interconnection with the facilities of a local exchange carrier's network at any technically feasible and economically reasonable point within the carrier's network on reasonable terms and conditions, to any other carrier or person offering telecommunications services requesting such access. The Commission shall establish such regulations after consultation with the Joint Board established pursuant to subparagraph (D). Such regulations shall provide for actual collocation of equipment necessary for interconnection for telecommunications services at the premises of a local exchange carrier, except that the regulations shall provide for virtual collocation where the local exchange carrier demonstrates that actual collocation is not practical for technical reasons or because of space limitations.

(B) COMPENSATION.—Within 1 year after the date of enactment of this subsection, the Commission shall establish regulations requiring just and reasonable compensation to the exchange carrier providing such equal access and interconnection pursuant to subparagraph (A). Such regulations shall include regulations to require the carrier, to the extent it provides a telecommunications service or an information service, to impute such access and interconnection charges to itself as the Commission determines are reasonable and nondiscriminatory.

(C) EXEMPTIONS AND MODIFICATIONS.—Notwithstanding paragraph (1) or subparagraph (A) of this paragraph, a rural telephone company shall not be required to provide equal access and interconnection to another local exchange carrier. The Commission shall not apply the requirements of this paragraph or impose requirements pursuant to paragraph (1)(B)(ii) to any rural telephone company, except to the extent that the Commission determines that compliance with such requirements would not be unduly economically burdensome, unfairly competitive, technologically infeasible, or otherwise not in the public interest. The Commission may modify the requirements of this paragraph for any other local exchange carrier that has, in the aggregate nationwide, fewer than 500,000 access lines installed, to the extent that the Commission determines that compliance with such requirements (without such modification) would be unduly economically burdensome, technologically infeasible, or otherwise not in the public interest. The Commission may include, in the regulations prescribed pursuant to paragraph (1)(B), modified requirements for any feature, function, or capability that the Commission determines is generally available to competing providers of telecommunications services or information services at the same or better price, terms, and conditions.

(D) JOINT BOARD ON EQUAL ACCESS AND INTERCONNECTION STANDARDS.—Within 30 days after the date of enactment of this subsection, the Commission shall convene a Federal-State Joint Board under section 410(c) for the purpose of preparing a recommended decision for the Commission with respect to the equal access and interconnection regulations required by this paragraph.

(E) ENFORCEMENT OF EXISTING REGULATIONS.—Nothing in this section shall be construed to prohibit the Commission from enforcing regulations prescribed prior to the date of enactment of this subsection in fulfilling the requirements of this subsection to the extent that such regulations are consistent with the provisions of this subsection.

(F) DEFINITION OF RURAL TELEPHONE COMPANY.—For the purpose of subparagraph (C) of this paragraph, the term "rural telephone company" means a local exchange carrier operating entity to the extent that such entity—

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

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

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

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

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

(3) PREEMPTION.—

(A) LIMITATION.—Notwithstanding section 2(b), no State or local government may, after one year after the date of enactment of this subsection—

(i) effectively prohibit any person or carrier from providing any interstate or intrastate telecommunications service or information service, or impose any restriction or condition on entry into the business of providing any such service;

(ii) prohibit any carrier or other person providing interstate or intrastate telecommunications services or information services from exercising the access and interconnection rights provided under this subsection; or

(iii) impose any limitation on the exercise of such rights.

(B) PERMITTED TERMS AND CONDITIONS.—Subparagraph (A) shall not be construed to prohibit a State from imposing a term or condition on providers of telecommunications services or information services if such term or condition is

not inconsistent with subparagraph (A) and is necessary and appropriate to—

(i) protect public safety and welfare;

(ii) ensure the continued quality of intrastate telecommunications;

(iii) ensure that rates for intrastate telecommunications services are just and reasonable; or

(iv) ensure that the provider's business practices are consistent with consumer protection laws and regulations.

(C) EXCEPTION.—In the case of commercial mobile services, the provisions of section 332(c)(3) shall apply in lieu of the provisions of this paragraph.

(D) PARITY OF FRANCHISE AND OTHER CHARGES.—Notwithstanding section 2(b), no local government may, after 1 year after the date of enactment of this subsection, impose or collect any franchise, license, permit, or right-of-way fee or any assessment, rental, or any other charge or equivalent thereof as a condition for operating in the locality or for obtaining access to, occupying, or crossing public rights-of-way from any provider of telecommunications services that distinguishes between or among providers of telecommunications services, including the local exchange carrier. For purposes of this subsection, a franchise, license, permit, or right-of-way fee or an assessment, rental, or any other charge or equivalent thereof does not include any imposition of general applicability which does not distinguish between or among providers of telecommunications services, or any tax.

(4) TARIFFS.—

(A) GENERALLY.—Within 18 months after the date of enactment of this subsection, a local exchange carrier shall prepare and file tariffs in accordance with this Act with respect to the services or elements offered to comply with the equal access and interconnection regulations required under this subsection. The costs that a carrier incurs in providing such services or elements shall be borne solely by the users of the features and functions comprising such services or elements or of the feature or function that uses or includes such services or elements. The Commission shall review such tariffs to ensure that—

(i) the charges for such services or elements are cost-based; and

(ii) the terms and conditions contained in such tariffs unbundle any separable services, elements, features, or functions in accordance with paragraph (1)(B)(ii) and any regulations thereunder.

(B) SUPPORTING INFORMATION.—A local exchange carrier shall submit supporting information with its tariffs for equal access and interconnection that is sufficient to enable the Commission and the public to determine the relationship between the proposed charges and the costs of providing such services or elements. The submission of such information shall be pursuant to regulations adopted by the

Commission to ensure that similarly situated carriers provide such information in a uniform fashion.

(5) PRICING FLEXIBILITY.—

(A) ESTABLISHMENT OF CRITERIA.—Within 270 days after the date of enactment of this subsection, the Commission, by regulation, shall establish criteria for determining—

(i) whether a telecommunications service or provider of such service has become, or is substantially certain to become, subject to competition, either within a geographic area or within a class or category of service;

(ii) whether such competition will effectively prevent rates for such service that are unjust or unreasonable or that are unjustly or unreasonably discriminatory; and

(iii) appropriate flexible pricing procedures that can be used in lieu of the filing of tariff schedules, or in lieu of other pricing procedures established by the Commission, and that are consistent with the protection of subscribers and the public interest, convenience, and necessity.

(B) DETERMINATIONS.—The Commission, with respect to rates for interstate or foreign communications, and State commissions, with respect to rates for intrastate communications, shall, upon application—

(i) render determinations in accordance with the criteria established under clauses (i) and (ii) of subparagraph (A) concerning the services or providers that are the subject of such application; and

(ii) upon a proper showing, establish appropriate flexible pricing procedures consistent with the criteria established under clause (iii) of such subparagraph.

The Commission shall approve or reject any such application within 180 days after the date of its submission.

(C) EXCEPTION.—In the case of commercial mobile services, the provisions of section 332(c)(1) shall apply in lieu of the provisions of this paragraph.

(6) JOINT BOARD TO PRESERVE UNIVERSAL SERVICE.—

(A) ESTABLISHMENT; FUNCTIONS.—Within 30 days after the date of enactment of this subsection, the Commission shall convene a Federal-State Joint Board under section 410(c) for the purpose of recommending actions to the Commission and State commissions for the preservation of universal service. As a part of preparing such recommendations, the Joint Board shall survey providers and users of telephone exchange service and consult with State commissions in order to determine the pecuniary difference between the cost of providing universal service and the prices determined to be appropriate for such service.

(B) PRINCIPLES.—The Joint Board shall base policies for the preservation of universal service on the following principles:

(i) A plan adopted by the Commission and the States should ensure the continued viability of universal serv-

ice by maintaining quality services at just and reasonable rates.

(ii) Such plan should define the nature and extent of the services encompassed within carriers' universal service obligations. Such plan should seek to promote access to advanced telecommunications services and capabilities, including open platform service, for all Americans by including access to advanced telecommunications services and capabilities in the definition of universal service while maintaining just and reasonable rates. Such plan should ensure reasonably comparable services for the general public in urban and rural areas.

(iii) Such plan should establish specific and predictable mechanisms to provide adequate and sustainable support for universal service.

(iv) All providers of telecommunications services should make an equitable and nondiscriminatory contribution to preservation of universal service.

(v) Such plan should permit residential subscribers to continue to receive only basic voice-grade local telephone service, equivalent to the service generally available to residential subscribers on the date of enactment of this subsection, at just, reasonable, and affordable rates. Determinations concerning the affordability of rates for such services shall take into account the rates generally available to residential subscribers on such date of enactment and the pricing rules established by the States. If the plan would result in any increases in the rates for such services for residential subscribers that are not attributable to changes in consumer prices generally, such plan shall include a requirement that a rate increase shall be permitted in any proceeding commenced after March 16, 1994, only upon a showing that such increase is necessary to prevent competitive disadvantages for one or more service providers and is in the public interest. Such plan should provide that any such increase in rates shall be minimized to the greatest extent practical and shall be implemented over a time period of not less than 5 years.

(vi) To the extent that a common carrier establishes advanced telecommunications services, such plan should include provisions to promote public access to advanced telecommunications services, other than a video platform, at a preferential rate that will recover only the added costs of providing such service, for educational, library, public broadcast, and other tax-exempt institutions, and governmental entities, both as producers and users of services as soon as technically feasible and economically reasonable. Such preferential rates should only be made available to such institutions and entities for the purpose of providing noncommercial information services or telecommunications services to the general public and not for the internal

telecommunications needs or commercial use of such institutions and entities.

(vii) Such plan should determine and establish mechanisms to ensure that rates charged by a provider of interexchange telecommunications services for services in rural areas are maintained at levels no higher than those charged by the same carrier to subscribers in urban areas.

(viii) Such plan should, notwithstanding any other provision of law, require common carriers serving more than 1,800,000 access lines in the aggregate nationwide, to be subject to alternative or price regulation, and not cost-based rate-of-return regulation, for services that are subject to the jurisdiction of the Commission or the States, as applicable, when such carrier's network has been made open to competition as a result of its implementation of the equal access, interconnection, and accessibility provisions of this subsection.

(ix) Such other principles as the Board determines are necessary and appropriate for the protection of the public interest, convenience, and necessity and consistent with the purposes of this Act.

(C) DEFINITION OF UNIVERSAL SERVICE; ACCESS TO ADVANCED SERVICES.—In defining the nature and extent of the services encompassed within carriers' universal service obligations under subparagraph (B)(ii), the Joint Board shall consider the extent to which—

(i) a telecommunications service has, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers;

(ii) denial of access to such service to any individual would unfairly deny that individual educational and economic opportunities;

(iii) such service has been deployed in the public switched telecommunications network; and

(iv) inclusion of such service within carriers' universal service obligations is otherwise consistent with the public interest, convenience, and necessity.

The Joint Board may, from time to time, recommend to the Commission modifications in the definition proposed under subparagraph (B).

(D) REPORT; COMMISSION RESPONSE.—The Joint Board convened pursuant to subparagraph (A) shall report its recommendations within 270 days after the date of enactment of this subsection. The Commission shall complete any proceeding to act upon such recommendations within one year after such date of enactment. A State may adopt regulations to implement the Joint Board's recommendations, except that such regulations shall not, after 18 months after such date of enactment, be inconsistent with regulations prescribed by the Commission to implement such recommendations.

(7) CROSS SUBSIDIES PROHIBITION.—The Commission shall—

(A) prescribe regulations to prohibit a common carrier from engaging in any practice that results in the inclusion in rates for telephone exchange service or telephone exchange access service of any operating expenses, costs, depreciation charges, capital investments, or other expenses directly associated with the provision of competing telecommunications services, information services, or video programming services by the common carrier or affiliate; and

(B) ensure such competing telecommunications services, information services or video programming services bear a reasonable share of the joint and common costs of facilities used to provide telephone exchange service or telephone exchange access service and competing telecommunications services, information services, or video programming services.

(8) RESALE.—The resale or sharing of telephone exchange service (or unbundled services, elements, features, or functions of such service) in conjunction with the furnishing of a telecommunications service or any information service shall not be prohibited nor subject to unreasonable conditions by the carrier, the Commission, or any State.

(9) TELECOMMUNICATIONS NUMBER PORTABILITY.—The Commission shall prescribe regulations to ensure that—

(A) telecommunications number portability shall be available, upon request, as soon as technically feasible and economically reasonable; and

(B) an impartial entity shall administer telecommunications numbering and make such numbers available on an equitable basis.

The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States. For the purpose of this paragraph, the term "telecommunications number portability" means the ability of users of telecommunications services to retain existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one provider of telecommunications services to another.

(10) REVIEW OF STANDARDS AND REQUIREMENTS.—At least once every three years, the Commission shall—

(A) conduct a proceeding in which interested parties shall have an opportunity to comment on whether the standards and requirements established by or under this subsection have opened the networks of carriers to reasonable and nondiscriminatory access by providers of telecommunications services and information services;

(B) review the definition of, and the adequacy of support for, universal service, and evaluate the extent to which universal service has been protected and access to advanced services has been facilitated pursuant to this subsection and the plans and regulations thereunder; and

(C) submit to the Congress a report containing a statement of the Commission's findings pursuant to such proceeding, and including an identification of any defects or

delays observed in attaining the objectives of this subsection and a plan for correcting such defects and delays.

(11) STUDY OF RURAL PHONE SERVICE.—Within 1 year after the date of enactment of this subsection, the Commission shall initiate an inquiry to examine the effects of competition in the provision of telephone exchange access service and telephone exchange service on the availability and rates for telephone exchange access service and telephone exchange service furnished by rural exchange carriers.

(d) NETWORK FUNCTIONALITY AND QUALITY.—

(1) FUNCTIONALITY AND RELIABILITY OBLIGATIONS.—The duty of a common carrier under subsection (a) to furnish communications service includes the duty to furnish that service in accordance with such regulations of functionality and reliability as the Commission may prescribe as necessary or desirable in the public interest pursuant to this subsection.

(2) COORDINATED PLANNING FOR INTEROPERABILITY AND OTHER PURPOSES.—The Commission shall establish—

(A) procedures for the conduct of coordinated network planning by common carriers and other providers of telecommunications services or information services, subject to Commission supervision, for the effective and efficient interconnection and interoperability of public and private networks; and

(B) procedures for Commission oversight of the development by appropriate standards-setting organizations of—

(i) standards for the interconnection and interoperability of such networks;

(ii) standards that promote access to network capabilities and services by individuals with disabilities; and

(iii) standards that promote access to information services by subscribers to telephone exchange service furnished by a rural telephone company (as such term is defined in subsection (c)(2)(F)).

(3) OPEN PLATFORM SERVICE.—

(A) STUDY.—Within 90 days after the date of enactment of this subsection, the Commission shall initiate an inquiry to consider the regulations and policies necessary to make open platform service available to subscribers at reasonable rates based on the reasonably identifiable costs of providing such service, utilizing existing facilities or new facilities with improved capability or efficiency. The inquiry required under this paragraph shall be completed within 180 days after the date of its initiation.

(B) REGULATIONS.—On the basis of the results of the inquiry required under subparagraph (A), the Commission shall prescribe and make effective such regulations as are necessary to implement the inquiry's conclusions. Such regulations may require a local exchange carrier to file, in the appropriate jurisdiction, tariffs for the origination and termination of open platform service as soon as such service is economically and technically feasible. In establishing any such regulations, the Commission shall take into account

the proximate and long-term deployment plans of local exchange carriers.

(C) TEMPORARY WAIVER.—The Commission shall also establish a procedure to waive temporarily specific provisions of the regulations prescribed under this paragraph if a local exchange carrier demonstrates that compliance with such requirement—

(i) would be economically or technically infeasible, or

(ii) would materially delay the deployment of new facilities with improved capabilities or efficiencies that will be used to meet the requirements of open platform services.

Such petitions shall be decided by the Commission within 180 days after the date of its submission.

(D) COST ALLOCATION.—Any such regulations shall provide for the allocation of all costs of facilities jointly used to provide open platform service and telephone exchange service or telephone exchange access services.

(E) STATE AUTHORITY.—Nothing in this paragraph shall be construed to limit a State's authority to continue to regulate any services subject to State jurisdiction under this Act.

(F) CONTINUING OVERSIGHT.—Commencing not later than 2 years after the date of enactment of this subsection, the Commission shall conduct an inquiry on the progress of open platform service deployment. The Commission shall submit a report to the Congress on the results of such inquiry within 180 days after the commencement of such inquiry and annually thereafter for the succeeding 5 years.

(4) ACCESSIBILITY REGULATIONS.—

(A) REGULATIONS.—Within 1 year after the date of enactment of this section, the Commission shall prescribe such regulations as are necessary to ensure that advances in network services deployed by local exchange carriers shall be accessible and usable by individuals with disabilities, including individuals with functional limitations of hearing, vision, movement, manipulation, speech, and interpretation of information, unless the cost of making the services accessible and usable would result in an undue burden or adverse competitive impact. Such regulations shall seek to permit the use of both standard and special equipment, and seek to minimize the need of individuals to acquire additional devices beyond those used by the general public to obtain such access. Throughout the process of developing such regulations, the Commission shall coordinate and consult with representatives of individuals with disabilities and interested equipment and service providers to ensure their concerns and interests are given full consideration in such process.

(B) COMPATIBILITY.—Such regulations shall require that whenever an undue burden or adverse competitive impact would result from the requirements in subparagraph (A), the local exchange carrier that deploys the network service shall ensure that the network service in question is compat-

ible with existing peripheral devices or specialized customer premises equipment commonly used by persons with disabilities to achieve access, unless doing so would result in an undue burden or adverse competitive impact.

(C) UNDUE BURDEN.—The term "undue burden" means significant difficulty or expense. In determining whether the activity necessary to comply with the requirements of this paragraph would result in an undue burden, the factors to be considered include the following:

(i) The nature and cost of the activity.

(ii) The impact on the operation of the facility involved in the deployment of the network service.

(iii) The financial resources of the local exchange carrier.

(iv) The type of operations of the local exchange carrier.

(D) ADVERSE COMPETITIVE IMPACT.—In determining whether the activity necessary to comply with the requirements of this paragraph would result in adverse competitive impact, the following factors shall be considered:

(i) Whether such activity would raise the cost of the network service in question beyond the level at which there would be sufficient consumer demand by the general population to make the network service profitable.

(ii) Whether such activity would, with respect to the network service in question, put the local exchange carrier at a competitive disadvantage. This factor may be considered so long as competing network service providers are not held to the same obligation with respect to access by persons with disabilities.

(E) REVIEW OF STANDARDS AND REQUIREMENTS.—At least once every 3 years, the Commission shall conduct a proceeding in which interested parties shall have an opportunity to comment on whether the regulations established under this paragraph have ensured that advances in network services by providers of telecommunications services and information services are accessible and usable by individuals with disabilities.

(F) EFFECTIVE DATE.—The regulations required by this paragraph shall become effective 18 months after the date of enactment of this subsection.

(5) QUALITY RULES.—

(A) MEASURES OR BENCHMARKS REQUIRED.—The Commission shall designate or otherwise establish network reliability and quality performance measures or benchmarks for common carriers for the purpose of ensuring the continued maintenance and evolution of common carrier facilities and service. Not later than 180 days after the date of enactment of this subsection, the Commission shall initiate a rulemaking proceeding to establish such performance measures or benchmarks.

(B) CONTENTS OF REGULATIONS.—Such regulations shall include—

(i) quantitative network reliability and service quality performance measures or benchmarks;

(ii) procedures to monitor and evaluate common carrier efforts to increase network reliability and service quality; and

(iii) procedures to resolve network reliability and service quality complaints.

(C) COORDINATION AND CONSULTATION.—Throughout the process of developing network reliability and service quality performance measures or benchmarks, as required by subparagraphs (A) and (B), the Commission shall coordinate and consult with service and equipment providers and users and State regulatory bodies to ensure their concerns and interests are given full consideration in such process.

(6) RURAL EXEMPTION.—The Commission may modify, or grant exemptions from, the requirements of this subsection in the case of a common carrier providing telecommunications services in a rural area.

(e) INFRASTRUCTURE SHARING.—

(1) REGULATIONS REQUIRED.—Within one year after the date of enactment of this subsection, the Commission shall prescribe regulations that require local exchange carriers to make available to any qualifying carrier such public switched telecommunications network technology and information and telecommunications facilities and functions as may be requested by such qualifying carrier for the purpose of enabling that carrier to provide telecommunications services, or to provide access to information services, in the geographic area in which that carrier has requested and obtained designation as the qualifying carrier.

(2) QUALIFYING CARRIERS.—For purposes of paragraph (1), the term "qualifying carrier" means a local exchange carrier that—

(A) lacks economies of scale or scope, as determined in accordance with regulations prescribed by the Commission pursuant to this subsection; and

(B) is a common carrier which offers telephone exchange service, telephone exchange access service, and any other service that is within the definition of universal service, to all customers without preference throughout one or more exchange areas in existence on the date of enactment of this subsection.

(3) TERMS AND CONDITIONS OF REGULATIONS.—The regulations prescribed by the Commission pursuant to this subsection—

(A) shall not require any local exchange carrier to take any action that is economically unreasonable or that is contrary to the public interest;

(B) shall permit, but shall not require, the joint ownership or operation of public switched telecommunications network facilities, functions, and services by or among the local exchange carrier and the qualifying carrier;

(C) shall ensure that a local exchange carrier shall not be treated by the Commission or any State commission as

a common carrier for hire, or as offering common carrier services, with respect to any technology, information, facilities, or functions made available to a qualifying carrier pursuant to this subsection;

(D) shall ensure that local exchange carriers make such technology, information, facilities, or functions available to qualifying carriers on fair and reasonable terms and conditions that permit such qualifying carriers to fully benefit from the economies of scale and scope of the providing local exchange carrier, as determined in accordance with guidelines prescribed by the Commission in such regulations;

(E) shall establish conditions that promote cooperation between local exchange carriers and qualifying carriers; and

(F) shall not require any local exchange carrier to engage in any infrastructure sharing agreement for any geographic area where such carrier is required to provide services subject to State regulation.

(4) INFORMATION CONCERNING DEPLOYMENT OF NEW SERVICES AND EQUIPMENT.—Any local exchange carrier that has entered into an agreement with a qualifying carrier under this subsection shall provide to each party to such agreement timely information on the planned deployment of telecommunications services and equipment, including software integral to such telecommunications services and equipment, including upgrades.

* * * * * * *

COMPLAINTS TO THE COMMISSION

SEC. 208. (a) * * *

* * * * * * *

(c) EXPEDITED REVIEW OF CERTAIN COMPLAINTS.—The Commission shall issue a final order with respect to any complaint arising from alleged violations of the regulations and orders prescribed pursuant to section 201(c) within 180 days after the date such complaint is filed.

* * * * * * *

EXTENSION OF LINES

SEC. 214. (a) * * *

* * * * * * *

(e) Any application filed under this section for authority to construct or extend a line shall address the means by which such construction or extension will meet the network access needs of individuals with disabilities.

* * * * * * *

REGULATION OF POLE ATTACHMENTS

SEC. 224. (a) As used in this section:

(1) * * *

* * * * * * *

(4) The term "pole attachment" means any attachment by a cable television system *or a provider of telecommunications service* to a pole, duct, conduit, or right-of-way owned or controlled by a utility.

* * * * * * *

(c)(1) * * *

(2) Each State which regulates the rates, terms, and conditions for pole attachments shall certify to the Commission that—

(A) * * *

(B) in so regulating such rates, terms, and conditions, the State has the authority to consider and does consider the interests of the subscribers of [cable television services] *the services offered via such attachments*, as well as the interests of the consumers of the utility services.

[(d)(1) For purposes of subsection (b) of this section, a rate is just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way.]

(d)(1) For purposes of subsection (b) of this section, the Commission shall, no later than 1 year after the date of enactment of the National Communications Competition and Information Infrastructure Act of 1994, prescribe regulations for ensuring that utilities charge just and reasonable and nondiscriminatory rates for pole attachments provided to all providers of telecommunications services, including such attachments used by cable television systems to provide telecommunications services (as defined in section 3(mm) of this Act). Such regulations shall—

(A) recognize that the entire pole, duct, conduit, or right-of-way other than the usable space is of equal benefit to all attachments to the pole duct, conduit, or right-of-way and therefore apportion the cost of the space other than the usable space equally among all attachments,

(B) recognize that the usable space is of proportional benefit to all entities attached to the pole, duct, conduit, or right-of-way and therefore apportion the cost of the usable space according to the percentage of usable space required for each entity, and

(C) allow for reasonable terms and conditions relating to health, safety, and the provision of reliable utility service.

(2) The final regulations prescribed by the Commission pursuant to subparagraphs (A), (B), and (C) of subsection (d)(1) shall not apply to a pole attachment used by a cable television system which solely provides cable service as defined in section 602(6) of this Act. The rates for pole attachments used for such purposes shall assure a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct, conduit, or right-of-way capacity, which is occu-

pied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way.

(3) For all providers of telecommunications services except members of the exchange carrier association established in 47 C.F.R. 69.601 as of December 31, 1993, upon enactment of this paragraph and until the Commission promulgates its final regulations pursuant to subparagraphs (A), (B), and (C) of paragraph (1), the rate formula contained in any joint use pole attachment agreement between the electric utility and the largest local exchange carrier having such a joint use agreement in the utility's service area, in effect on January 1, 1994, shall also apply to the pole attachments in the utility's service area, but if no such joint use agreement containing a rate formula exists, then the pole attachment rate shall be the rate applicable under paragraph (2) to cable television systems which solely provide cable service as defined in section 602(6) of this Act. Disputes concerning the applicability of a joint use agreement shall be resolved by the Commission or the States, as appropriate.

[(2)] *(4)* As used in this subsection, the term "usable space" means the space above the minimum grade level which can be used for the attachment of wires, cables, and associated equipment.

* * * * * * *

SEC. 229. TELECOMMUNICATIONS SERVICES FOR EDUCATIONAL INSTITUTIONS, HEALTH CARE INSTITUTIONS, AND LIBRARIES.

(a) PROMOTION OF DELIVERY OF ADVANCED SERVICES.—In fulfillment of its obligation under section 1 to make available to all the people of the United States a rapid, efficient, nationwide, and worldwide communications service, the Commission shall promote the provision of advanced telecommunications services by wire, wireless, cable, and satellite technologies to—

(1) educational institutions;

(2) health care institutions; and

(3) public libraries.

(b) ANNUAL SURVEY REQUIRED.—The National Telecommunications and Information Administration shall conduct a nationwide survey of the availability of advanced telecommunications services to educational institutions, health care institutions, and public libraries. The Administration shall complete the survey and release publicly the results of such survey not later than one year after the date of enactment of this section. The results of such survey shall include—

(1) the number of educational institutions and classrooms, health care institutions, and public libraries;

(2) the number of educational institutions and classrooms, health care institutions, and public libraries that have access to advanced telecommunications services; and

(3) the nature of the telecommunications facilities through which such educational institutions, health care institutions, and public libraries obtain access to advanced telecommunications services.

The National Telecommunications and Information Administration shall update annually the survey required by this section. The survey required under this subsection shall be prepared in consultation

with the Department of Education, Department of Health and Human Services, and such other Federal, State, and local departments, agencies, and authorities that may maintain or have access to information concerning the availability of advanced telecommunications services to educational institutions, health care institutions, and libraries.

(c) RULEMAKING REQUIRED.—Within one year after the date of enactment of this section, the Commission shall issue a notice of proposed rulemaking for the purpose of adopting regulations that—

(1) enhance, to the extent technically feasible and economically reasonable, the availability of advanced telecommunications services to all educational institutions and classrooms, health care institutions, and public libraries by the year 2000;

(2) ensure that appropriate functional requirements or performance standards, or both, including interoperability standards, are established for telecommunications systems or facilities that interconnect educational institutions, health care institutions, and public libraries with the public switched telecommunications network;

(3) define the circumstances under which a carrier may be required to interconnect its telecommunications network with educational institutions, health care institutions, and public libraries;

(4) provide for either the establishment of preferential rates for telecommunications services, including advanced services, that are provided to educational institutions, health care institutions, and public libraries, or the use of alternative mechanisms to enhance the availability of advanced services to these institutions; and

(5) address such other related matters as the Commission may determine.

(d) FEASIBILITY STUDY.—The Commission shall assess the feasibility of including postsecondary educational institutions in any regulations promulgated under this section.

(e) DEFINITIONS.—For purposes of this section—

(1) the term "educational institutions" means elementary and secondary educational institutions; and

(2) the term "health care institutions" means not-for-profit health care institutions, including hospitals and clinics.

SEC. 230. POLICY AND RULEMAKING TO PROMOTE COMPETITION BY SMALL BUSINESS AND MINORITY-OWNED BUSINESS CONCERNS.

(a) POLICY; FINDING.—It shall be the policy of the Commission to promote whenever possible the ownership of information services and telecommunication services by small business concerns, minority-owned business concerns, and nonprofit entities. The Congress finds that the goals of competitively priced services, service innovation, employment, and diversity of viewpoint can be advanced by promoting marketplace penetration by such concerns and entities.

(b) RULEMAKING REQUIRED.—Within 1 year after the date of enactment of this section, the Commission, in consultation with the National Telecommunications and Information Administration, shall initiate a rulemaking proceeding for the purpose of lowering market entry barriers for small business, minority-owned business

concerns, and nonprofit entities that are seeking to provide telecommunication services and information services. The proceeding shall seek to provide remedies for, among other things, lack of access to capital and technical and marketing expertise on the part of such concerns and entities. Consistent with the broad policy and finding set forth in subsection (a), the Commission shall adopt such regulations and make such recommendations to Congress as the Commission deems appropriate. Not later than 2 years after the date of enactment of this section, the Commission shall complete the proceeding required by this subsection.

TITLE III—PROVISIONS RELATING TO RADIO

PART I—GENERAL PROVISIONS

* * * * * * *

GENERAL POWERS OF COMMISSION

SEC. 303. Except as otherwise provided in this Act, the Commission from time to time, as public convenience, interest, or necessity requires shall—

(a) * * *

* * * * * * *

(v) Have exclusive jurisdiction over the regulation of the direct broadcast satellite service.

* * * * * * *

TITLE VI—CABLE COMMUNICATIONS

PART I—GENERAL PROVISIONS

* * * * * * *

DEFINITIONS

SEC. 602. For purposes of this title—

(1) * * *

* * * * * * *

(6) the term "cable service" means—

(A) * * *

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

* * * * * * *

(18) the term "telephone service area" when used in connection with a common carrier subject in whole or in part to title II of this Act means the area within which such carrier provides telephone exchange service as of November 20, 1993, but if any common carrier after such date transfers its 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;

[(18)] *(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

[(19)] *(20)* the term "video programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

* * * * * * *

PART II—USE OF CABLE CHANNELS AND CABLE OWNERSHIP RESTRICTIONS

* * * * * * *

OWNERSHIP RESTRICTIONS

SEC. 613. (a) * * *

[(b)(1) It shall be unlawful for any common carrier, subject in whole or in part to title II of this Act, to provide video programming directly to subscribers in its telephone service area, either directly or indirectly through an affiliate owned by, operated by, controlled by, or under common control with the common carrier.

[(2) It shall be unlawful for any common carrier, subject in whole or in part to title II of this Act, to provide channels of communications or pole line conduit space, or other rental arrangements, to any entity which is directly or indirectly owned by, operated by, controlled by, or under common control with such common carrier, if such facilities or arrangements are to be used for, or in connection with, the provision of video programming directly to subscribers in the telephone service area of the common carrier.

[(3) This subsection shall not apply to any common carrier to the extent such carrier provides telephone exchange service in any rural area (as defined by the Commission).

[(4) In those areas where the provision of video programming directly to subscribers through a cable system demonstrably could not exist except through a cable system owned by, operated by, controlled by, or affiliated with the common carrier involved, or upon other showing of good cause, the Commission may, on petition for waiver, waive the applicability of paragraphs (1) and (2) of this subsection. Any such waiver shall be made in accordance with section 63.56 of title 47, Code of Federal Regulations (as in effect September 20, 1984) and shall be granted by the Commission upon a finding that the issuance of such waiver is justified by the particlar circumstances demonstrated by the petitioner, taking into account the policy of this subsection.]

(b)(1) Subject to the requirements of part V and the other provisions of this title, any common carrier subject in whole or in part to title II of this Act may, either through its own facilities or through an affiliate owned, operated, or controlled by, or under common control with, the common carrier, provide video programming directly to subscribers in its telephone service area.

(2) Subject to the requirements of part V and the other provisions of this title, any common carrier subject in whole or in part to title II of this Act may provide channels of communications or pole, line,

or conduit space, or other rental arrangements, to any entity which is directly or indirectly owned, operated, or controlled by, or under common control with, such common carrier, if such facilities or arrangements are to be used for, or in connection with, the provision of video programming directly to subscribers in its telephone service area.

(3) Notwithstanding paragraphs (1) and (2), an affiliate that—

(A) is, consistent with section 656, owned, operated, or controlled by, or under common control with, a common carrier subject in whole or in part to title II of this Act, and

(B) provides video programming to subscribers in the telephone service area of such carrier, but

(C) does not utilize the local exchange facilities or services of any affiliated common carrier in distributing such programming,

shall not be subject to the requirements of part V, but shall be subject to the requirements of this part and parts III and IV.

* * * * * * *

PART III—FRANCHISING AND REGULATION

GENERAL FRANCHISE REQUIREMENTS

SEC. 621. (a) * * *
(b)(1) * * *

* * * * * * *

(3)(A) To the extent that 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 title; and

(ii) the provisions of this title shall not apply to such cable operator or affiliate.

(B) A franchising authority may not impose any requirement 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 title with respect to the provision of such telecommunications service.

(D) A franchising authority may not require a cable operator to provide any telecommunications service or facilities as a condition of the initial grant of a franchise or a franchise renewal.

* * * * * * *

FRANCHISE FEES

SEC. 622. (a) * * *

(b) 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.

* * * * * * *

PART V—VIDEO PROGRAMMING SERVICES PROVIDED BY TELEPHONE COMPANIES

SEC. 651. DEFINITIONS.

For purposes of this part—

(1) the term "control" means—

(A) an ownership interest in which an entity has the right to vote more than 50 percent of the outstanding common stock or other ownership interest; or

(B) actual working control, as defined in the order of the Commission entitled "Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competitive Act of 1992—Horizontal and Vertical Ownership Limits, Cross-Ownership Limitations, and Anti-Trafficking Provisions", MM Docket 92–264, adopted September 23, 1993, if no single entity directly or indirectly has the right to vote more than 50 percent of the outstanding common stock or other ownership interest;

(2) the term "video platform" has the same meaning as the term "basic platform" in the order of the Commission entitled "Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54–63.58", CC Docket No. 87–266, adopted July 16, 1992, except that the Commission may modify this definition by regulation consistent with the purposes of this Act; and

(3) the term "rural area" means a geographic area that does not include either—

(A) any incorporated or unincorporated place of 10,000 inhabitants or more, or any part thereof; or

(B) any territory, incorporated or unincorporated, included in an urbanized area.

SEC. 652. SEPARATE VIDEO PROGRAMMING AFFILIATE.

(a) IN GENERAL.—Except as provided in subsection (d) of this section, a common carrier subject to title II of this Act shall not provide video programming directly to subscribers in its telephone service area unless such video programming is provided through a video programming affiliate that is separate from such carrier.

(b) BOOKS AND MARKETING.—

(1) IN GENERAL.—A video programming affiliate of a common carrier shall—

(A) maintain books, records, and accounts separate from such carrier which identify all transactions with such carrier;

(B) carry out directly (or through any nonaffiliated person) its own promotion, except that institutional advertising carried out by such carrier shall be permitted so long as each party bears its pro rata share of the costs; and

(C) not own real or personal property in common with such carrier.

(2) INBOUND TELEMARKETING AND REFERRAL.—Notwithstanding paragraph (1)(B), a common carrier may provide telemarketing or referral services in response to the call of a customer or potential customer related to the provision of video programming by a video programming affiliate of such carrier. If such services are provided to a video programming affiliate, such services shall be made available to any video programmer or cable operator on request, on nondiscriminatory terms, at just and reasonable prices, and subject to regulations of the Commission to ensure that the carrier's method of providing telemarketing or referral and its price structure do not competitively disadvantage any video programmer or cable operator, regardless of size, including those which do not use the carrier's telemarketing services.

(3) JOINT TELEMARKETING.—Notwithstanding paragraph (1)(B), a common carrier may petition the Commission for permission to market video programming directly, upon a showing that a cable operator or other entity directly or indirectly provides telecommunications services within the telephone service area of the common carrier, and markets such telecommunications services jointly with video programming services. The common carrier shall specify the geographic region covered by the petition. Any such petition shall be granted or denied within 180 days after the date of its submission.

(c) BUSINESS TRANSACTIONS WITH CARRIER SUBJECT TO REGULATION.—Any contract, agreement, arrangement, or other manner of conducting business, between a common carrier and its video programming affiliate, providing for—

(1) the sale, exchange, or leasing of property between such affiliate and such carrier,

(2) the furnishing of goods or services between such affiliate and such carrier, or

(3) the transfer to or use by such affiliate for its benefit of any asset or resource of such carrier,

shall be pursuant to regulation prescribed by the Commission, shall be on a fully compensatory and auditable basis, shall be without cost to the telephone service ratepayers of the carrier, shall be filed with the Commission, and shall be in compliance with regulations established by the Commission that will enable the Commission to assess the compliance of any transaction.

(d) WAIVER.—

(1) CRITERIA FOR WAIVER.—The Commission may waive any of the requirements of this section for small telephone compa-

nies or telephone companies serving rural areas, if the Commission determines, after notice and comment, that—

(A) such waiver will not affect the ability of the Commission to ensure that all video programming activity is carried out without any support from telephone ratepayers;

(B) the interests of telephone ratepayers and cable subscribers will not be harmed if such waiver is granted;

(C) such waiver will not adversely affect the ability of persons to obtain access to the video platform of such carrier; and

(D) such waiver otherwise is in the public interest.

(2) DEADLINE FOR ACTION.—The Commission shall act to approve or disapprove a waiver application within 180 days after the date it is filed.

(3) CONTINUED APPLICABILITY OF SECTION 659.—In the case of a common carrier that obtains a waiver under this subsection, any requirement that section 659 applies to a video programming affiliate shall instead apply to such carrier.

SEC. 653. ESTABLISHMENT OF VIDEO PLATFORM.

(a) COMMON CARRIER OBLIGATIONS.—

(1) IN GENERAL.—Any common carrier subject to title II of this Act and that provides, through a video programming affiliate, video programming directly to subscribers in its telephone service area, shall establish a video platform.

(2) IDENTIFICATION OF DEMAND FOR CARRIAGE.—Any common carrier subject to the requirements of paragraph (1) shall, prior to establishing a video platform, submit a notice to the Commission of its intention to establish channel capacity for the provision of video programming to meet the bona fide demand for such capacity. Such notice shall—

(A) be in such form and contain such information as the Commission may require by regulations pursuant to subsection (b);

(B) specify the methods by which any entity seeking to use such channel capacity should submit to such carrier a specification of its channel capacity requirements; and

(C) specify the procedures by which such carrier will determine (in accordance with the Commission's regulations under subsection (b)(1)(B)) whether such request for capacity are bona fide.

The Commission shall submit any such notice for publication in the Federal Register within 5 working days.

(3) RESPONSE TO REQUEST FOR CARRIAGE.—After receiving and reviewing the requests for capacity submitted pursuant to such notice, such common carrier shall, subject to approval of a certificate under section 214, establish channel capacity that is sufficient to provide carriage for—

(A) all bona fide requests submitted pursuant to such notice,

(B) any additional channels required pursuant to section 659, and

(C) any additional channels required by the Commission's regulations under subsection (b)(1)(C).

(4) RESPONSES TO CHANGES IN DEMAND FOR CAPACITY.—Any common carrier that establishes a video platform under this section shall—

(A) immediately notify the Commission and each video programming provider of any delay in or denial of channel capacity or service, and the reasons therefor;

(B) continue to receive and grant, to the extent of available capacity, carriage in response to bona fide requests for carriage from existing or additional video programming providers;

(C) if at any time the number of channels required for bona fide requests for carriage may reasonably be expected soon to exceed the existing capacity of such video platform, immediately notify the Commission of such expectation and of the manner and date by which such carrier will provide sufficient capacity to meet such excess demand; and

(D) construct, subject to approval of a certificate under section 214, such additional capacity as may be necessary to meet such excess demand.

(5) 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 award damages sustained in consequence of any violation of this section to any person denied carriage, or require carriage, or both. Any aggrieved party may seek any other remedy available under this Act.

(b) COMMISSION REGULATIONS.—

(1) IN GENERAL.—Within one year after the date of the enactment of this section, the Commission shall prescribe regulations that—

(A) consistent with the requirements of section 659, prohibit a common carrier from discriminating among video programming providers with regard to carriage on its video platform, and ensure that the rates, terms, and conditions for such carriage are just, reasonable, and nondiscriminatory;

(B) prescribe definitions and criteria for the purposes of determining whether a request shall be considered a bona fide request for purposes of this section;

(C) establish a requirement that video platforms contain a suitable margin of unused channel capacity to meet reasonable growth in bona fide demand for such capacity;

(D) extend to video platforms the Commission's regulations concerning network nonduplication (47 C.F.R. 76.92 et seq.) and syndicated exclusivity (47 C.F.R. 76.151 et seq.);

(E) require the video platform to provide service, transmission, interconnection, and interoperability for unaffiliated or independent video programming providers that is equivalent to that provided to the common carrier's video programming affiliate;

(F)(i) prohibit a common carrier from discriminating among video programming providers with regard to material or information provided by the common carrier to subscribers for the purposes of selecting programming on the video platform, or in the way such material or information is presented to subscribers;

(ii) require a common carrier to ensure that video programming providers or copyright holders (or both) are able suitably and uniquely to identify their programming services to subscribers; and

(iii) if such identification is transmitted as part of the programming signal, require the carrier to transmit such identification without change or alteration; and

(G) prohibit a common carrier from excluding areas from its video platform service area on the basis of the ethnicity, race, or income of the residents of that area, and provide for public comments on the adequacy of the proposed service area on the basis of the standards set forth under this subparagraph.

(2) EXTENSION OF REGULATIONS TO OTHER HIGH CAPACITY SYSTEMS.—The Commission shall extend the requirements of the regulations prescribed pursuant to this section, in lieu of the requirements of section 612, to any cable operator of a cable system that has installed a switched, broadband video programming delivery system, except that the Commission shall not extend the requirements of the regulations prescribed pursuant to subsection (b)(1)(D) or any other requirement that the Commission determines is clearly inappropriate.

(c) COMMISSION INQUIRY.—The Commission shall conduct a study of whether it is in the public interest to extend the requirements of subsection (a) to any other cable operators in lieu of the requirements of section 612. The Commission shall submit to the Congress a report on the results of such study not later than 2 years after the date of enactment of this section.

SEC. 654. EQUAL ACCESS COMPLIANCE.

(a) CERTIFICATION REQUIRED.—

(1) IN GENERAL.—A common carrier subject to title II of this Act shall not provide video programming directly to subscribers in its telephone service area unless such carrier has certified to the Commission that such carrier is in compliance with the requirements of paragraphs (1) and (2) of section 201(c) of this Act, and regulations prescribed pursuant to such paragraphs.

(2) EXCEPTION.—Notwithstanding paragraph (1), a common carrier subject to title II of this Act may provide video programming directly to subscribers in its telephone service area during any period prior to the date the Commission first prescribes final regulations pursuant to paragraphs (1) and (2) of section 201(c) of this Act if such carrier has certified to the Commission that such carrier is in compliance with State laws and regulations concerning equal access, interconnection, and unbundling that are substantially similar to and fully consistent with the requirements of such paragraphs or if there is no statutory prohibition against such carrier providing video programming directly to subscribers in its telephone service area on the date of

enactment of this section. A common carrier that submits a certification pursuant to this paragraph shall not be exempt from the requirements of paragraph (1) after the effective date of such final regulations.

(b) CERTIFICATION AND APPLICATION APPROVAL.—A common carrier that submits a certification under paragraph (1) or (2) of subsection (a) shall be eligible to provide video programming to subscribers in accordance with the requirements of this part, subject to the approval of any necessary application under section 214 for authority to establish a video platform. An application under section 214 may be filed simultaneously with the filing of such certification or at any time after the date of enactment of this section, and the Commission shall act to approve (with or without modification) or reject such application within 180 days after the date of its submission. If the Commission acts to approve such an application prior to the filing of such certification, such approval shall not be effective until such certification is filed.

SEC. 655. PROHIBITION OF CROSS-SUBSIDIZATION.

(a) CROSS SUBSIDIES PROHIBITION.—The Commission shall—

(1) prescribe regulations to prohibit a common carrier from engaging in any practice that results in the inclusion in rates for telephone exchange service or telephone exchange access service of any operating expenses, costs, depreciation charges, capital investments, or other expenses directly associated with the provision of competing video programming services by the common carrier or affiliate; and

(2) ensure such competing video programming services bear a reasonable share of the joint and common costs of facilities used to provide telephone exchange service or telephone exchange access service and competing video programming services.

(b) CABLE OPERATOR PROHIBITIONS.—The Commission shall prescribe regulations to prohibit a cable operator from engaging in any practice that results in improper cross-subsidization between its regulated cable operations and its provision of telecommunications service, either directly or through an affiliate.

SEC. 656. PROHIBITION ON BUYOUTS.

(a) GENERAL PROHIBITION.—No common carrier that provides telephone exchange service, and no entity owned by or under common ownership or control with such carrier, may purchase or otherwise obtain control over any cable system that is located within its telephone service area and is owned by an unaffiliated person.

(b) EXCEPTIONS.—Notwithstanding subsection (a), a common carrier may—

(1) obtain a controlling interest in, or form a joint venture or other partnership with, a cable system that serves a rural area;

(2) obtain, in addition to any interest, joint venture, or partnership obtained or formed pursuant to paragraph (1), a controlling interest in, or form a joint venture or other partnership with, any cable system or systems if—

(A) such systems in the aggregate serve less than 10 percent of the households in the telephone service area of such carrier; and

(B) no such system serves a franchise area with more than 35,000 inhabitants, except that a common carrier may obtain such interest or form such joint venture or other partnership with a cable system that serves a franchise area with more than 35,000 but not more than 50,000 inhabitants if such system is not affiliated (as such term is defined in section 602) with any other system whose franchise area is contiguous to the franchise area of the acquired system; or

(3) obtain, with the concurrence of the cable operator on the rates, terms, and conditions, the use of that part of the transmission facilities of such 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.

(c) WAIVER.—

(1) CRITERIA FOR WAIVER.—The Commission may waive the restrictions in subsection (a) of this section only upon a showing by the applicant that—

(A) because of the nature of the market served by the cable system concerned—

(i) the incumbent cable operator would be subjected to undue economic distress by the enforcement of such subsection; or

(ii) the cable system would not be economically viable if such subsection were enforced; and

(B) the local franchising authority approves of such waiver.

(2) DEADLINE FOR ACTION.—The Commission shall act to approve or disapprove a waiver application within 180 days after the date it is filed.

SEC. 657. PENALTIES.

If the Commission finds that any common carrier has knowingly violated any provision of this part, the Commission shall assess such fines and penalties as it deems appropriate pursuant to this Act.

SEC. 658. CONSUMER PROTECTION.

(a) JOINT BOARD REQUIRED.—Within 30 days after the date of enactment of this part, the Commission shall convene a Federal-State Joint Board under the provisions of section 410(c) for the purpose of recommending a decision concerning the practices, classifications, and regulations as may be necessary to ensure proper jurisdictional separation and allocation of the costs of establishing and providing a video platform. The Board shall issue its recommendations to the Commission within 270 days after the date of enactment of this part.

(b) COMMISSION REGULATIONS REQUIRED.—The Commission, with respect to interstate switched access service, and the States, with respect to telephone exchange service and intrastate interexchange service, shall establish such regulations as may be necessary to implement section 655 within one year after the date of the enactment of this part.

(c) NO EFFECT ON CARRIER REGULATION AUTHORITY.—Nothing in this section shall be construed to limit or supersede the authority of any State or the Commission with respect to the allocation of costs associated with intrastate or interstate communication services.

SEC. 659. APPLICABILITY OF FRANCHISE AND OTHER REQUIREMENTS.

(a) IN GENERAL.—Any provision that applies to a cable operator under—

(1) sections 613, 616, 617, 628, 631, 632, and 634 of this title, shall apply,

(2) sections 611, 612, 614, and 615 of this title, and section 325 of title III, shall apply in accordance with the regulations prescribed under subsection (b), and

(3) parts III and IV (other than sections 628, 631, 632, and 634) of this title shall not apply,

to any video programming affiliate established by a common carrier in accordance with the requirements of this part.

(b) IMPLEMENTATION OF REQUIREMENTS.—

(1) REGULATIONS.—The Commission shall prescribe regulations to ensure that a video programming affiliate of a common carrier shall provide (A) capacity, services, facilities, and equipment for public, educational, and governmental use, (B) capacity for commercial use, (C) carriage of commercial and noncommercial broadcast television stations, and (D) an opportunity for commercial broadcast stations to choose between mandatory carriage and reimbursement for retransmission of the signal of such station. In prescribing such regulations, the Commission shall, to the extent possible, impose obligations that are no greater or lesser than the obligations contained in the provisions described in subsection (a)(2) of this section. Such regulations shall also require that, if a common carrier establishes a video platform but does not provide or ceases to provide video programming through a video programming affiliate, such carrier shall comply with the regulations prescribed under this paragraph and with the provisions described in subsection (a)(1) in the operation of its video platform.

(2) FEES.—A video programming affiliate of any common carrier that establishes a video platform under this part, and any multichannel video programming distributor offering a competing service using such video platform (as determined in accordance with regulations of the Commission), shall be subject to the payment of fees imposed by a local franchising authority, in lieu of the fees required under section 622. 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 same service area.

SEC. 660. RURAL AREA EXEMPTION.

The provisions of sections 652, 653, 654, and 656 shall not apply to video programming provided in a rural area by a common carrier that provides telephone exchange service in the same area.

* * * * * * *

ADDITIONAL VIEWS

H.R. 3636 directs the FCC to convene a Joint Federal-State Board for the purpose of recommending actions the Commission and state regulators can take to preserve universal service in an increasingly competitive environment.

As part of its instructions to the Joint Board, H.R. 3636 enumerates several principles the Joint Board should use as the basis for its universal service policies. They are: maintaining just and reasonable rates, defining what services are included in a carrier's universal service obligation, balancing services between rural and urban areas, permitting residential customers to continue to receive basic voice-grade local telephone service that is comparable to what they receive on the date of enactment, and requiring all telecommunications service providers to contribute to preserving universal service.

My amendment, which the Committee adopted by voice vote, adds another key principle to this list. Its purpose is to fundamentally change the way we regulate our largest common carriers by replacing traditional rate of return regulation with alternative of price regulation.

My amendment will ensure that Federal and State commissions use appropriate tools in a dynamic telecommunications environment, characterized by fast-paced change and technological innovations. We are at a point in time where the traditional lines between industries are becoming blurred. It has become increasingly obvious that regulatory schemes devised decades ago to deal with a vastly different market structure no longer serve industries or consumers. By imposing price regulation, policymakers will send a powerful signal to industry that increased innovation and productivity are important goals.

Adopting price regulation will continue a trend begun by Federal and State regulators over the last decade. Recognizing the shift from a monopoly to a competitive environment, the FCC and a majority of state commissions have abandoned rate of return regulation in favor of incentive regulation. They did so for several reasons. While traditional rate of return regulation values all investments comparably, incentive regulation is a method of positively rewarding investment in productivity-enhancing products and services. A company's return should not hinge solely on its level of aggregate investment (i.e., paving a parking lot should not count the same as buying new switches or software). Rather, a company's return should reflect its level of innovation, responsiveness to competition, and efficiency in the marketplace.

Price regulation also is a simply way of overseeing a carrier's operations by focusing directly on the prices consumers are charged for services. The Congress recognized this when it enacted the "Cable Television Consumer Protection and Competition Act of

1992." With that statute we acknowledged that advances in the cable industry and its convergence with the voice and data industries called for a new type of regulatory treatment. For that reason we chose to focus not on the profits cable companies are permitted to earn but on the prices cable companies are permitted to charge subscribers. Since this convergence inevitably will lead to formerly discrete industries competing in each other's markets, it makes sense to treat them similarly from a regulatory perspective.

Rate of return regulation, by contrast, oversees prices only indirectly by controlling the amount of profit a carrier may earn on its investment. The flaws in rate of return regulation repeatedly emerged as demand increased or decreased in relation to forecasts, or unforeseen costs intervened. During this recent transitional period, incentive regulation has facilitated both price competition and a reduction in the burden for regulators. It has given local and long distance telephone companies needed pricing flexibility, essential in an increasingly competitive market. While it has lowered the cost or regulation for the public, it also has facilitated increased competition.

As a transitional device, incentive or price regulation, in contrast to rate of return regulation, has proven to be an effective competitive safeguard. Using this approach, regulators control the prices carriers charge by using a formula. Typically, they may not increase consumer prices by more than the rate of inflation, less a predetermined percentage. In periods when the inflation rate is below that agreed-upon percentage, carriers must reduce their prices and, indeed, over the past five years, most have done so. Under rate of return regulation, the more carrier spend, the more they are permitted to earn and, thus, the more they can charge. Therefore, it creates a positive incentive to shift costs from competitive to less competitive sectors of the market. But price regulation eliminates such an incentive. Indeed, the FCC has said that this built-in deterrence is a prime reason behind establishing its price caps system for both AT&T and the largest local exchange telephone companies.

My amendment will ensure that trend toward advanced price regulation, evident at both the Federal and State levels, will continue to be encouraged and will continue to yield substantial public interest dividends. In an increasingly diverse telecommunications marketplace, policymakers must take steps to guarantee that effective regulation is applied where it is needed. But we also need to ensure that the form of regulation pursued is consistent with overall Federal policy goals. That is what my amendment will accomplish.

BILLY TAUZIN.

O

Document No. 169