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102–628

CABLE TELEVISION CONSUMER PROTECTION AND COMPETITION ACT OF 1992

June 29, 1992.—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

REPORT

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 4850]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 4850) to amend the Communications Act of 1934 to provide increased consumer protection and to promote increased competition in the cable television and related markets, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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59–006

The amendment is as follows:

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

SECTION 1. SHORT TITLE.

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

SEC. 2. FINDINGS; DEFINITION.

(a) FINDINGS.—Section 601 of the Communications Act of 1934 (47 U.S.C. 521) is amended—

(1) by striking the heading of such section and inserting the following:

"PURPOSES; FINDINGS";

(2) by inserting "(a) PURPOSES.—" after "SEC. 601."; and

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

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

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

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

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

"(4) There is a substantial governmental and first amendment interest in promoting a diversity of views provided through multiple technology media.

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

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

"(B) public television is a local community institution, supported through local tax dollars and voluntary citizen contributions in excess of $10,800,000,000 between 1972 and 1990 that provides public service programming that is responsive to the needs and interests of the local community;

"(C) the Federal Government, in recognition of public television's integral role in serving the educational and informational needs of local communities, has invested more than $3,000,000,000 in public broadcasting between 1969 and 1992; and

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

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

"(A) promotes localism and provides a significant source of news, public affairs, and educational programming;

"(B) is necessary to serve the goals contained in section 307(b) of this Act of providing a fair, efficient, and equitable distribution of broadcast services; and

"(C) will enhance the access to such signals by Americans living in areas where the quality of reception of broadcast stations is poor.

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

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

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

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

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

"(12) Cable systems provide the most effective access to television households that subscribe to cable. As a result of the cable operator's provision of this access and the operator's economic incentives described in paragraph (11), negotiations between cable operators and local broadcast stations have not been an effective mechanism for securing carriage and channel positioning.

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

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

(b) DEFINITION.—Section 602 of the Communications Act of 1934 (47 U.S.C. 522) is amended—

(1) by redesignating paragraphs (11) through (16) as paragraphs (12) through (17); and

(2) by inserting after paragraph (10) the following new paragraph:

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

SEC. 3. REQUIREMENTS FOR THE PROVISION AND REGULATION OF BASIC SERVICE TIER.

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

"SEC. 623. REGULATION OF RATES.

"(a) COMPETITION PREFERENCE; LOCAL AND FEDERAL REGULATION.—

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

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

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

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

"(3) QUALIFICATION OF FRANCHISING AUTHORITY.—A franchising authority that seeks to exercise the regulatory jurisdiction permitted under paragraph (2)(A) shall file with the Commission a written certification that—

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

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

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

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

"(A) the franchising authority has adopted or is administering regulations with respect to the rates subject to regulation under this section that are not consistent with the regulations prescribed by the Commission under subsection (b);

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

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

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

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

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

"(b) ESTABLISHMENT OF BASIC SERVICE TIER RATE LIMITATIONS.—

"(1) COMMISSION REGULATIONS.—Within 120 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission shall, by regulation, establish the following:

"(A) BASIC SERVICE TIER RATES.—A formula to establish the maximum price of the basic service tier, which formula shall take into account—

"(i) the number of signals carried on the basic service tier;

"(ii) the direct costs (if any) of obtaining, transmitting, and otherwise providing such signals, including signals and services carried on the basic service tier pursuant to paragraph (2)(B), and changes in such costs;

"(iii) such portion of the joint and common costs of the cable operator as is determined, in accordance with regulations prescribed by the Commission, to be properly allocable to obtaining, transmitting, and otherwise providing such signals, and changes in such costs;

"(iv) a reasonable profit (as defined by the Commission) on the provision of the basic service tier;

"(v) rates for comparable cable systems, if any, that are subject to effective competition and that offer comparable services, taking into account, among other factors, similarities in facilities, the number of cable channels, the number of cable subscribers, and local conditions;

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

"(vii) any amount required, in accordance with subparagraph (C), to satisfy franchise requirements to support public, educational, or governmental channels or the use of such channels or any other services required under the franchise.

"(B) EQUIPMENT.—A formula to establish, on the basis of actual cost, the price or rate for—

"(i) installation and lease of the equipment necessary for subscribers to receive the basic service tier, including a converter box and a remote control unit and, if requested by the subscriber, such addressable converter box or other equipment as is required to access programming described in paragraph (3); and

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

"(C) COSTS OF FRANCHISE REQUIREMENTS.—A formula to identify and allocate costs attributable to satisfying franchise requirements to support public, educational, and governmental channels or the use of such channels or any other services required under the franchise.

"(D) IMPLEMENTATION AND ENFORCEMENT.—Additional standards, guidelines, and procedures concerning the implementation and enforcement of the regulations prescribed by the Commission under this subsection, which shall include—

"(i) procedures by which cable operators may implement and franchising authorities may enforce the administration of the formulas, standards, guidelines, and procedures established by the Commission under this subsection;

"(ii) procedures for the expeditious resolution of disputes between cable operators and franchising authorities concerning the administration of such formulas, standards, guidelines, and procedures;

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

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

"(E) EFFECTIVE DATES.—An effective date or dates for compliance with the formulas, standards, guidelines, and procedures established under this subsection.

"(2) COMPONENTS OF BASIC TIER SUBJECT TO RATE REGULATION.—

"(A) MINIMUM CONTENTS.—Each cable operator of a cable system shall provide its subscribers a separately available basic service tier to which the rates prescribed under paragraph (1) shall apply and to which subscription is required for access to any other tier of service. Such basic service tier shall, at a minimum, consist of the following:

"(i) All signals carried in fulfillment of the requirements of sections 614 and 615.

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

"(iii) Any signal of any broadcast station that is provided by the cable operator to any subscriber.

"(B) PERMITTED ADDITIONS TO BASIC TIER.—A cable operator may add additional video programming signals or services to the basic service tier. Any such additional signals or services provided on the basic service tier shall be provided to subscribers at rates determined under paragraph (1)(A).

"(3) BUY-THROUGH OF OTHER TIERS PROHIBITED.—

"(A) PROHIBITION.—A cable operator may not require the subscription to any tier other than the basic service tier required by paragraph (2) as a condition of access to video programming offered on a per channel or per program basis. A cable operator may not discriminate between subscribers to the basic service tier and other subscribers with regard to the rates charged for video programming offered on a per channel or per program basis.

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

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

"(ii) 5 years after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, subject to subparagraph (C).

"(C) STUDY; EXTENSION OF LIMITATION.—(i) The Commission shall, within 4 years after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, initiate a proceeding to consider (I) the benefits to consumers of subparagraph (A), (II) whether the cable operators or consumers are being forced (or would be forced) to incur unreasonable costs for complying with subparagraph (A), and (III) the effect of subparagraph (A) on the provision of diverse programming sources to cable subscribers.

"(ii) If, in the proceeding required by clause (i), the Commission determines that subparagraph (A) imposes unreasonable costs on cable operators or cable subscribers, the Commission may extend the 5-year period provided in subparagraph (B)(ii) for 2 additional years.

"(4) NOTICE OF FEES, TAXES, AND OTHER CHARGES.—Each cable operator may identify, in accordance with the formulas required by clauses (vi) and (vii) of paragraph (1)(A), as a separate line item on each regular bill of each subscriber, each of the following:

"(A) the amount of the total bill assessed as a franchise fee and the identity of the authority to which the fee is paid;

"(B) the amount of the total bill assessed to satisfy any requirements imposed on the operator by the franchise agreement to support public, educational, or governmental channels or the use of such channels; and

"(C) any other fee, tax, assessment, or charge of any kind imposed on the transaction between the operator and the subscriber.

"(c) REGULATION OF UNREASONABLE RATES.—

"(1) COMMISSION REGULATIONS.—Within 180 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission shall, by regulation, establish the following:

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

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

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

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

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

"(B) the rates for comparable cable systems, if any, that are subject to effective competition and that offer comparable services, taking into account, among other factors, similarities in facilities, the number of cable channels, the number of cable subscribers, and local conditions;

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

"(D) the rates, as a whole, for all the cable programming, equipment, and services provided by the system;

"(E) capital and operating costs of the cable system, including costs of obtaining video signals and services;

"(F) the quality and costs of the customer service provided by the cable system; and

"(G) the revenues (if any) received by a cable operator from advertising from programming that is carried as part of the service for which a rate is being established, and changes in such revenues.

"(3) LIMITATION ON COMPLAINTS CONCERNING EXISTING RATES.—On and after 180 days after the effective date of the regulations prescribed by the Commission under paragraph (1), the procedures established under subparagraph (B) of such paragraph shall be available only with respect to complaints filed within a reasonable period of time following a change in rates that is initiated after that effective date.

"(d) REGULATION OF PAY-PER-VIEW CHARGES FOR CHAMPIONSHIP SPORTING EVENTS.—A State or franchising authority may, without regard to the regulations prescribed by the Commission under subsections (b) and (c), regulate any per-program rates charged by a cable operator for any video programming that consists of the national championship game or games between professional teams in baseball, basketball, football, or hockey.

"(e) DISCRIMINATION; SERVICES FOR THE HEARING IMPAIRED.—Nothing in this title shall be construed as prohibiting any Federal agency, State, or a franchising authority from—

"(1) prohibiting discrimination among customers of basic service, except that no Federal agency, State, or franchising authority may prohibit a cable operator from offering reasonable discounts to senior citizens or other economically disadvantaged group discounts; or

"(2) requiring and regulating the installation or rental of equipment which facilitates the reception of basic cable service by hearing impaired individuals.

"(f) NEGATIVE OPTION BILLING PROHIBITED.—A cable operator shall not charge a subscriber for any individually-priced channel of video programming or for any pay-per-view video programming that the subscriber has not affirmatively requested. For purposes of this subsection, a subscriber's failure to refuse a cable operator's proposal to provide such channel or programming shall not be deemed to be an affirmative request for such programming.

"(g) REVIEW OF FINANCIAL INFORMATION.—

"(1) COLLECTION OF INFORMATION.—The Commission shall, by regulation, require cable operators to file, within 60 days after the effective date of the regulations prescribed under subsection (c)(1) and annually thereafter, such financial information as may be needed for purposes of administering and enforcing this section.

"(2) CONGRESSIONAL REPORT.—The Commission shall submit to each House of the Congress, by January 1, 1994, a report on the financial condition, profitability, rates, and performance of the cable industry. Such report shall include such recommendations as the Commission considers appropriate in light of such information. Such report also shall address the availability of discounts for senior citizens and other economically disadvantaged groups.

"(h) PREVENTION OF EVASIONS.—Within 120 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission shall, by regulation, establish standards, guidelines, and procedures to prevent evasions of the rates, services, and other requirements of this section and shall, thereafter, periodically review and revise such standards, guidelines, and procedures.

"(i) SMALL SYSTEM BURDENS.—In developing and prescribing regulations pursuant to this section, the Commission shall design such regulations to reduce the administrative burdens and cost of compliance for cable systems that have 500 or fewer subscribers.

"(j) RATE REGULATION AGREEMENTS.—The provisions of this section (and the regulations thereunder) shall not apply to a cable system during the term of an agreement by a cable operator with a franchising authority that was entered into before July 1, 1990, and that authorizes the franchising authority to regulate the rates of such cable system for basic cable service, if such system was not subject to effective competition pursuant to the rules of the Commission in effect on July 1, 1990.

"(k) REPORTS ON AVERAGE PRICES.—The Commission shall publish quarterly statistical reports on the average rates for basic service and other cable programming, and for converter boxes, remote control units, and other equipment, of—

"(1) cable systems that the Commission has found are subject to effective competition under subsection (a)(2), compared with

"(2) cable systems that the Commission has found are not subject to such effective competition.

"(l) DEFINITIONS.—As used in this section—

"(1) The term 'effective competition' means that—

"(A) fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system;

"(B) the franchise area is—

"(i) served by at least two unaffiliated multichannel video programming distributors each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and "(ii) the number of households subscribing to programming services offered by multichannel video programming distributors other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area; or

"(C) a multichannel video programming distributor operated by the franchising authority for that franchise area offers video programming to at least 50 percent of the households in that franchise area.

"(2) The term 'cable programming service' means any video programming provided over a cable system, regardless of service tier, other than (A) video programming carried on the basic service tier, and (B) video programming offered on a per channel or per program basis.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) of this section shall take effect 120 days after the date of enactment of this Act, except that the authority of the Federal Communications Commission to prescribe regulations is effective on such date of enactment.

SEC. 4. MULTIPLE FRANCHISES.

(a) UNREASONABLE REFUSALS TO FRANCHISE PROHIBITED.—Section 621(a) of the Communications Act of 1934 (47 U.S.C. 541(a)) is amended by adding at the end thereof the following:

"(4) A franchising authority shall not, in the awarding of franchises within its jurisdiction, grant an exclusive franchise, or unreasonably refuse to award additional franchises because of the previous award of a franchise to another cable operator. For purposes of this paragraph, refusal to award a franchise shall not be unreasonable if, for example, such refusal is on the ground—

"(A) of technical infeasibility;

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

"(C) of inadequate assurance that the cable operator will, within a reasonable period of time, provide universal service throughout the entire franchise area under the jurisdiction of the franchising authority;

"(D) that such award would interfere with the right of the franchising authority to deny renewal; or

"(E) of inadequate assurance that the cable operator has the financial, technical, or legal qualifications to provide cable service.

"(5) Nothing in this subsection shall be construed as limiting the authority of local governments to assess fees or taxes for access to public rights of way.".

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

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

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

"(f) No provision of this Act shall be construed to—

"(1) prohibit a local or municipal authority that is also, or is affiliated with, a franchising authority from operating as a multichannel video programming distributor in the geographic areas within the jurisdiction of such franchising authority, notwithstanding the granting of one or more franchises by such franchising authority, or

"(2) require such local or municipal authority to secure a franchise to operate as a multichannel video programming distributor.".

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

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

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

(d) LEASE/BUY-BACK AUTHORITY.—Section 613(b)(2) of the Communications Act of 1934 (47 U.S.C. 533(b)(2)) is amended by adding at the end the following: "This paragraph shall not prohibit a common carrier from providing multiple channels of communication to an entity pursuant to a lease agreement under which the carrier retains, consistent with section 616, an option to purchase such entity upon the taking effect of an amendment to this section that permits common carriers generally to provide video programming directly to subscribers in such carrier's telephone service area.".

SEC. 5. CARRIAGE OF LOCAL COMMERCIAL TELEVISION SIGNALS.

Part II of title VI of the Communications Act of 1934 (47 U.S.C. 531 et seq.) is amended by inserting after section 613 the following new section:

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

"(a) CARRIAGE OBLIGATIONS.—Each cable operator shall carry, on the cable system of that operator, the signals of local commercial television stations as provided by the following provisions of this section. Carriage of additional broadcast television signals on such system shall be at the discretion of such operator.

"(b) SIGNALS REQUIRED.—

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

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

"(2) SELECTION OF SIGNALS.—Whenever the number of local commercial television stations exceeds the maximum number of signals a cable system is required to carry under paragraph (1), the cable operator shall have discretion in selecting which such stations shall be carried on its cable system, except that if the cable operator elects to carry an affiliate of a broadcast network (as such term is defined by the Commission by regulation), such cable operator shall carry the affiliate of such broadcast network whose city of license reference point, as defined in section 76.53 of title 47, Code of Federal Regulations (in effect on January 1, 1991), or any successor regulation thereto, is closest to the principal headend of the cable system.

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

"(B) The cable operator shall carry the entirety of the program schedule of any television station carried on the cable system unless carriage of specific programming is prohibited, and other programming authorized to be substituted, under section 76.67 or subpart F of part 76 of title 46, Code of Federal Regulations (as in effect on January 1, 1991), or any successor regulations thereto.

"(4) SIGNAL QUALITY.—

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

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

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

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

"(7) SIGNAL AVAILABILITY.—Signals carried in fulfillment of the requirements of this section shall be provided to every subscriber of a cable system. Such signals shall be viewable via cable on all television receivers of a subscriber which are connected to a cable system by a cable operator or for which a cable operator provides a connection. If a cable operator authorizes subscribers to install additional receiver connections, but does not provide the subscriber with such connections, or with the equipment and materials for such connections, the operator shall notify such subscribers of all broadcast stations carried on the cable system which cannot be viewed via cable without a converter box and shall offer to sell or lease such a converter box to such subscribers at rates in accordance with section 623(b)(1)(B).

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

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

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

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

"(B) a cable operator may accept payments from stations which would be considered distant signals under section 111 of title 17, United States Code, as reimbursement for the incremental copyright costs assessed against such cable operator for carriage of such signal; and

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

"(c) REMEDIES.—

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

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

"(3) REMEDIAL ACTIONS; DISMISSAL.—Within 120 days after the date a complaint is filed, the Commission shall determine whether the cable operator has met its obligations under this section. If the Commission determines that the cable operator has failed to meet such obligations, the Commission shall order the cable operator to reposition the complaining station or, in the case of an obligation to carry a station, to commence carriage of the station and to continue such carriage for at least 12 months. If the Commission determines that the cable operator has fully met the requirements of this section, it shall dismiss the complaint.

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

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

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

"(e) REGULATIONS BY COMMISSION.—Within 180 days after the date of enactment of this section, the Commission shall, following a rulemaking proceeding, issue regulations implementing the requirements imposed by this section.

"(f) SALES PRESENTATIONS AND PROGRAM LENGTH COMMERCIALS.—Nothing in this Act shall require a cable operator to carry on any tier, or prohibit a cable operator from carrying on any tier, the signal of any commercial television station or video programming service that is predominantly utilized for the transmission of sales presentations or program length commercials.

"(g) EFFECT ON OTHER LAW.—Nothing in this section shall be construed to modify or otherwise affect title 17, United States Code.

"(h) DEFINITION.—

"(1) LOCAL COMMERCIAL TELEVISION STATION.—For purposes of this section, the term 'local commercial television station' means any television broadcast station, determined by the Commission to be a commercial station, licensed and operating on a channel regularly assigned to its community by the Commission that, with respect to a particular cable system, is within the same television market as the cable system. If such a television broadcast station—

"(A) would be considered a distant signal under section 111 of title 17, United States Code, it shall be deemed to be a local commercial television station for purposes of this section upon agreement to indemnify the cable operator for the increased copyright liability as a result of being carried on the cable system; or

"(B) does not deliver to the principal headend of a cable system either a signal level of −45dBm for UHF signals or −49dBm for VHF signals at the input terminals of the signal processing equipment, it shall be responsible for the costs of delivering to the cable system a signal of good quality or a baseband video signal.

"(2) EXCLUSIONS.—The term 'local commercial television station' shall not include low power television stations, television translator stations, and passive repeaters which operate pursuant to part 74 of title 47, Code of Federal Regulations, or any successor regulations thereto.

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

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

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

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

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

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

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

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

SEC. 6. CARRIAGE OF NONCOMMERCIAL STATIONS.

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

"SEC. 615. CARRIAGE OF NONCOMMERCIAL EDUCATIONAL TELEVISION.

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

"(b) REQUIREMENTS TO CARRY QUALIFIED STATIONS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"(g) CONDITIONS OF CARRIAGE.—

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

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

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

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

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

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

"(i) PAYMENT FOR CARRIAGE PROHIBITED.—

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

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

"(j) REMEDIES.—

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

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

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

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

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

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

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

"(ii) has as its licensee an entity which is eligible to receive a community service grant, or any successor grant thereto, from the Corporation for Public Broadcasting, or any successor organization thereto, on the basis of the formula set forth in section 396(k)(6)(B) (47 U.S.C. 396(k)(6)(B)); or

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

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

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

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

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

SEC. 7. CONSUMER PROTECTION AND CUSTOMER SERVICE.

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

"SEC. 632. CONSUMER PROTECTION AND CUSTOMER SERVICE.

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

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

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

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

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

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

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

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

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

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

SEC. 8. CUSTOMER PRIVACY RIGHTS.

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

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

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

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

"(C) the term 'cable operator' includes, in addition to persons within the definition of cable operator in section 602, any person who (i) is owned or controlled by, or under common ownership or control with, a cable operator, and (ii) provides any wire or radio communications service.".

SEC. 9. CONSUMER ELECTRONICS EQUIPMENT COMPATIBILITY.

The Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended by adding after section 624 the following new section:

"SEC. 624A. CONSUMER ELECTRONICS EQUIPMENT COMPATIBILITY.

"(a) FINDINGS.—The Congress finds that—

"(1) new and recent models of television receivers and video cassette recorders often contain premium features and functions that are disabled or inhibited because of cable scrambling, encoding, or encryption technologies and devices, including converter boxes and remote control devices required by cable operators to receive programming;

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

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

"(b) COMPATIBLE INTERFACES.—Within 1 year after the date of enactment of this section, the Commission, in consultation with representatives of the cable industry and the consumer electronics industry, shall report to the Congress on means of assuring compatibility between televisions and video cassette recorders and cable systems, consistent with the need to prevent theft of cable service, so that cable subscribers will be able to enjoy the full benefit of both the programming available on cable systems and the functions available on their televisions and video cassette recorders. The Commission shall issue such regulations as may be necessary to require the use of interfaces that assure such compatibility.

"(c) RULEMAKING REQUIRED.—

"(1) IN GENERAL.—Within 1 year after the date of submission of the report required by subsection (b), the Commission shall prescribe such regulations as are necessary to increase compatibility between television receivers equipped with premium functions and features, video cassette recorders, and cable systems.

"(2) FACTORS TO BE CONSIDERED.—In prescribing the regulations required by this subsection, the Commission shall consider—

"(A) the costs and benefits of requiring cable operators to adhere to technical standards for scrambling or encryption of video programming in a manner that will minimize interference with or nullification of the special functions of subscribers' television receivers or video cassette recorders, while providing effective protection against theft or unauthorized reception of cable service, including functions that permit the subscriber—

"(i) to watch a program on 1 channel while simultaneously using a video cassette recorder to tape a program on another channel;

"(ii) to use a video cassette recorder to tape 2 consecutive programs that appear on different channels; or

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

"(B) the potential for achieving economies of scale by requiring manufacturers of television receivers to incorporate technologies to achieve such compatibility in all television receivers;

"(C) the costs and benefits to consumers of imposing compatibility requirements on cable operators and television manufacturers; and

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

"(3) REGULATIONS REQUIRED.—The regulations prescribed by the Commission under this section shall include such regulations as are necessary—

"(A) to establish the technical requirements that permit a television receiver or video cassette recorder to be sold as 'cable ready';

"(B) to establish procedures by which manufacturers may certify television receivers that comply with the technical requirements established under subparagraph (A) of this paragraph in a manner that, at the point of sale is easily understood by potential purchasers of such receivers;

"(C) provide appropriate penalties for willful misrepresentations concerning such certifications;

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

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

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

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

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

"(d) REVIEW OF REGULATIONS.—The Commission shall periodically review and, if necessary, modify the regulations issued pursuant to this section in light of any actions taken in response to regulations issued under subsection (c) and to reflect improvements and changes in cable systems, television receivers, video cassette recorders, and similar technology.

"(e) FEASIBILITY AND COST.—The Commission shall adopt standards under this section that are technologically and economically feasible. In determining the feasibility of such standards, the Commission shall take into account the cost and benefit to cable subscribers and purchasers of television receivers of such standards.".

SEC. 10. TECHNICAL STANDARDS; EMERGENCY ANNOUNCEMENTS; PROGRAMMING CHANGES.

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

"(e) Within one year after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission shall prescribe regulations which establish minimum technical standards relating to cable systems' technical operation and signal quality. The Commission shall update such standards periodically to reflect improvements in technology. A franchising authority may require as part of a franchise (including a modification, renewal, or transfer thereof) provisions for the enforcement of the standards prescribed under this subsection. A franchising authority may apply to the Commission for a waiver to impose standards that are more stringent than the standards prescribed by the Commission under this subsection.".

(b) EMERGENCY ANNOUNCEMENTS.—Section 624 of such Act is further amended by adding at the end the following new subsection:

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

(c) PROGRAMMING CHANGES.—Section 624 of such Act is further amended—

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

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

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

"(1) to provide 30 days advance written notice of any change in channel assignment or in the video programming service provided over any such channel;

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

SEC. 11. REGULATION OF CARRIAGE AGREEMENTS.

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

"SEC. 616. REGULATION OF CARRIAGE AGREEMENTS.

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

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

"(2) include provisions designed to prohibit a cable operator or other multichannel video programming distributor from coercing a video programming vendor to provide, and from retaliating against such a vendor for failing to provide, exclusive rights against other multichannel video programming distributors as a condition of carriage on a system;

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

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

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

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

"(b) DEFINITION.—As used in this section, the term 'video programming vendor' means a person engaged in the production, creation, or wholesale distribution of a video programming service for sale.".

SEC. 12. EQUAL EMPLOYMENT OPPORTUNITY.

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

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

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

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

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

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

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

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

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

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

(d) PENALTIES.—Section 634(f)(2) of such Act is amended by striking "$200" and inserting "$500".

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

(f) STUDY AND REPORT REQUIRED.—Not later than 240 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission shall submit to the Congress a report pursuant to a proceeding to review and obtain public comment on the effect and operation of its procedures, regulations, policies, standards, and guidelines concerning equal employment opportunity in the broadcasting industry. In conducting such review, the Commission shall consider the effectiveness of such procedures, regulations, policies, standards, and guidelines in promoting equality of employment opportunity and promotion opportunity, and particularly the effectiveness of such procedures, regulations, policies, standards, and guidelines in promoting the congressional policy favoring increased employment opportunity for women and minorities in positions of management authority. In conducting such proceeding the Commission also shall review the effectiveness of penalties and remedies for violation of existing regulations and policies concerning equality of employment opportunity in the broadcasting industry. The Commission shall forward to the Congress such legislative recommendations to improve equal employment opportunity in the broadcasting industry as it deems necessary.

(g) BROADCASTING EQUAL EMPLOYMENT OPPORTUNITY.—Part II of title VI of the Communications Act of 1934 is amended by adding at the end thereof the following new section:

"SEC. 617. EQUAL EMPLOYMENT OPPORTUNITY OBLIGATIONS OF MUST-CARRY STATIONS.

"(a) APPLICATION OF SECTION.—This section shall apply to—

"(1) the licensee for any television broadcasting station that is eligible for carriage under section 614 or 615; and

"(2) any corporation, partnership, association, joint-stock company, trust, or affiliate or subsidiary thereof engaged primarily in the management or operation of any such licensee.

"(b) EQUAL EMPLOYMENT OPPORTUNITY REQUIRED.—Equal opportunity in employment shall be afforded by each entity specified in subsection (a), and no person shall be discriminated against in employment by such entity because of race, color, religion, national origin, age, or sex.

"(c) EMPLOYMENT POLICIES AND PRACTICES REQUIRED.—Any entity specified in subsection (a) shall establish, maintain, and execute a positive continuing program of specific practices designed to ensure equal opportunity in every aspect of its employment policies and practices and to promote the hiring of a workforce that reflects the diversity of its community. Under the terms of its programs, such entity shall—

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

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

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

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

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

"(d) COMMISSION RULES REQUIRED.—

"(1) DEADLINE FOR RULES.—Not later than 270 days after the date of enactment of this section, and after notice and opportunity for hearing, the Commission shall prescribe rules to carry out this section.

"(2) CONTENT OF RULES.—Such rules shall specify the terms under which an entity specified in subsection (a) shall, to the extent possible—

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

"(B) use minority organizations, organizations for women, media, educational institutions, and other potential sources of minority and female applicants, on an ongoing basis as a potential source of referrals for whenever jobs may become available;

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

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

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

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

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

"(A) Corporate officers.

"(B) General Manager.

"(C) Chief Technician.

"(D) Comptroller.

"(E) General Sales Manager.

"(F) Production Manager.

"(G) Managers.

"(H) Professionals.

"(I) Technicians.

"(J) Sales.

"(K) Office and Clerical.

"(L) Skilled Craftspersons.

"(M) Semiskilled Operatives.

"(N) Unskilled Laborers.

"(O) Service Workers.

"(4) ADDITIONAL CONTENTS OF REPORTS.—In addition, such report shall state the number of job openings occurring during the course of the year and (A) shall certify that the openings were filled in accordance with the program required by subsection (c), or (B) shall contain a statement providing reasons for not filling such positions in accordance with such program. The statistical report shall be available to the public at the central office and at every location where more than 5 full-time employees are regularly assigned to work.

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

"(e) ENFORCEMENT.—

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

"(2) LICENSE RENEWAL REVIEWS.—The Commission shall, at the time of license renewal, review the employment practices of each entity described in subsection (a), in the aggregate, as well as in individual job categories, and determine whether such entity is in compliance with the requirements of subsections (b), (c), and (d), including whether such entity's employment practices deny or abridge minorities and women equal opportunities. As part of such investigation, the Commission shall review whether the entity's reports filed pursuant to subsection (d)(3) accurately reflect employee responsibilities in the reported job classifications and accurately reflect compliance with the equal employment opportunity plan in filing its annual reports.

"(f) COMPLAINTS.—Employees or applicants for employment who believe they have been discriminated against in violation of the requirements of this section, or rules under this section, or any other interested person, may file a complaint with the Commission. A complaint by any such person shall be in writing, and shall be signed and sworn to by that person. The rules prescribed under subsection (d)(1) shall specify a program, under authorities otherwise available to the Commission, for the investigation of complaints and violations, and for the enforcement of this section.

"(g) PENALTIES.—

"(1) IN GENERAL.—Any person who is determined by the Commission, through an investigation pursuant to subsection (e) or otherwise, to have failed to meet or failed to make best efforts to meet the requirements of this section, or rules under this section, shall be liable to the United States for a forfeiture penalty of $200 for each violation. Each day of continuing violation shall constitute a separate offense. Any entity defined in subsection (a) shall not be liable for more than 180 days of forfeitures which accrued prior to notification by the Commission of a potential violation. Nothing in this paragraph shall limit the forfeiture imposed on any person as a result of any violation that continues subsequent to such notification. In addition, any person liable for such penalty may also have any license under this Act conditioned, suspended, or revoked. Whoever knowingly makes any false statement or submits documentation which he knows to be false, pursuant to an application for certification under this section shall be in violation of this section.

"(2) ADDITIONAL REMEDIES.—The provisions of paragraphs (2)(D), (3), and (4), of section 503(b) shall apply to forfeitures under this subsection.

"(3) NOTICE OF PENALTIES.—The Commission shall provide for notice to the public of any penalty imposed under this section.

"(h) EFFECT ON OTHER LAWS.—Nothing in this section shall affect the authority of any State or local government—

"(1) to establish or enforce any requirement which is consistent with the requirements of this section, including any requirement which affords equal employment opportunity protection for employees; or

"(2) to establish or enforce any provision requiring or encouraging any entity specified in subsection (a) to conduct business with enterprises which are owned or controlled by members of minority groups (as defined in section 309(i)(3)(C)(ii)) or which have their principal operations located within the local service area of such entity.".

SEC. 13. HOME WIRING.

Section 624 of the Communications Act of 1934 (17 U.S.C. 544) is amended by adding at the end the following new subsection:

"(i) Within 120 days after the date of enactment of this subsection, the Commission shall prescribe rules concerning the disposition, after a subscriber to a cable system terminates service, of any cable installed by the cable operator within the premises of such subscriber.".

SEC. 14. SALES OF CABLE SYSTEMS.

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

"SEC. 618. SALES OF CABLE SYSTEMS.

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

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

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

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

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

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

"(d) WAIVER AUTHORITY.—The Commission may, consistent with the public interest, waive the requirement of subsection (a), except that, if the franchise requires franchise authority approval of a transfer, the Commission shall not waive such requirements unless the franchise authority has approved the transfer.

"(e) LIMITATION ON DURATION OF FRANCHISING AUTHORITY POWER TO DISAPPROVE TRANSFERS.—In the case of any sale or transfer of ownership of any cable system after the 36-month period following acquisition of such system, a franchising authority shall, if the franchise requires franchising authority approval of a sale or transfer, have 120 days to act upon any request for approval of such sale or transfer that contains or is accompanied by such information as is required in accordance with Commission regulations and by the franchising authority. If the franchising authority fails to render a final decision on the request within 120 days, such request shall be deemed granted unless the requesting party and the franchising authority agree to an extension of time.".

SEC. 15. CABLE CHANNELS FOR COMMERCIAL USE.

(a) RATES, TERMS, AND CONDITIONS.—Section 612(c) of the Communications Act of 1934 (47 U.S.C. 532(c)) is amended—

(1) in paragraph (1), by striking "consistent with the purpose of this section" and inserting "consistent with regulations prescribed by the Commission under paragraph (4)"; and

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

"(4) The Commission shall, not later than 180 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, by regulation establish—

"(A) a formula to determine the maximum rates which a cable operator may establish under paragraph (1) of this subsection;

"(B) standards concerning the terms and conditions which may be so established;

"(C) standards concerning methods for collection and billing for commercial use of channel capacity made available under this section; and

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

(b) ACCESS FOR QUALITY MINORITY PROGRAMMING SOURCES AND QUALIFIED EDUCATIONAL PROGRAMMING SOURCES.—Section 612 of such Act is further amended by adding at the end thereof the following new subsection:

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

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

"(3) For purposes of this subsection, the term 'qualified educational programming source' means a programming source which devotes significantly all of its programming to educational or instructional programming of such a nature that it promotes public understanding of mathematics, the sciences, the humanities, and the arts and has a documented annual expenditure on programming exceeding $15,000,000. Programming expenditures shall mean all annual costs incurred by the channel originator to produce or acquire programs which are scheduled to appear on air, and shall specifically exclude marketing, promotion, satellite transmission and operational costs, and general administrative costs. Nothing in this subsection shall substitute for the requirements to carry qualified noncommercial educational television stations as specified under section 615.".

SEC. 16. CABLE FOREIGN OWNERSHIP RESTRICTIONS.

(a) FINDINGS.—The Congress finds that—

(1) restrictions on alien or foreign ownership of broadcasting and common carriers first were enacted by Congress in the Radio Act of 1912;

(2) cable television service currently is available to more than 90 percent of American households, more than 62 percent of American households subscribe to such services, and the majority of viewers rely on cable as the conduit through which they receive terrestrial broadcast signals;

(3) many Americans receive a significant portion of their daily news, information, and entertainment programming from cable television systems, and such systems should not be controlled by foreign entities; and

(4) the policy justifications underlying restrictions on alien ownership of broadcast or common carrier licenses have equal application to alien ownership

of cable television systems, direct broadcast satellite systems, and multipoint distribution services.

(b) AMENDMENT TO COMMUNICATIONS ACT.—Section 310(b) of the Communications Act of 1934 (47 U.S.C. 310(b)) is amended—

(1) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D);

(2) by inserting "(1)" after "(b)"; and

(3) by adding at the end thereof the following new paragraphs:

"(2)(A) No cable system (as such term is defined in section 602) in the United States shall be owned or otherwise controlled by any alien, representative, or corporation described in subparagraph (A), (B), (C), or (D) of paragraph (1) of this subsection.

"(B) Subparagraph (A) of this paragraph shall not be applied—

"(i) to require any such alien, representative, or corporation to sell or dispose of any ownership interest held or contracted for on or before June 1, 1990, or acquired in accordance with clause (ii); or

"(ii) to prohibit any such alien, representative, or corporation that owns, has contracted on or before June 1, 1990, to acquire ownership, or otherwise controls, any cable system from acquiring ownership or control of additional cable systems if the total number of households passed by all the cable systems that such alien, representative, or corporation would, as a result of such acquisition, own or control does not exceed 2,000,000.

"(3)(A) For purposes of paragraph (1) of this subsection, a license or authorization for any of the following services shall be deemed to be a broadcast station license:

"(i) cable auxiliary relay services;

"(ii) multipoint distribution services;

"(iii) direct broadcast satellite services; and

"(iv) other services the licensed facilities of which may be substantially devoted toward providing programming or other information services within the editorial control of the licensee.

"(B) Subparagraph (A) of this paragraph shall not be applied to any cable operator to the extent that such operator is eligible for the exemptions contained in subparagraph (B) of paragraph (2).".

SEC. 17. THEFT OF CABLE SERVICE.

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

(1) in paragraph (2)—

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

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

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

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

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

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

SEC. 18. STUDIES.

(a) STUDY OF VIDEO PROGRAMMING DIVERSITY AND COMPETITION.—

(1) COMMISSION STUDY AND RULEMAKING.—The Commission shall conduct a rulemaking proceeding to review and study to determine whether it is necessary or appropriate in the public interest to prohibit or constrain acts and practices that may unreasonably restrict diversity and competition in the market for video programming. In conducting such proceeding, the Commission—

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

(B) shall impose limitations on the proportion of the market, at any stage in the distribution of video programming, which may be controlled by any multichannel video programming distributor or other person engaged in such distribution.

(2) REPORT.—Within one year after the date of enactment of this Act, the Commission shall submit a report on the review and study required by paragraph (1) to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate. Thereafter, the Commission shall continue to monitor (and summarize in the Commission's annual reports) the status of diversity and competition in the marketplace for video programming.

(3) PROCEEDING REQUIRED TO REVIEW DBS RESPONSIBILITIES.—The Federal Communications Commission shall, within 180 days after the date of enactment of this Act, initiate a rulemaking proceeding to impose, with respect to any direct broadcast satellite system that is not regulated as a common carrier under title II of the Communications Act of 1934, public interest or other requirements on direct broadcast satellite systems providing video programming. Any regulations prescribed pursuant to such rulemaking shall, at a minimum, apply the access to broadcast time requirement of section 312(a)(7) of the Communications Act of 1934 and the use of facilities requirements of section 315 of such Act to direct broadcast satellite systems providing video programming. Such proceeding also shall examine the opportunities that the establishment of such systems provide for the principle of localism under such Act, and the methods by which such principle may be served through technological and other developments in, or regulation of, such systems.

(4) PUBLIC SERVICE USE REQUIREMENTS.—The Federal Communications Commission shall require, as a condition of any initial authorization, or renewal thereof, for a direct broadcast satellite service providing video programming, that the provider of such service reserve not less than 4 percent or more than 7 percent of the channel capacity of such service exclusively for noncommercial public service uses. A provider of direct broadcast satellite service may use any unused channel capacity designated pursuant to this paragraph until the use of such channel capacity is obtained, pursuant to a written agreement, for public service use. The direct broadcast satellite service provider may recover only the direct costs of transmitting public service programming on the channels reserved under this subsection.

(5) STUDY PANEL.—There is established a study panel which shall be comprised of a representative of the Corporation for Public Broadcasting, the National Telecommunications and Information Administration, and the Office of Technology Assessment selected by the head of each such entity. Such study panel shall within 2 years after the date of enactment of this Act, submit a report to the Congress containing recommendations on—

(A) methods and strategies for promoting the development of programming for transmission over the public use channels reserved pursuant to paragraph (4)(A);

(B) methods and criteria for selecting programming for such channels that avoids conflicts of interest and the exercise of editorial control by the direct broadcast satellite service provider; and

(C) identifying existing and potential sources of funding for administrative and production costs for such public use programming.

(6) DEFINITIONS.—As used in this subsection—

(A) the term "direct broadcast satellite systems" includes (i) satellite systems licensed under Part 100 of the Federal Communications Commission's rules, and (ii) high power Ku-band fixed service satellite systems providing video service directly to the home and licensed under Part 25 of the Federal Communications Commission's rules; and

(B) the term "public service uses" includes—

(i) programming produced by public telecommunications entities, including programming furnished to such entities by independent production services;

(ii) programming produced by public or private educational institutions or entities for educational, instructional, or cultural purposes; and

(iii) programming produced by any entity to serve the disparate needs of specific communities of interest, including linguistically distinct groups, minority and ethnic groups, and other groups.

(b) SPORTS PROGRAMMING MIGRATION STUDY AND REPORT.—

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

(2) REPORT ON STUDY.—The Federal Communications Commission shall, on or before July 1, 1993, and July 1, 1994, submit an interim and a final report, respectively, on the results of the study required by paragraph (1) to the Committee on Energy and Commerce of the House of Representatives and the Commit-

tee on Commerce, Science, and Transportation of the Senate. Such reports shall include a statement of the results, on a sport-by-sport basis, of the analysis of the trends required by paragraph (1) and such legislative or regulatory recommendations as the Commission considers appropriate.

(c) PROCEEDING WITH RESPECT TO AREAS RECEIVING POOR OVER-THE-AIR SIGNALS.—The Federal Communications Commission shall initiate an inquiry and rulemaking to examine the feasibility of providing access to network and independent broadcasting station signals to persons who subscribe to direct broadcast satellite service and are unable to receive such signals (of grade B quality) over the air from a local licensee or from a cable system. In undertaking such rulemaking, the Commission shall take into consideration pertinent economic and technological factors, including the following:

(1) the extent to which individuals in rural, underserved areas are unable to receive broadcast television transmission; and

(2) potential ways in which operators of satellite-delivered programming services or the manufacturers or distributors of receiving equipment might enhance the ability of such persons to receive and readily access additional video programming, including without limitation, an electronic switching capability as a minimum feature on satellite television receiving equipment.

SEC. 19. ANTITRUST IMMUNITY.

(a) Nothing in the amendments made by this Act shall be construed to create any immunity to any civil or criminal action under any Federal or State antitrust law, or to alter or restrict in any matter the applicability of any Federal or State antitrust law.

SEC. 20. EFFECTIVE DATE.

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

PURPOSE AND SUMMARY

Passage of the Cable Communications Policy Act of 1984 (Cable Act) was premised on the expectation that emerging competition in the video marketplace would result in reasonable rates for cable service and improved customer services practices. Since passage of the Cable Act, however, competition to cable from alternative multichannel video technologies largely has failed to materialize. At the same time, consumer complaints about high and rising cable rates and poor customer service practices have become widespread. Concerns also have been raised about the evolving structure of the video programming marketplace and its implications for the flow of news, information, and entertainment to the American people.

H.R. 4850 is designed to address the principal concerns about the performance of the cable industry and the development of the market for video programming since passage of the Cable Act. The legislation will protect consumers by preventing unreasonable rates, by improving the cable industry's customer service practices, and by sparking the development of a competitive marketplace. Rate regulation will be permitted only in the absence of effective competition. Specifically, the legislation requires cable operators to offer a basic service tier, consisting, at a minimum, of all broadcast signals carried on the cable system and public, educational, and governmental (PEG) access channels. Cable operators will retain the authority to include any additional programming services on this basic tier. The Federal Communications Commission (FCC or the Commission) is required to establish a formula for determining the maximum price cable operators may charge for this tier. H.R. 4950 also directs the FCC to develop the means to identify and to reduce, in individual cases, unreasonable cable rates. A franchising authority or other relevant State or local government entity will be authorized to file a complaint with the FCC alleging that a rate is unreasonable. The legislation requires the FCC to consider such complaints in a fair and expedited proceeding and to establish procedures for refunding any "unreasonable" portion of the rates paid by subscribers after the filing of a complaint.

A principal goal of H.R. 4850 is to encourage competition from alternative and new technologies, including competing cable system, wireless cable, direct broadcast satellites, and satellite master antenna television services. Accordingly, the legislation prohibits franchising authorities from granting exclusive franchises and from unreasonably refusing to award additional franchises. The legislation also permits municipalities to establish and operate their own competing cable systems.

In order to stem and reduce the potential for abusive or anticompetitive actions against programming entities, the legislation prohibits multichannel video programming distributors from coercing programmers to provide exclusivity for video programming against other multichannel video programming distributors as a condition of carriage on a cable system; from requiring a financial interest in a program service as a condition of carriage; and from discriminating against non-affiliated cable programming services with respect to terms and conditions of carriage.

In an effort to ensure the contained availability of free over-the-air broadcasting, the legislation contains provisions that govern cable carriage of local broadcast signals. Under the must carry provision, cable operators will be obligated to reserve up to one third of their systems' channel capacity for carriage of local commercial television stations. Cable operators also will be required to carry all qualified local noncommercial television stations, subject to certain exceptions.

H.R. 4850 contains additional provisions designed to enhance the interests of cable subscribers and to protect consumers from the unfair practices of some cable operators. For example, for systems where it is or becomes technologically feasible, and for all systems within five years, (subject to a two year extension after a study and report by the FCC), cable operators will be prohibited from requiring subscribers to purchase any tier of service other than the regulated basic tier before being permitted to purchase services offered on a per program, per programming service, or per channel basis. Further, H.R. 4850 prohibits cable operators from charging subscribers for programming that they have not affirmatively requested; permits cable operators to offer reasonable discounts to senior citizens; and enables local authorities to require advance notice of programming and channel assignment changes.

H.R. 4850 also requires the FCC to establish a formula to determine the maximum price cable operators may charge for cable equipment and services, including remote control devices, converter boxes, additional outlets, and installation. In addition, the legislation requires the FCC to establish minimum federal standards for customer service, and ensures that states and local authorities retain the ability to enact and enforce laws that impose more stringent customer service requirements as well as generic consumer protection laws. The legislation also obligates the FCC to prescribe regulations to increase the compatibility between television sets equipped with advanced features, video cassette recorders, and cable systems, consistent with the need for cable operators to prevent theft of cable service. Finally, the legislation requires the FCC to develop regulations to promote the commercial availability of remote controls from cable operators and retail vendors.

H.R. 4850 also contains provisions to promote the continued availability of sports programming to all television viewers. The bill provides states and local authorities with the authority to regulate the rates charged by cable operators for pay-per-view telecasts of championship events in professional baseball, basketball, football, and hockey. In addition, H.R. 4850 requires the FCC to conduct a study and report to Congress on trends regarding the migration of local, regional, and national sports programming from carriage by broadcast stations to cable programming networks and pay-per-view services.

To advance equality of employment opportunities for women and minorities, the bill requires the FCC to revise its regulations concerning the annual statistical reports identifying by race, sex, and job title the number of employees of cable operators in job categories specified by the Commission. The bill extends the Commission's equal employment opportunity regulations to all multichannel video programming distributors. The legislation further extends similar equal employment opportunity regulations to all broadcasters eligible for must carry status under the bill.

Other provisions in H.R. 4850 require the FCC to establish minimum technical standards for the technical operation and signal quality of cable operators; to ensure that viewers of cable programming have access to emergency information provided by the emergency broadcasting system; to collect financial information from cable systems on an annual basis; to address, by regulation, the issue of ownership of home wiring; and to place limits on horizontal concentration of cable system ownership and determine whether limitations on vertical integration are necessary or appropriate.

In addition H.R. 4850 requires the Commission to submit to Congress reports concerning the financial condition of the cable industry as well as diversity and competition in the video programming marketplace. The legislation further requires the Commission to initiate a rulemaking to impose public interest requirements on direct broadcast satellite (DBS) systems, to consider the impact direct broadcast satellites will have on the principle of localism, and to require DBS operators to reserve 4–7 percent of their channel capacity for noncommercial public service uses. Finally, the legislation imposes anti-trafficking rules and foreign ownership restrictions on cable systems and strengthens the leased access and the theft of cable service provisions contained in the Communications Act.

Background and Need for the Legislation

THE 1984 CABLE ACT

The Communications Act of 1934 was adopted well before the emergence of cable television technology. As a result, the Act, which provides the overall framework for communications policymaking in the U.S., did not contain a national policy to guide the development of the cable television industry. Prior to 1984, cable television was regulated principally at the local government level through the franchise process. In addition, a number of states, as well as the Federal government, had rules and regulations regarding the terms of local franchises.

Reponding to the varied regulatory schemes affecting the cable industry, Congress enacted the Cable Communications Policy Act of 1984, amending the Communications Act to incorporate "cable communications." The legislation established a national policy that clarified a system of local, state and Federal regulation of cable television. The Cable Act was intended to create a statutory balance emphasizing reliance on the local franchising process as the primary means of cable television regulation, while defining and limiting the authority that a franchising authority may exercise through the franchising process.

The Cable Act codified local government authority to regulate cable by laying the ground rules for the relationship between the cable operator and the local government entity (usually the city in which the cable company operates) that grants the franchise. The Cable Act, among other things, set about strict guidelines confirming municipal regulatory authority by limiting rate regulation, permitting municipal franchise fees to rise from 3 percent to 5 percent of an operator's gross revenues, and providing local governments authority to deny franchise renewal if a cable operator's performance fails to meet a particular standard. Since December 30, 1986, state and local governments have been prohibited from regulating the basic service rates of cable systems in the vast majority of television markets due to the FCC's adoption of "effective competition" rules.

When the Cable Act was passed in 1984, Congress believed that deregulation would enable the cable industry to prosper, benefiting both consumers and industry participants alike. To a large extent, that prediction has been realized. The Committee notes that in the 7 years since passage of the Cable Act, the cable industry has experienced tremendous growth. Cable penetration has increased from 37 percent of television households in January 1985 to approximately 61 percent in June 1992. Monthly revenue earned by cable operators also has grown dramatically, according to statistics provided by Paul Kagan Associates, from $18.94 per subscriber in 1984 to $31.51 per subscriber in 1991. In addition, during this period, annual cable advertising revenues have increased five-fold, from less than $600 million in 1984 to approximately $3 billion in 1991. Moreover, the quality and diversity of programming available to consumers and cable's annual investment in programming has increased greatly.

The Committee recognizes that increased cable subscribership levels and investment in programming, which, in turn, led to increased advertising revenues, are linked closely to many of the Cable Act's deregulatory provisions. In the years since passage of the Cable Act, however, the Committee has become increasingly concerned about the actions of some cable operators who clearly have abuse both their unique position in the marketplace and their deregulated status. Some cable operators have behaved in an anticompetitive fashion against unaffiliated programming services and alternative multichannel video system providers. Further, subscribers in many localities across the country have endured substantial, and sometimes unjustified, rate hikes as well as poor customer service.

The Committee notes that the competition to cable system operators from other providers of video programming that the Committee anticipated during consideration of the 1984 Act, such as wireless and private cable operators, cable overbuilders, the home satellite dish market, and direct broadcast satellite operators, largely has failed to energy. While cable passes more than 95 percent of U.S. television households, and presently more than 60 percent of households subscribe to cable, cable's competitors serve, in the aggregate, fewer than 5 percent of American households.

The Committee also is concerned about the impact of the 1984 Cable Act on the relationship between local governments, including franchise authorities, and cable operators. The Committee believes that it is necessary to ensure that local authorities have the ability to protect consumers from unreasonable rates. The Committee believes that it is necessary to ensure that states and franchise authorities have the ability to monitor and, where necessary and appropriate, enforce compliance with regulations and agreements concerning the levels of customer and technical service required to be provided by cable operators.

H.R. 4850 addresses these concerns. The legislation will protect consumers from unreasonable behavior by the "renegades" in the cable industry, while promoting the development of competing multichannel video programming distributors. The Committee believes that competition ultimately will provide the best safeguard for consumers in the video marketplace and strongly prefers competition and the development of a competitive marketplace to regulation. The Committee also recognizes, however, that until true competition develops, some tough yet fair and flexible regulatory measures are needed.

CABLE RATES SINCE DEREGULATION

Pursuant to the 1984 Cable Act, in an effort to spur investment in new programming services and expanded system capacity, the FCC deregulated cable rates as of December 30, 1986. At the time the Cable Act was passed, the Committee believed that the "availability of competing sources of programming in a given market [would] keep the rates for basic cable services reasonable in that market without the need for regulation." [1] Congress believed that in the absence of rate regulation, the local franchising process would ensure that cable operators were responsive to the needs of the local community.

As a result, rate deregulation under the Cable Act applies to all cable systems, except those that are not subject to "effective competition" as defined by the Federal Communications Commission (FCC). Initially, a cable system was considered to be subject to effective competition if the entire community it served could receive

[1] Committee on Energy and Commerce, "Report on the Cable Franchise Policy and Communications Act of 1984," House Report 98-934, page 25.

three or more unduplicated broadcast signals. Under this three signal standard, cable systems in approximately 96 percent of all communities were not rate regulated.

On June 13, 1991, the FCC voted to redefine effective competition in an effort to reflect changes in the video marketplace that had occurred since the three signal standard was adopted. Under the new definition, a cable system is considered to be subject to effective competition if (1) six unduplicated over-the-air broadcast signals are available in the entire cable community; or (2) an independently owned, competing multichannel video delivery service is available to 50 percent of the homes and subscribed to by at least 10 percent of the homes passed by the incumbent cable system. According to the General Accounting Office, 59 percent of the cable systems serving 80 percent of the nation's cable subscribers are not subject to regulation under the "six-signal" component of this standard.[2] Further, information provided to the Committee indicates that a de minimis number of cable systems are subject to regulation under the "competing provider" component of the effective competition test.

The Committee finds that since rate deregulation took effect in December 1986, the cable industry, as the Committee hoped, has invested substantially in capital improvements and programming. According to statistics provided by the National Cable Television Association (NCTA), basic cable networks spent $1.5 billion for programming in 1991, an increase from $745 million in 1988, and more than four times the $340 million spent in 1984. Similarly, the typical cable system offers 30 to 53 channels today compared to the typical 24 channels or less before the Cable Act was enacted.

However, these expenditures have been accompanied by rate increases which, in some instances, the Committee believes, have been unreasonable. In response to the complaints of many municipalities and consumer groups, in April 1988, the Chairman of the Committee's Subcommittee on Telecommunications and Finance, requested that the General Accounting Office (GAO) conduct a review of the effects of the deregulation of rates pursuant to the Cable Act. Specifically, GAO was asked to analyze patterns and differentials in the rates charged by cable companies on December 1, 1986, one month prior to deregulation, and the rates charged on October 1, 1988, almost two years after rate deregulation became effective.

GAO developed the rate survey methodology and questionnaire with input from both the NCTA and the National League of Cities (NLC). GAO sent questionnaires to a random sample nationwide of 1,950 cable systems and received 1,451 usable responses, a response rate of 74 percent. The results, released in August 1989, indicated that monthly rates for the lowest priced basic service increased 29 percent, or four times the rate of inflation, and that almost one in five cable subscribers incurred a rate increase of more than fifty percent. The survey also showed, however, that although cable rates had increased, cable systems were providing consumers additional channels, from an average of 24 channels on the lowest

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[2] General Accounting Office, 1991 Survey of Cable Television Rates and Services, July 1991, page 4.

priced basic service in December 1986 to approximately 30 channels in 1988. The survey also concluded that cable systems' average monthly revenue per subscriber increased from $21.58 in 1986 to $24.68 in 1988, an increase of fourteen percent.

The 1989 GAO rate survey provided important information but left several unanswered questions. As a result, GAO initiated a follow-up survey of cable television rates and services. In drafting the follow-up survey, GAO met with representatives from the FCC, NCTA, NLC, the Community Antenna Television Association (CATA), the U.S. Conference of Mayors, and members of the Telecommunications and Finance Subcommittee staff. For its follow-up work, GAO randomly selected a sample of 1,971 cable systems to survey from which it received 1,530 usable responses, a response rate of 78 percent. GAO released the results of the follow-up survey in June 1990.

GAO found that basic rates for cable service continued to increase at a "rather significant rate." [3] GAO determined that from December 1988 to December 1989, an average cable subscriber's monthly rates for both the lowest priced and the most popular basic services increased by 10 percent, or more than twice the rate of inflation, and that an estimated 12 percent of cable system operators increased rates by more than 20 percent, or more than four times the rate of inflation. More specifically, GAO found that an estimated 6 percent of cable system operators increased rates for the most popular tier of service by 21–30 percent, that approximately 3 percent of cable operators increased rates by 31–40 percent, that nearly 2 percent of cable operators increased rates by 41–50 percent, and that slightly more than 1 percent of cable operators increased rates by more than 50 percent. GAO determined that these rate increases were accompanied by small increases (one and two channels, respectively, for the lowest priced and most popular basic services) in the average number of basic channels offered. The survey also concluded that revenue to cable operators per subscriber increased, on average, 5 percent, from $25.00 to $26.36, during 1989.

In addition, GAO's follow-up survey showed average rate increases from 1986 to 1989 of 39 percent and 43 percent for the most popular and lowest priced basic services, respectively, as well as a 21 percent increase in revenue per subscriber. GAO also determined that from December 1984 to December 1989, rates for the lowest priced basic cable service rose 68 percent, or nearly three times the rate of inflation of 23.7 percent for that period.

On July 31, 1990, the FCC released a report to Congress (FCC Cable Report) pursuant to the requirements of the 1984 Cable Act. In its report, the FCC also analyzed changes in rates charged for cable services since deregulation. For its analysis, the Commission utilized the raw data collected by GAO for its follow-up rate survey. The FCC, like GAO, concluded that cable rates rose appreciably under deregulation. The FCC found that between 1986 and 1989, monthly rates for the lowest price tier of service increased by

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[3] Briefing statement before the Subcommittee on Telecommunications and Finance of the Committee on Energy and Commerce of John M. Ols, Jr., Director, Housing and Community Development Issues, U.S. General Accounting Office, June 14, 1990, Page 1.

36 percent and for the most popular tier of service by 38 percent. The FCC survey further revealed that increases in the average subscriber's total monthly bill slowed from 7.1 percent in 1987 and 7.2 percent in 1988 to only 5.4 percent, or slightly above the rate of inflation, in 1989. The FCC also noted that because of the increase in the number of channels provided, the cost per channel to subscribers for the lowest priced tier of service rose only 7 percent between 1986 and 1989.[4]

In May 1991, GAO was asked to address the level of cable rate increases or decreases during 1990. GAO also was requested to structure the study to be compatible with prior GAO cable rate surveys, so that cable rate trends could be explored. Accordingly, GAO contacted the 1,530 cable systems that responded to its 1990 survey; it received a response rate of 98 percent (1,505 of 1,530 systems).

In its third survey, released in July 1991, GAO documented continued, and often substantial, rate increases. Specifically, GAO determined that although average monthly rates for the lowest priced basic service increased by 9 percent from December 1989 to April 1991, the average number of channels offered dropped by one. The Committee notes that for the first time, cable consumers appeared to be spending more money on cable service and receiving less programming in return. GAO further determined that during this time period, average monthly rates for the most popular basic service increased by 15 percent (more than twice the rate of inflation), while the average number of channels available increased by two. In addition, GAO found that approximately 70 percent of subscribers for the most popular service and 66 percent for the lowest priced service incurred rate increases of more than 10 percent between December 1989 and April 1991. Overall, GAO found that during the first four and one-half years of deregulation (November 1986 to April 1991), the monthly charge for the lowest priced service increased by 56 percent and for the most popular basic service by 61 percent—increases of more than three times the rate of inflation.

The Committee concurs in the findings of both the FCC and GAO concerning the magnitude of rate increases since passage of the Cable Act. The Committee finds that rate increases imposed by some cable operators are not justified economically and that a minority of cable operators have abused their deregulated status and their market power and have unreasonably raised the rates they charge subscribers. The Committee believes that it is necessary to protect consumers from unreasonable cable rates.

In the Committee's view, the FCC's redefinition of effective competition does not obviate the need for a legislative approach to protecting consumers. First, the Committee questions the extent to which the FCC's action adequately will protect consumers in urban and suburban areas who are likely to be served by at least six over-the-air broadcast stations. As noted above, the GAO has deter-

[4] The results of the GAO and FCC reports generally are consistent. Any differences in the results can be attributed to differences in the way the two organizations aggregated and analyzed the data. GAO's results were computed on a per subscriber basis, whereas the FCC's results were computed on a per system basis.

mined that the rates of only 20 percent of the nation's cable subscribers will be regulated under the new definition. Second, as FCC Chairman Alfred Sikes testified, "I do not think our effective competition rulemaking will promote the development of robust competition." [5] The Committee believes that a fully competitive marketplace ultimately will provide the most efficient and broadest safeguards for consumers.

The rate regulation provisions contained in H.R. 4850 will provide improved protection for consumers. The legislation permits rate regulation only in the absence of effective competition, which is defined to exist if (1) fewer than 30 percent of households in the franchise area subscribe to cable; (2) at least two sources of multichannel video programming are offered to 50 percent of households and subscribed to by at least 15 percent of households; or (3) a multichannel video programming distributor owned by the franchising authority for that franchise area offers service to at least 50 percent of households. The legislation requires the FCC to establish a cost-based formula for determining the maximum price cable operators will be permitted to charge for a required basic tier consisting, at a minimum, of all broadcast signals carried on the cable system and public, educational and governmental (PEG) access channels. The legislation also directs the FCC to develop the means to identify unreasonable rates charged by cable operators for cable programming services. A franchising authority or other relevant state or local government entity will be authorized to file a complaint with the Commission alleging that a rate is unreasonable. The Committee expects that these provisions will provide consumers meaningful protection from unreasonable cable rates.

CUSTOMER SERVICE PRACTICES

The 1984 Cable Act enables a franchising authority to require, as part of a franchise, provisions for the enforcement of customer service requirements. Such requirements relate to interruption of service; disconnection; rebates and credits to consumers; deadlines to respond to consumer requests or complaints; the location of the cable operator's consumer service offices; and the provision to customers, or potential customers, of information on billing or services.

However, testimony submitted to the Committee indicates that despite the ability of franchising authorities to include customer service requirements in franchise agreements, some cable operators have failed to provide satisfactory customer service. Numerous submissions to the Committee demonstrate that some cable operators frequently break installation and repair appointments, subject customers to frequent service interruptions, fail to answer customer calls or place customers on hold for extended periods, and ignore or are slow to respond to customer billing inquiries.

The results of a New York City survey of cable subscribers, conducted in 1990 and submitted to the Committee, "paint a dismal picture of customer service in each of the four areas addressed by

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[5] Testimony of Alfred C. Sikes, Chairman, Federal Communications Commission, Legislative Hearing of the Committee's Subcommittee on Telecommunications and Finance on H.R. 1303, March 20, 1991 page 199.

the survey—reception, telephone service, service repair, and billing." [6] The survey showed, for example, that of the respondents who had telephoned their cable operator in the two years prior to the survey, more than half encountered a busy signal the last time they telephoned the cable company. And of those respondents ultimately connected by telephone, approximately one-half were put on "hold" for longer than one minute.

Similarly, in 1990 and 1991, Consumer Reports conducted a survey to ascertain individuals' opinions about cable television service.[7] According to Consumer Reports, consumers are less satisfied with their local cable system than with any other type of service Consumer Reports has rated. Specifically, 25 percent of survey respondents are dissatisfied with their cable company service. In the year preceding the survey, about 60 percent of respondents experienced service outages—typically four per year—that affected all channels and usually lasted less than half a day. One tenth of respondents reported that the most recent service interruption lasted two days or longer. In addition, according to Consumer Reports, one in eight respondents experienced billing problems during the year preceding the survey, and respondents reported that they had difficulty reaching the cable company by telephone nearly 50 percent of the times they tried. Respondents also reported that in roughly 15 percent of the times a service call was made in person, the installation or repair was done improperly, and in another 15 percent of the times, the service person failed to keep the service appointment.

The Committee received further testimony regarding consumers' views about the customer service practices of some cable operators. For example, Sharpe James, Mayor of Newark, New Jersey, testified before the Committee's Subcommittee on Telecommunications and Finance that the Board of Public Utilities for the States of New Jersey, which monitors complaints against cable operators, received 16,892 complaints in 1990. According to James, the primary areas of complaints concerned billing practices, service quality, rates and fees, and consumers' ability to reach the cable company.[8] Similarly, Kurt L. Schmoke, Mayor of Baltimore, Maryland, testified that the City of Baltimore received more than 2,160 complaints regarding cable service in 1990. Of the complaints, 36.5 percent concerned the quality of the cable operator's service, 28.5 percent were related to installation, 14.25 percent were related to complaints about the cable operator's billing procedures, and 7.7 percent were related to construction.[9]

The cable industry has acknowledged that some customer service-related problems exist but asserts that such difficulties are asso-

[6] Statement submitted to the Committee by John L. Hanks, Director, Bureau of Franchises for the City of New York, the National League of Cities, and the U.S. Conference of Mayors, March 1, 1990, Page 3.

[7] Consumer Reports receive more than 200,000 responses from its readers. The results of the survey appeared in the September 1991 issue of Consumer Reports, pages 576–585.

[8] Testimony of Sharpe James, Mayor of the City of Newark, New Jersey, Legislative Hearing of the Committee's Subcommittee on Telecommunications and Finance on H.R. 1303, the "Cable Television Consumer Protection and Competition Act of 1991," March 20, 1991, page 111.

[9] Testimony of Kurt L. Schmoke, Mayor of the City of Baltimore, Maryland, Legislative Hearing of the Committee's Subcommittee on Telecommunications and Finance on H.R. 1303, the "Cable Television Consumer Protection and Competition Act of 1991," March 20, 1991, page 135.

ciated with rapid and unprecedented growth in the industry. The cable industry also points to the voluntary customer service standards NCTA adopted in February 1990 as evidence of the industry's commitment to improve service to consumers. The standards address practices and performance regarding customer service response time, installation, service interruptions, rate changes, channel repositioning, office hours, and billing. Although antitrust laws prevent NCTA from enforcing these standards, the association expects the standards to be "picked up by local franchising authorities, who can monitor and enforce them." [10]

While the Committee commends the cable industry for taking steps to improve the quality of customer service, the Committee questions whether the guidelines are stringent enough and whether a self-policing mechanism can be successful in addressing the serious concerns of consumers about the cable industry's customer service practices. The Committee also notes that minimal competition in the video marketplace means that cable operators have little or no market incentive to offer consistently high quality customer service. Finally, the Committee has concerns about the extent to which cable systems are complying with the voluntary standards. At the time the standards were adopted, NCTA stated that it expected its members to implement the standards fully by July 1991. To assess industry performance, in April 1991, NCTA surveyed 18 cable companies, serving two-thirds of all cable subscribers. Although 85 percent of the respondents reported that they were in compliance with the standards, only half had applied for NCTA's Seal of Quality Customers Service.

Submissions to the Committee indicate that local franchising authorities also share concerns about the potential efficacy of NCTA's voluntary guidelines. Paul Berra, President, National Association of Telecommunications Officers and Advisors (NATOA), testified that:

> The substance of the NCTA-proposed standards is minimal * * * in every case St. Louis' city ordinance equals or exceeds the standards proposed. At the same time, I have never heard from my local cable operator that our standards [in St. Louis] are unrealistic, unfair, or unduly burdensome. Many other state and local governments have set consumer practice standards that have more teeth, are more specific, or are more sensitive to consumer needs than the guidelines recommended by NCTA * * * Congress should not be misled. Simple voluntary consumer service standards are not a substitute for effective governmental oversight.[11]

The Committee believes that consumers should receive customer service superior to that currently available from many cable opera-

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[10] Testimony of James P. Mooney, President and Chief Executive Officer, Legislative hearing of the Committee's Subcommittee on Telecommunications and Finance to consider pending cable legislation, focusing on consumer issues, including rates and services, March 1, 1990, page 62.

[11] Testimony of Paul Berra (NATOA), Legislative hearing of the Subcommittee on Telecommunications and Finance of the Committee on Energy and Commerce to consider pending cable legislation, focusing on consumer issues, including rates and services, March 1, 1990.

tors. Accordingly, H.R. 4850 requires the FCC to establish minimum Federal standards for customer service and consumer protection. The legislation allows local authorities to require stricter standards as part of a franchise agreement and to establish and enforce laws that impose more stringent customer service requirements. In addition, states and franchise authorities retain the ability, under H.R. 4850, to enact and enforce legislation imposing more stringent consumer protection standards, whether or not the provisions of such laws are written into the cable franchise agreement.

TECHNICAL STANDARDS

The Cable Act allows the FCC to set technical standards related to facilities and equipment required by a franchising authority in a franchise agreement. Pursuant to the Cable Act, the FCC retained its existing standards for Class I cable channels [12] and prohibited franchising authorities from adopting different standards. The Commission did not set any technical standards for Class II, Class III or Class IV channels and prohibited franchising authorities from setting their own technical standards. As a result of a court of appeals decision holding that prohibiting franchise authorities from acting on Class II channels in the absence of federal standards was arbitrary and capricious,[13] the FCC proposed extending its Class I standards to Class II and Class III channels.[14]

On February 13, 1992, the FCC adopted new technical standards for cable systems, applicable to all NTSC video downstream signals on all cable channels.[15] These standards, which define the basic technical quality of service cable subscribers are entitled to receive, were based in large part on an inter-industry proposal, submitted to the Commission as part of its Notice of Proposed Rulemaking,[16] by the National League of Cities, the U.S. Conference of Mayors, the National Association of Counties, the National Association of Telecommunications Officers and Advisors, the NCTA, and the Community Antenna Television Association. In adopting the new rules, the FCC preempted local standards that differ from its national standards, although the Commission allows franchising authorities for cable systems serving rural communities to set certain lower technical standards. The Commission also permits franchising authorities for systems serving fewer than 1,000 subscribers to set standards for such systems, so long as those standards do not exceed the FCC's standards.

Submissions to the Committee indicate that cable technical service, like customer service, has in some cases been unsatisfactory. For example, the survey of cable subscribers in New York City in-

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[12] Class I channels carry broadcast programming. Class II channels deliver non-encoded cablecast programming. Class III channels carry encoded cablecast programming and non-video, non-interactive communications. Class IV channels carry interactive communications.

[13] See *City of New York* v. *FCC*, 814 F.2d 720 (D.C. Cir. 1987) aff'd 108 S.Ct. 1637 (1988).

[14] Further Notice of Proposed Rulemaking, "In the Matter of Review of the Technical and Operational Requirements of Part 76, Cable Television," MM Docket No. 85-38, 3 FCC Rcd. 5966 (1988).

[15] NTSC (National Television Systems Committee) video is the television signal standard used in the U.S. Downstream signals are signals transmitted from a cable system's headend to subscriber terminals. The Commission's new technical standards do not apply to non-NTSC video signals offered on class III and class IV cable channels.

[16] Notice of Proposed Rulemaking in MM Docket Nos. 91-169 and 85-38, 6 FCC Rcd. 3673 (1991).

dicated significant signal quality problems. Approximately 35–40 percent of the respondents rated their cable television reception as "poor," "very poor," or "fair." Further, the survey shows that more than half of subscribers experienced repeated or prolonged problems with their cable television picture or sound in the last two years; a significant percentage of subscribers (28–40 percent) experienced such a problem in the last 30 days. Similarly, one in eight respondents in the Consumer Reports survey described picture quality as fair, poor, or very poor.

The Committee received further testimony regarding the poor technical quality of cable service offered by some cable operators. Mayor James testified that of all the complaints the local cable operator for the City of Newark received in 1990, 45 percent concerned poor reception, and another 32 percent concerned the absence of a signal.[17] Similarly, Xavier L. Suarez, Mayor of Miami, Florida, testified that from 1987 to 1989, nearly 60 percent of the noncompliance citations issued by Miami pursuant to its cable license ordinance related to violations concerning maintenance of the system and technical and safety standards.[18]

The Committee recognizes that technical problems with cable service are more likely to occur with older systems and with systems that are in the process of upgrading their facilities. However, as the FCC noted in its Cable Report, while the cable industry has invested substantially in facility upgrades, the investments principally have resulted in increases in channel capacity and upgrades in programming, not improvements in the technical quality of service. The FCC concluded that "there is a pattern of technical problems with cable service."

The Committee concurs with this finding and believes that steps must be taken to ensure that consumers receive a cable signal of adequate quality. While the Committee commends the FCC for adopting new technical standards, it also believes that a legislative approach is necessary to ensure long-term and continued protection for consumers. Accordingly, H.R. 4850 requires the FCC to establish minimum technical standards for the technical operation and signal quality of cable systems. The legislation also enables a franchising authority to apply to the Commission for a waiver to impose standards that are more stringent than the standards prescribed by the FCC.

LEASED ACCESS

The 1984 Cable Act requires cable operators to make available channel capacity for lease by unaffiliated entities. The legislation mandates that cable systems with 36–54 activated channels reserve 10 percent of these channels for leased access and that systems with over 55 activated channels reserve 15 percent for leased access.

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[17] Testimony of Sharpe James, Mayor of the City of Newark, New Jersey, Legislative Hearing of the Committee's Subcommittee on Telecommunications and Finance on H.R. 1303, the "Cable Television Consumer Protection and Competition Act of 1991," March 20, 1991, page 116.

[18] Testimony of Xavier L. Suarez, Mayor of the City of Miami, FL, Legislative Hearing of the Committee's Subcommittee on Telecommunications and Finance on H.R. 1303, the "Cable Television Consumer Protection and Competition Act of 1991," March 20, 1991, page 156.

This provision was designed to "assure that the widest possible diversity of information sources are made available to the public * * *." [19]

The House Report on the 1984 Cable Act states:

> An important concept in assuring that cable systems provide the public with a true diversity of programming sources is leased access. Leased access is aimed at assuring that cable channels are available to enable program suppliers to furnish programming when the cable operator may elect not to provide that service as part of the program offerings [it] makes available to subscribers. Thus, section 612 establishes a scheme to assure access to cable systems by third parties unaffiliated with the cable operator, and thereby promotes and encourages an increase in the sources of programming available to the public.

The Committee understands that the demand for leased access channels by programmers seeking national distribution has not been as great under the 1984 Cable Act as the Congress envisioned, as was confirmed in the recent FCC Cable Report. On the other hand, there have been numerous examples of leased channel use by local businesses and other entities that have found such commercial arrangements with cable operators to be an attractive option.

However, the Committee believes that leased access has not been an effective mechanism for securing access for programmers to the cable infrastructure or to cable subscribers. In the Committee's view, the principal reason for this deficiency is that the Cable Act empowered cable operators to establish the price and conditions for use of leased access channels. The House Report that accompanied the Cable Act explicitly states that the Act does not require cable operators to provide leased access channels on a non-discriminatory basis, noting that the fair market price will vary with the content of the service. The FCC stated in the FCC Cable Report, however, that some cable operators have established unreasonable terms, or, in some cases, simply refused to discuss the issue of leased access with potential lessees. The Committee is concerned that cable operators have financial incentives to refuse leased access channel capacity to programmers whose services may compete with services already carried on the cable system, especially when the cable operator has a financial interest in the programming services it carries.

The FCC also found that the enforcement mechanism in the leased access provision of the Cable Act is cumbersome and might inhibit its widespread use. Under the Cable Act, aggrieved parties may bring action in federal district court, which is empowered to order cable operators to provide leased access, to establish price, terms, and conditions for such access, and at its discretion, award actual damages. The Cable Act also entitles aggrieved parties to file complaints at the Commission, which can provide the same relief, except for damages, that the courts can provide. In evaluating the complaint, the courts and the FCC are directed to presume

[19] House Report 98–934, p. 160.

that the price and conditions of access offered by a cable operator are "reasonable and in good faith unless shown by clear and convincing evidence to the contrary." The Committee concurs with the FCC that the expense of litigation and the high burden of proof on the aggrieved party may limit the extent of use of leased access capacity. The cumbersome enforcement mechanism also might explain why some cable operators cite very low demand for leased access channels.

The Committee continues to believe that leased access can be effective in fulfilling the Communications Act's mandate of promoting diversity and ensuring the public access to a wide variety of voices and viewpoints. The Committee concurs with the FCC's finding in the FCC Cable Report that leased access capacity should be used to promote competition by independent programmers to the services selected by the cable operator.

To make leased access a more desirable alternative for programmers, H.R. 4850 requires the FCC to set maximum rates and terms and conditions for such use of a cable operator's channel capacity. Further, under the Cable Act, cable operators are not required to provide "marketing, billing, or other such services" to users of leased access channels.[20] The FCC Cable Report contains a recommendation that Congress require cable operators to provide billing and collection services for channel lessees. H.R. 4850, in accordance with this recommendation, requires the FCC to establish standards concerning methods for collection and billing for leased access.

The Committee notes that in the House Report accompanying the 1984 Cable Act, the Committee undertook an extensive analysis of the First Amendment implications of public, educational, and governmental (PEG) and commercial access requirements. The Committee stated its belief that the access provisions contained in the 1984 Cable Act "are consistent with and further the goals of the First Amendment." [21] The Committee continues to find accurate its findings and analyses accompanying the 1984 Act concerning the constitutionality of access requirements and restates its belief that access requirements establish a form of content-neutral structural regulation "which will foster the availability of a diversity of viewpoints to the listening audience." [22]

INTEGRATION AND CONCENTRATION

Under current regulation, broadcast licensees are subject to restrictions that limit their ability to expand either horizontally (through station acquisition) or vertically (through program production and syndication). However, the cable industry is not subject to comparable restrictions; cable operators and networks may acquire, merge with, and invest freely in other cable systems, cable networks, and cable program production companies. The Committee is concerned that recent mergers and acquisitions of companies operating in various segments of the cable industry will result in increased concentration and integration that could undermine competition and reduce diversity in information and entertainment

[20] House Report 98-934, p. 52.
[21] Ibid., p. 31.
[22] Ibid., p. 31.

programming. The Committee notes that a few large, vertically integrated firms increasingly control large segments of the domestic cable marketplace.

VERTICAL INTEGRATION

Economists refer to a company as vertically integrated when one division within the organization functions as a supplier to another. In the cable industry, vertical integration generally refers to common ownership of cable systems and program networks, channels, services, or program production companies. The Committee notes the explosive growth in vertical relationships between cable operators and program suppliers. According to NCTA, there are 68 nationally delivered cable video networks, 39 of which, or 57 percent, have some ownership affiliation with the operating side of the cable industry.

The Committee received testimony that vertically integrated companies reduce diversity in programming by threatening the viability of rival cable programming services. Submissions to the Committee allege that some cable operators favor programming services in which they have an interest, denying system access to programmers affiliated with rival MSOs and discriminating against rival programming services with regard to price, channel positioning, and promotion. Submissions to the Committee also suggest that some vertically integrated MSOs have agreed to carry a programming service only in exchange for an ownership interest in the service. In addition, the Committee received testimony that vertically integrated operators have impeded the creation of new programming services by refusing or threatening to refuse carriage to such services that would compete with their existing programming services.

At the same time, however, additional information forwarded to the Committee indicates that some concerns about discrimination against rival programming services may be overstated. A 1988 National Telecommunications and Information Administration (NTIA) study stated that "common ownership of cable systems and cable programming services does not appear to affect adversely the supply of cable programming or the diversity of viewing choices for cable subscribers." [23] NTIA found that none of the top five multisystem operators (MSOs) showed a pattern of favoring basic services with which they were affiliated. Other witnesses before the Committee testified that vertical relationships strongly promote diversity and make the creation of innovative, and risky, programming services possible. These witnesses point to C-Span, CNN, Black Entertainment Television, Nickelodeon, and the Discovery Channel as examples of innovative programming services that would not have been feasible without the financial support of cable system operators.

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[23] Video Program Distribution and Cable Television: Current Policy Issues and Recommendations," NTIA Report 88-233, June 1988, p. 102.

HORIZONTAL CONCENTRATION

Horizontal concentration refers to the share of cable subscribers accounted for by the largest MSOs. Under traditional antitrust analysis, the two prevailing measures of market concentration are the top four firm concentration ratio (Four Firm Ratio) and the Herfindahl-Hirschman Index (HHI). The Four Firm Ratio measures the percentage of market captured by the four largest companies in that market. The Herfindahl-Hirschman Index reflects the distribution of market share among all firms in a given market, giving proportionally greater weight to the market shares of the larger firms. Typically, a market is considered concentrated when one firm, or a small group of firms, has a sufficient share of the market to exercise power over it. The Justice Department, and prevailing economic theory, acknowledge the existence of market power when the four firm ratio exceeds 50 percent or when the HHI exceeds 1,000. Information submitted to the Committee indicates that the HHI index for the top twenty MSOs is 491, well below the Justice Department's threshold of 1,000. Further, the Committee estimates the Four Firm Ratio for the largest MSOs at 36 percent, also less than the Justice Department's 50 percent threshold. However, traditional antitrust analysis has not been, and should not be, the sole measure of concentration in media industries. Both Congress and the Commission have historically recognized that diversity of information sources can only be assured by imposing limits on the ownership of media outlets that are substantially below those that a traditional antitrust analysis would support. For example, a wide array of rules limits horizontal and vertical integration in the broadcasting industry. In many instances the Commission's structural regulations are more stringent than those used to analyze concentration under the antitrust laws. The Committee believes that concentration of media presents unique problems that must be considered by the Commission. The Committee also notes that an economist in the Antitrust Division of the U.S. Department of Justice recently determined that at least 45 to 50 percent of basic cable rate increases since deregulation are due to the exercise of market power by cable operators.[24]

The Committee received testimony that horizontal concentration provides incentives for MSOs to impede competition by discouraging the formation of new cable programming services. This charge is related to a concern that cable MSOs have excess market power, or monopsony power, in the program acquisition market. Currently, the largest MSO controls access to almost 25 percent of all U.S. cable subscribers. Although this percentage may appear low relative to other industries, the Committee believes that it may be quite significant depending on the subscriber level needed to launch and sustain a cable programming service.

Information submitted to the Committee also indicates that the size of certain MSOs could enable them to extract concessions from programmers, including equity positions, in exchange for carriage.

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[24] Robert Rubinovitz, "Market Power and Price Increases for Basic Cable Service Since Deregulation," Economic Analysis Group, Antitrust Division, U.S. Department of Justice, August 6, 1991.

The Committee believes that such practices could discourage entry of new programming services, restrict competition, impact adversely on diversity, and have other undesirable effects on program quality and viewer satisfaction. The Committee recognizes, however, that permitting system operators an equity position in programming services may be an efficient way of financing new service providers and compensating cable operators for assuming some of the risk associated with the launch of a new service.

The Committee also is aware that consolidation in the cable industry has brought some benefits to consumers. The Committee believes that the growth of MSOs in the cable industry has produced some efficiencies in administration, distribution, and procurement of programming. Further, programmers' transaction costs also may have been reduced in the absence of the need for negotiation with each of thousands of local cable systems throughout the country. Moreover, large MSOs, able to take risks that a small operator would not, can provide a sufficient number of subscribers to encourage new programming entry.

In general, the Committee believes that concerns raised regarding increased vertical and horizontal integration in the cable industry are serious and substantial. The Committee believes that it is critical for the FCC to consider whether, and to ensure that, the structure of the industry is suited to service in the public interest. For these reasons, H.R. 4850 requries the FCC to conduct a study and report to Congress on whether it is necessary or appropriate to prohibit or constrain acts and practices that may unreasonably restrict diversity and competition in the video marketplace. In conducting such a study, the Commission is required to consider the necessity and appropriateness of imposing limitations on vertical integration. H.R. 4850 also directs the FCC to impose limits on horizontal integration.

In addition, in order to reduce the potential for abusive or anticompetitive actions or practices by cable operators against programming entities, the legislation requires the FCC to promulgate rules to prohibit multichannel video programming distributors from requiring a financial interest in a program service as a condition of carriage, prevent them from coercing programmers to provide exclusive rights against other multichannel video programming distributors as a condition of carriage, and prevent multichannel video programming distributors from discriminating against non-affiliated cable programming services with regard to terms and conditions of carriage.

COMPETITION IN THE VIDEO PROGRAMMING MARKETPLACE

Passage of the Cable Act was predicted on the belief that emerging competition in the video marketplace would eliminate the need for substantial government regulation of the cable industry, especially regulation of cable rates and customer service practices. The Committee also was concerned that the Cable Act not give cable operators undue advantage over competitors. Specifically, the House Report that accompanied the Cable Act noted that the "* * * Committee is concerned that Federal law not provide the cable industry with an unfair competitive advantage in the delivery of video programming. National communications policy has promoted the growth and development of alternative delivery systems for these services, such as DBS, SMATV, and subscription television. The public interest is served by this competition, and it should continue." [25]

The Committee continues to believe that competition is essential both for ensuring diversity in programming and for protecting consumers from potential abuses by cable operators possessing market power. However, for a number of reasons, such competition has not emerged on a widespread basis. The Committee believes that steps must be taken to encourage the further development of robust competition in the video programming marketplace. Such competition may emerge from a number of sources, including wireless and private cable systems, cable overbuilds, and home satellite dish market, and DBS systems, among others.

MULTICHANNEL MULTIPOINT DISTRIBUTION SERVICE

Multichannel Multipoint Distribution Service (MMDS), also known as wireless cable, is a delivery system that brings multichannel television programming to subscribers using microwave radio waves. MMDS operators utilize a central transmitter that broadcasts in all directions to residents who are within reach of its signal. The frequencies used necessitate the use of special receiving equipment and antennas. At present there are relatively few functioning MMDS systems; the Wireless Cable Association estimates that there presently are 77 wireless cable systems operating or under construction in the U.S. serving 350,000 subscribers.

The Committee has identified a number of factors that have limited the ability of MMDS systems to emerge as full-scale competitors to cable. First, MMDS systems are subject to inherent technological limits. MMDS systems rely on "line of sight" technology, which does not work well in areas where mountains, foliage, or buildings can interfere with the antenna's ability to transmit the signal. (The Committee notes that such technological infirmities may be alleviated by innovations such as "beam-bender" technology.) In addition, the FCC licensing process for MMDS has taken longer than initially was expected. To address this problem, in April 1992, the FCC adopted a Notice of Proposed Rulemaking to solicit public comment on a range of proposals designed to reduce the delays associated with the processing of MMDS applications. At the same time, the Commission also imposed a freeze on the filing of new applications for MMDS stations.[26] Finally, the channel capacity of MMDS systems is limited in many areas. In October 1990 and September 1991, however, the FCC took steps to increase channel availability and improve service capabilities for wireless cable operators.[27] In the FCC Cable Report, the FCC predicted that at the conclusion of its wireless cable proceedings, and as a result of technological advances, wireless cable systems might be able to

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[25] House Report 98-934, pp. 22-23.

[26] See Notice of Proposed Rulemaking, PR Docket No. 92-80, adopted April 9, 1992; comment date: June 29, 1992; reply comment date: July 14, 1992.

[27] See Report and Order, General Docket Nos. 90-54 and 80-113.

expand their channel capacity and compete more effectively against cable operators.

CABLE SYSTEM OVERBUILDS

Cable overbuilds exist when cable television service is offered by two or more wired cable systems in direct competition with each other within the same service area. However, the existence of secondary cable systems is a rare phenomenon; overbuilds exist in fewer than 1 percent of the cable markets in this country, most often in small, non-urban areas. Impediments to further development of the industry include economic considerations unique to secondary cable system operators.

The Committee notes that there are examples of cities where two cable systems compete successfully and where consumers have reaped benefits in terms of lower rates and enhanced customer service. However, the Committee also recognizes that competitive entry frequently results in the survival of a single firm and substantial losses by its unsuccessful rival as a result of the large capital requirements and the necessity of securing sufficient market share once the system is built. Submissions to the Committee indicate that overbuilds may make economic sense only when an area is characterized by high density, strong demand, low fixed costs, and poor service by the incumbent cable operator.

The Committee further notes the existence of "greenmail" as an impediment to growth in the number of secondary cable systems. In a "greenmail" scenario, the aim of the overbuilder is not to build and run a competing system but to receive payment from the existing operator in exchange for existing the market. Thirty percent of the overbuild franchises awarded are never built because the incumbent operator agrees to buy the overbuilder out before it goes into operation. The Committee notes its disapproval of such "greenmail" practices because they are harmful to legitimate cable operators, and, ultimately, to consumers, who lose the potential benefits of competition and whose cable rates may be affected by the cable operator's payment to the "greenmailer."

HOME SATELLITE DISH INDUSTRY

Competition to the cable industry also is potentially available from existing domestic C-band satellite systems. Reception of television signals via backyard satellite dishes began in 1976. However, at that time reception of such signals by owners of backyard satellite dishes was not authorized by law. The courts and the FCC took the view that home satellite dish (HSD) owners receiving satellite signals without authorization were involved in an illegal practice. Congress conferred full legal status on the television receive-only (TVRO) industry in the 1984 Cable Act.

Since the passage of the Cable Act, the backyard satellite dish industry has experienced explosive growth, particularly in the South and Midwest. The number of backyard satellite earth stations in operation in the United States has increased from an estimated 5,000 in 1980 to 3.6 million today. According to one estimate, 75 unscrambled services, approximately 75 audio program services, and 75 subscription services are available to C-band satellite dish owners. Complete home receiving systems, which once sold for as much as $36,000 now are advertised for less than $1000.

DIRECT BROADCAST SATELLITES

Direct Broadcast Satellites (DBS) are high-powered satellites capable of transmitting programming directly to the home. A number of applications to operate DBS satellites have been granted, but none of these satellite systems currently is operational.[28] The Committee believes that DBS systems offer a promising source of competition to the cable industry. With continuing progress being made in receiver design, it should be possible in the near future for DBS signals to be received on small flat plate antennas (or "squarials") of dinner plate size, capable of flush mounting against the exterior walls of buildings. The dish and other equipment needed to receive the signal on a conventional television set is expected to cost $200–$500.

Several major media entities have unveiled plans to initiate DBS ventures over the next several years. The operators of some ventures intend to deliver standard video and digital-quality audio signals initially but believe that they will be capable of beaming high definition television signals in the future. Some ventures are dependent on the successful introduction of digital compression technology, which would enable one satellite transponder to transmit as many as four times the number of channels currently capable of being transmitted.

A recent RAND study, which was submitted to the Committee, concluded that during the 1990's, high-powered DBS systems have greater potential for widespread competition with cable systems than do other multichannel video alternatives.[29] The Committee agrees that DBS system operators potentially could provide competition to the cable industry.

MULTIPLE FRANCHISES

In the Committee's view, as noted above, consumers would benefit greatly from the existence of two competing cable systems operating in a given market. Evidence presented to the Committee indicates that where such competition exists, cable rates frequently decline and customer service improves. In the FCC Cable Report, the Commission concluded that where there is either direct or "yardstick" competition, rates on a per-channel basis are some 30 percent below the national average.[30] The Commission recommended that Congress, in order to encourage more robust competition in the local video marketplace, prevent local franchising authorities from unreasonably denying a franchise to potential competitors who are ready and able to provide service.

Additional evidence presented to the Committee conforms with the Commission's findings regarding the benefits of competition. For example, at a hearing of the Committee's Subcommittee on Telecommunications and Finance, Henry Feldhaus, Mayor of Shel-

[28] One mid-powered DBS system initiated service in November 1990.
[29] Leland L. Johnson and Deborah R. Castleman, RAND, "Direct Broadcast Satellities—A Competitive Alternative to Cable Television?" R-4047-MF/RL.
[30] FCC Cable Report, Appendix H, page 2.

byville, Tennessee, testified that in Glasgow, Kentucky, monthly cable rates fell from roughly $14 to $8.95 when a competing cable system entered the market. At the same time, according to Mayor Feldhaus, cable rates varied from $17 to $20 per month in markets surrounding Glasgow that were served by only one cable company.[31]

The Committee notes that benefits flow to consumers in competitive situations where secondary cable service is provided by a municipality as well as by a private entity.For example, in August 1991, in Elbow Lake, Minnesota, Triax Cable Communications offered to pay cable subscribers $100 if they subscribe for one year. This offer was proceeded by a Triax rate cut (from $14.95 to $5.95 for 23 channels). Some analysts argue that the promotional offer and rate cut were a response to competition from Elbow Lake Cable, a new municipally-owned cable system that had attracted 356 of the Triax Cable system's 471 customers before Triax made its promotional offer.[32] According to the American Public Power Association, municipalities own and operate 60 systems nationwide.

In an effort to spur the development of competition from secondary cable system, H.R. 4850 prohibits franchising authorities from granting exclusive franchises and from unreasonably refusing to award additional franchises. Further, the legislation permits municipalities to establish and operate competing cable systems.

CARRIAGE OF COMMERCIAL TELEVISION STATIONS

A centerpiece of the Committee's efforts to restore a competitive balance to the video marketplace are the provisions requiring cable operators to offer their subscribers a complement of local commercial television signals. These provisions are intended to help rectify the competitive imbalance which has developed since the elimination of the FCC's long-standing must carry rules.

BACKGROUND OF CABLE CARRIAGE REGULATION

From the early days of cable development, the FCC was concerned that the ability of cable operators to choose to carry or not to carry particular local television stations would permit cable operators unilaterally to recast the FCC's carefully established allocation system for local television service. Beginning in 1962, therefore, the FCC began to require cable systems to carry local television signals as a condition for the use of microwave signals to import distant stations.[33] In affirming that decision, the court of appeals stressed that the FCC's obligation under section distribution of services required it to determine the effect on local communities of the services it authorizes, including services permitting the expansion of cable systems.[34] The court recognized that the

[31] Testimony of Henry Feldhaus, Mayor, City of Shelbyville, TN, on behalf of the U.S. Conference of Mayors and the National League of Cities, Legislative Hearing of the Committee's Subcommittee on Telecommunications and Finance on H.R. 1303, the "Cable Television Consumer Protection and Competition Act of 1991," March 20, 1991, page 164.

[32] See Cable World Magazine, November 18, 1991.

[33] *Carter Mountain Transmission Corp.*, 32 FCC 459 (1962), aff'd., 321 F.2d 359 (D.C. Cir.), cert. denied, 375 U.S. 951 (1963).

[34] *Carter Mountain Transmission Corp.* v. *FCC*, 321 F.2d 359, 362–63 (D.C. Cir.), cert. denied, 375 U.S. 951 (1963).

FCC's statutory obligations required it to impose conditions on cable services to ensure that they did not imperil the availability of free, local television service.

The FCC formalized this obligation of cable systems carrying microwave-imported signals in a rule in 1965,[35] and included all cable systems within the scope of the carriage rules in 1966, regardless of how they obtained their signals.[36] Responding to arguments of the cable industry even then that the FCC lacked authority to regulate cable systems' signal carriage, or that no need had been demonstrated for such regulations, the FCC pointed out the provisions of the Act requiring it to ensure local service, and declared: "We are not powerless to prevent frustration of our action under these sections * * *." [37] It further found "[t]hat failure to carry local stations * * * are unfair competitive practices" which cable systems were likely to engage in and would harm the continuation and development of over-the-air broadcasting.[38] The FCC refined its must carry rules in 1972 as part of an industry agreement.[39]

When Congress established the compulsory copyright license, it therefore relied on the existence of the FCC's must carry rules as part of the delicate balance it sought to establish between the two industries. Indeed, it cautioned the Commission not to disturb the balance created between the compulsory license and the must carry rules.[40] Similarly, the 1984 Cable Act substantially deregulating cable service was passed with the understanding that there would be continuing obligations for cable systems to carry local broadcast stations.[41]

THE QUINCY DECISION AND THE FCC'S REVISED RULES

In 1985, the United States Court of Appeals for the District of Columbia Circuit held in *Quincy Cable TV, Inc.* v. *FCC* that the then existing must carry rules were invalid under the First Amendment.[42] The court concluded that the "scarcity" rationale under which certain regulation of broadcast content is justified was not applicable to cable regulation. The court then examined the rules under the test for "incidental" burdens on speech established in *United States* v. *O'Brien*, 391 U.S. 367 (1968). The court determined that the FCC had not provided adequate support for its regulations to meet the *O'Brien* standard. It found that the economic assumptions behind the must carry rules—that they were necessary to preserve localism and the system of free over-the-air broadcasting—were unproven, and that the FCC had thus failed to meet its burden of showing that the rules were necessary to protect a substantial governmental interest. Even assuming that such an interest had been demonstrated, the court found that the rules would

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[35] *Microwave-Served CATV (First Report and Order)*, 38 FCC 683 (1965).
[36] *CATV (Second Report and Order)*, 2 FCC 2d 725, 746 (1966).
[37] *Id.* at 730.
[38] *Id.* at 736, 737.
[39] *Cable Television*, 36 FCC 2d 143 (1972); see 17 U.S.C. 111.
[40] H. Rep. No. 1476, 94th Cong., 2d Sess. 89 (1976); Letter from Rep. Kastenmeier to Charles Ferris, Chairman of the FCC, reprinted in, 45 Fed. Reg. 60301 (1980).
[41] See House Report 98–934, p. 40.
[42] *Quincy Cable TV, Inc.* v. *FCC*, 768 F.2d 1434 (D.C. Cir. 1985), cert. denied, 476 U.S. 1169 (1986).

be invalid as overly broad, encompassing stations which could not reasonably be viewed as local, requiring carriage of duplicating signals, and unreasonably impinging on cable operators' editorial discretion. The court stressed, however, that it had reached no conclusion that more narrowly tailored carriage rules with better support would not meet constitutional muster.

The FCC did not seek review of the *Quincy* decision. Its apparent acquiescence in the elimination of must carry regulations was challenged by industry groups, and the Congress, and the FCC in November 1985 initiated a new proceeding looking towards the development of local signal carriage rules.[43] The cable and broadcast industries subsequently reached an agreement on new must carry rules which they submitted for the FCC's approval. Despite this industry consensus, the FCC remained skeptical of new carriage regulations and delayed acting on the new rules until November 1986.[44]

When it acted, the FCC did not adopt the must carry proposal suggested by the affected industries, concluding instead that signal carriage rules should be only an interim measure. Rather than relying on the localism rationale that had supported the FCC's signal carriage rules since 1963, the FCC embarked on a different theory based on the supposition that consumers were unaware of what the FCC viewed as their obligation to maintain an ability to receive over-the-air signals independently of the cable system. To that end, the FCC ordered cable systems to begin providing so-called "A/B switches" to consumers and to engage in a program of consumer education about the use of these switches to enable consumer education about the use of these switches to enable consumers to receive signals independently of the cable system. Must carry rules similar to the industry agreement would be imposed while these programs were being put in place, but the FCC concluded that carriage regulations should terminate after a five-year transition period.

Commissioner Quello, while supporting the FCC's decision as "the very minimum" acceptable signal carriage regulations, criticized the FCC on two grounds:

> The most obvious shortcoming of our Order is that in justifying a must-carry rule, it does not rely on the substantial government interest in protecting the integrity of our Table of Assignments and ensuring public access to stations that have a statutory obligation to serve their local communities. In my view, both interests are substantial enough to justify a must-carry rule * * *.[45] When I dissented from the Commission's refusal to appeal the *Quincy* decision, I expressed considerable skepticisum that the A/B switch could realistically be relied on to maintain access to off-the-air television in homes wired to a cable system * * *. [I]t [is] doubtful cable subscribers would

[43] *Carriage of Television Broadcast Signals by Cable Television Systems (Notice of Proposed Rulemaking)*, 50 Fed. Reg. 48232 (1985).
[44] *Carriage of Television Broadcast Signals by Cable Television Systems*, 1 FCC Rcd. 864 (1986), recon. denied, 2 FCC Rcd. 3593 (1987).
[45] Id. at 912 (Separate Statement of Commissioner Quello).

maintain an antenna system solely to view the local stations a cable system chose not to carry.[46]

The FCC received 30 petitions for reconsideration of its decision. In particular, representatives of both the cable and broadcast industries argued that the A/B switch proposal was unworkable. The FCC also received arguments that it should broaden the policy basis for must carry rules and eliminate the "sunset" provision. It rejected all of these arguments and made only minor changes in its earlier decision.

THE CENTURY DECISION

The revised must carry rules were subjected to an immediate court challenge. On December 11, 1987, in *Century Communications Corp.* v. *FCC,* the court again found that the FCC had failed to provide an adequate justification for the rules to meet the *O'Brien* standard.[47] The court concluded that the FCC had scant evidence, if any, to support its finding that it would take five years for consumers to learn about and equip themselves with A/B switches. Since this was the only ground asserted by the FCC in support of its new rules, the court concluded both that there was an inadequate demonstration of a governmental interest substantial enough to overcome cable systems' First Amendment interests, and that the five-year life of the rules was longer than the FCC could justify as needed to educate consumers. The court, however, stressed that "[w]e do not suggest that must carry rules are per se unconstitutional, and we certainly do not mean to intimate that the FCC may not regulate the cable industry to advance substantial governmental interests." [48]

THE NEED FOR MUST CARRY REGULATIONS

The Committee firmly believes that reimplementing local signal carriage rules is essential to the preservation and further development of the benefits which the television industry has brought to the public. Title III of the Communications Act reflects the importance which Congress placed on the development of a competitive system of over-the-air broadcasting, an intent which the FCC recognized in allocating significant amounts of scarce radio frequency spectrum to broadcasting and creating its Table of Allocations to ensure the widest distribution of local television service. Local television stations are central to this public purpose—they are both the leading source of news and public affairs information for a majority of Americans [49] and the most popular entertainment medium.

The Committee believes that without a requirement that local broadcast signals be carried on cable systems, the substantial public benefits which television has created over more than 40 years may be lost, jeopardizing the competitive balance which the

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[46] Id. at 912–13.
[47] *Century Communications Corp.* v. *FCC,* 835 F.2d 292 (D.C. Cir.), *clarified,* 837 F.2d 517 (D.C. Cir. 1987), cert. denied, 468 U.S. 1032 (1988).
[48] 835 F.2d at 304.
[49] Eighty-one percent of Americans say that television is their primary source of information about news. Network Television Ass'n, National Ass'n of Broadcasters, The Roper Organization, America's Watching 11-12 (1991).

Communications Act sought to achieve. The Committee recognizes that cable television is unique—it both provides services which compete with local television stations and it provides the only effective means which the same local television stations have to gain access to cable subscribers which, in many markets, constitute a large majority of television homes.

The Committee believes that healthy and fair competition between cable television and over-the-air broadcast television serves the public interest by providing increased diversity and program choice to the public. The absence of local signal carriage requirements will result in a weakening of the over-the-air television industry and a reduction in competition, thereby depriving the public of those benefits. The record before the Committee persuasively demonstrates that the substantial governmental interest in promoting competition in the video marketplace will be threatened if cable systems have unfettered discretion to drop local broadcast signals, carry them in a disadvantageous manner, or require payment from broadcasters or other consideration in exchange for signal carriage. This was pointed out to the Committee in the testimony of Thomas L. Goodgame, Chairman of the Television Board of the National Association of Broadcasters:

> Cable systems are dropping broadcast signals or demanding payments or other concessions for carriage. Some cable systems are demanding, for example, that local broadcasters drop their legal rights under syndex or network nonduplication rules in order to receive carriage. This is particularly true of independent stations, since many of their programming choices are being copied by some cable-only programmers. If a cable operator believes he can increase profits by dropping (or not adding) an independent station and forcing viewers to switch to similar cable-only programming, then the independent station will be dropped or not added. This is especially true in competing for the advertising dollar.
>
> Another example of this economic incentive is when a cable operator desires to add a new cable-only service but has no additional channel capacity. By bumping the broadcaster off the system, he makes room for the cable-only channel. In doing so, he can see additional revenue through basic service fees or pay channel fees, plus any advertising he can sell adjacent to the cable channel's programs. In fact, the ability to sell ads on cable-only channels is perhaps the major incentive for cable operators to drop carriage of broadcasting signals, where they cannot sell advertising. And with local cable system advertising revenues expected to grow significantly in the next few years, that incentive can only grow larger.

The record also provides concrete and demonstrable evidence of the harm suffered by local broadcasters when they are not carried by, or are repositioned on, their local cable systems. Such harm has included reduced viewership, lost advertising revenues, and resulting forced reductions in local news, public affairs, and other public interest programs, the inability of new stations to obtain financing to commerce operations, and bankruptcy for existing stations.[50]

A survey undertaken by the FCC in 1988 demonstrates that cable operators have denied and will continue to deny carriage to local television stations.[51] That survey found that 869 reporting cable systems denied carriages to 704 different stations, totalling 1,820 separate instances of a cable system's dropping or calling to carry a local station. Two-hundred-eighty of these stations were eligible for carriage under the FCC's revised must carry rules. The FCC further reported 65 stations which were forced to pay compensation for carriage on local cable systems in 326 separate instances. Extrapolating from the FCC's sample [52] indicates that, in the year following the *Century* decision, there may have been as many as 3,640 instances of non-carriage.[53] Evidence also has been presented showing that cable operators drop signals or carry them in a way 50 as to discourage their viewing, in order to increase the value of cable programming. An NCTA study itself showing that in 70 percent of the reported decisions to drop a local station, the channel was filled on the cable system with a basic or premium cable channel.[54] One cable operator is reported to have explained a decision to drop local signals by saying: "Why have people trained to watch UHF?" [55] While the Committee has not found that cable systems are engaging in a widespread pattern of denying carriage of local television stations, there is ample evidence that some cable systems will refuse to carry the signals of local television stations, and that such refusal to carry poses a grave threat to the allocation system favoring local service established by Congress and the FCC.

Comments filed at the FCC include recent examples of cable systems using their gateway status either to prevent competing television stations from getting access to viewers or to extract unwarranted concessions from broadcasters to obtain carriage. For example, station KMTR(TV), Eugene, Oregon, recently constructed two full power satellite stations to extend its signal across its television market. It also sought to have the satellite stations carried on cable systems in their areas. In Coos Bay, where one of the satellites operates, cable penetration exceeds 82 percent, making cable carriage essential if the station is to have any audience at all. The Coos Bay cable system carried two NBC affiliates from adjacent markets which did not provide local programming. It originally refused to carry the new facility and only agreed to do so after the licensee agreed, among other things, to waive its syndex rights,

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[50] Comments of the National Association of Broadcasters, MM Docket No. 88-138, July 8, 1988, at 31-37, and Reply Comments, Aug. 6, 1988, at 6-8; Comments of the National Association of Broadcasters, MM Docket No. 90-4. Sept. 25, 1991, at 24-32.

[51] Cable System Broadcast Signal Carriage Survey, Staff Report by the Policy & Rules Division, FCC Mass Media Bureau, Sept. 1, 1988.

[52] Only about half of the surveyed cable systems responded to the FCC's inquiry. Since the purpose of the survey was to determine the need for carriage regulations, it is logical that cable systems which engaged in widespread refusal to carry local television signals would be less likely to answer the survey. Thus, even extrapolating the results to the Nation's entire cable system population is likely to understate the full extent of the carriage problem.

[53] Reply comments of the National Association of Broadcasters, MM Docket No. 89-600, April 2, 1990, at 25-26.

[54] Comments of the National Cable Television Association, MM Docket No. 88-138, July 8, 1988, at 13-15.

[55] Comments of the National Association of Broadcasters, MM Docket No. 88-138, July 8, 1988, at 15-18.

grant the cable system free advertising time to promote cable service, grant the cable system free production services, and permit the cable system to use the station's transmitter building for the cable system's headend.[56] In effect, in order to get access to the audience it is licensed to serve, the station was required to subsidize the cable system which is its principal competitor.

In Iowa and Minnesota, other cable systems engaged in widespread dropping and replacement of network stations at the time a new cable channel in which the cable operator held an ownership interest was introduced. The cable system in Washington County, Iowa for many years carried the signals of three network affiliates in Cedar Rapids, and Washington County was included in the Cedar Rapids Area of Dominant Influence (ADI), the standard industry indicator of a television market. The cable system operator dropped carriage of the Cedar Rapids ABC and NBC affiliates, substituting for them one signal from the Davenport-Rock Island market and one signal from Des Moines. Thus, the network affiliates carried on the Washington system come from three different television markets. Although the Quad Cities station is not much further from Washington than Cedar Rapids, the Cedar Rapids stations cover the Washington area, while the substitute station does not. The Des Monies station is more than 150 miles from Washington County.[57]

Another Cedar Rapids station, KCRG–TV, was dropped from cable systems in Charles City, Floyd, Iowa Falls, Mt. Pleasant, and New London, Iowa, as well as East Dubuque, Illinois. "KCRG–TV and the other Cedar Rapids/Waterloo broadcasters have served these communities for the past 38 years." [58] Subscribers on those systems have lost access to the local news and public information which the dropped stations provided.

Moreover, these patterns of carriage abuses by cable systems may, in the Committee's view, accelerate in the absence of must carry rules. For many years, the prime function of most cable systems was the retransmission of local television signals. In that environment, few cable systems would have refused carriage to many signals, even if the must carry rules had not been in place. The direction of the cable industry today, however, appears to be different. While cable subscribers continue to watch the programming of local broadcast stations,[59] the focus of cable operators and the source of their financial growth lies in the provision of cable-unique program services which compete with broadcast channels. As that competition for programming, viewers, and advertising dollars increases, the Committee finds that the incentives for cable systems to drop, refuse to carry, and reposition local stations may increase.

[56] Comments on KMTR, Inc., MM Docket No. 90–4 (filed Aug. 14, 1991).

[57] Comments of the National Association of Broadcasters, MM Docket 90–4, Sept. 25, 1991, at 27.

[58] Letter from Robert G. Allen, Vice President and General Manager, KCRG–TV, to Senator Tom Harkin, May 17, 1991.

[59] With the exception of NFL football, the least popular local television signal is watched on cable systems by as many people as watch the most popular cable network. Comments of the National Association of Broadcasters, MM Docket No. 90–4, Sept. 25, 1992, at 8–9.

For the subscribers to those cable systems, these local television stations will effectively cease to exist, despite the decision of the FCC that the public interest would be served by the broadcast service. All evidence indicates that, once a television set is connected to a cable system, consumers will not watch signals available only over-the-air. Cable systems for many years promoted their service as a means of getting rid of unsightly or expensive antennas. For many television households, especially those in apartment buildings, condominiums, or planned developments, the use of outside antennas is either impractical or banned outright by local ordinances or lease provisions, leaving cable as the only means of obtaining a quality television signal.

Although the FCC sought to promote the use of A/B switches as a means of permitting consumers to shift between cable and their own antenna, the Committee finds that these switches are cumbersome, often ineffective, troublesome to install and operate, and are unacceptable to consumers.[60] For example, stand-alone A/B switches generally cannot be operated with a remote control and complicate the installation of common video equipment such as VCRs and video game equipment. On "cable-ready" televisions, the UHF channel setting are set to the frequencies used by cable systems when they are connected to cable. To use an A/B switch, consumers may also have to change the UHF channel settings on their televisions, and reset them when they want to see cable channels. Moreover, it is estimated that the costs to consumers to install such switches and the requisite antennas could range between $843 million and $1.6 billion, and that costs to replace malfunctioning switches could amount to an additional $540 million.[61]

A recent survey of cable subscribers shows that consumers are not willing to use A/B switches.[62] Four years after the FCC began a mandatory consumer education program about A/B switches, of all sets connected to a cable system, less than 12 percent also were connected to an antenna and an A/B switch. Only half of those households could recall ever using the A/B switch.[63] Consumers appear to be unwilling to bear the expense of subscribing to cable and of maintaining an adequate antenna for off-the-air reception and the Committee finds that it would be contrary to the public interest to require them to do so.[64]

In addition to refusing to carry local signals or demanding compensation for carriage, some cable systems have engaged in repeated changes in the channel positions on which local stations are carried. One egregious example is a San Francisco UHF station carried for many years on the same channel on almost all local cable systems. In recent years, many of these cable systems have repositioned the station, always to a higher channel number, and one system has changed the station's channel number four times since

[60] *See* National Association of Broadcasters & National Cable Television Association Joint Petition for Reconsideration, MM Docket No. 85–349, Dec. 17, 1986.
[61] Comments of the National Association of Broadcasters, MM Docket No. 88–138, July 8, 1988, at 26 n. 35.
[62] Fratrik, "A-B Switch Availability and Use," Sept. 23, 1991 attached to Comments of the National Association of Broadcasters, MM Docket No. 90–4, Sept. 25, 1991.
[63] Id.
[64] Thus, the comments of the court in *Century* concerning the acceptability of the A/B switch ignore the full costs of their use, as well as the lack of any evidence of consumer acceptance.

1985.[65] In May, 1991, the station was moved on the San Carlos system from channel 19 to channel 23. On the Sunnyvale system, the station was shifted from channel 22 to channel 24. The Fremont system moved it from channel 22 to channel 23. These changes were made without any prior notice to the station.[66] The FCC's survey showed that 974 responding cable systems had repositioned local stations a total of 3,000 times.[67] Moreover, some cable systems have changed channel positions or dropped signals with little or no notice to either the affected station or the cable system's subscribers. The Committee heard testimony about the effects of these channel changes:

> Channel shifting is a major problem because in multiple set homes, in apartment complexes and in hotels, many television sets connected to the cable do not have converter boxes. These sets can only receive channels 2 through 13 via cable. Local stations shifted into the UHF band are not viewable via cable on these television sets. This critical fact compounds the competitive injury suffered by local stations when their channels are shifted * * * [C]hannel shifts are not undertaken to satisfy consumer demand. In virtually every case, local stations rooted out of prime VHF channel slots were replaced by less popular cable services in which the cable operator has an equity interest and/or in which the cable operator is selling advertising time.[68]

Channel position is important in ensuring the success of a signal carried on a cable system. The Committee is aware that certain cable programmers offer cable systems financial incentives to be placed on a lower channel number where viewers initially "graze" in search of an attractive program.[69] Eighty-five percent of the moves reported in the FCC survey were made for the cable system's "marketing" reasons.[70] Local stations moved to a high channel number, often a location unexpected by their usual audience, may lose viewers and suffer a diminution of their capability of rendering program services in the public interest, a development that will harm all viewers, whether or not they subscribe to cable.[71] The FCC recently noted this same pattern:

> Cable operators carry the most popular local stations with virtually no compensation to the stations, use the au-

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[65] Comments of Chris-Craft Industries, Inc., MM Docket No. 89-600, March 1, 1990, at 17-19

[66] Comments of the National Association of Broadcasters, MM Docket No. 90-4, Sept. 25, 1991, at 29-30.

[67] FCC Report at Table 10.

[68] Testimony of Preston Padden, President, Association of Independent Television Stations, Inc., Cable Television: Hearings before the Subcommittee on Telecommunications and Finance of the House Committee on Energy and Commerce, May 11, 1988, p. 531 (emphasis omitted); see Testimony of Edward O. Fritts, President, National Association of Broadcasters, pp. 565-66; Testimony of James B. Hedlund, President, Association of Independent Television Stations, Inc., before the Subcommittee on Telecommunications and Finance of the House Committee on Energy and Commerce, May 16, 1990, at Appendix H.

[69] Quick, Finan & Associates, Economic Appendix to Reply Comments of the National association of Broadcasters, MM Docket No. 89-600, April 12, 1990.

[70] FCC Report at Table 18.

[71] See Testimony of James B. Hedlund, President, Association of Independent Television Stations, Inc., before the Subcommittee on Telecommunications and Finance of the House Committee on Energy and Commerce, May 16, 1990, at Appendix I.

> dience they derive from carriage of these stations to increase their own advertising revenue and, in turn, buy more and better cable-exclusive programming, further draining audience and advertising revenues away from local stations * * * The strong localism and diversity in broadcast television service—positive forces that fifty years of regulatory policy under the Communications Act have sought to develop—will be jeopardized if this situation continues unredressed.[72]

The Committee believes that the incentive to engage in such anti-competitive activity will continue. Cable operators will continue to compete with local broadcasters for local advertising revenues. Cable's local advertising revenues climbed from just $167 million in 1985 to an estimated $760 million in 1991 and are expected to reach $906 million 1992.[73] Moreover, cable operators have and will continue to acquire ownership interests in programming services that are exhibited on cable systems in competition with over-the-air broadcast services. As a result, there will be continued incentives to deny carriage and reposition local broadcast stations.

Continuation of these practices will impede the achievement of substantial governmental interests. Consumers who cannot receive a quality television signal over the air, and thus must rely on cable television for video services, would be prevented from access to local stations and the diversity of information sources which section 307(b) of the Communications Act sought to guarantee, as part of the First Amendment interest in providing the American people with abroad diversity of viewpoints and program choices. Even for consumers who might otherwise receive local signals off the air, if they subscribe to cable to receive the benefits of the programming that the cable system chooses to provide, the Committee believes they should not be deprived of the programs presented by their local television stations. The importance of local programming was recently pointed out by the Chairman of the FCC:

> Most TV stations program from three to five hours of local news, information, and other shows daily. I would guess that an average TV station spends several million dollars a year on local news alone. This programming is the linchpin of localism. It is the "public interest" commitment.[74]

The Committee concludes, however, that the consumers who benefit from such local programming will not have effective acccess to stations not carried on their cable system.

The Committee concludes, on the basis of the overwhelming evidence in the record, that refusal to carry, changing channel positions, or demanding compensation for carriage of local broadcast signals are all practices damaging to the public interest and to the policies and purposes of the Communication Act. Cable systems

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[72] Competition, Rate Deregulation and the Commission's Policies Relating to the Provision of Cable Television Service, 5 FCC Rcd. 4962, 5039–40 (1990) [hereinafter the 1990 Cable Report].

[73] Cablevision, April 6, 1992, at 35–36. By the end of the decade, local cable advertising revenues are projected to be between three and five billion dollars. Id.

[74] Remarks of Alfred C. Sikes, Chairman, FCC, before the International Radio and Television Society, Sept. 19, 1991, at 6.

and broadcasters do compete, and their competition is healthy if it results in increased programs choices for the public. The use by one competitor of its "gateway" facilities to block access to the other competitor's offerings is not an appropriate competitive strategy and will, if unchecked, harm the public interest.

The cable industry has also benefited from the compulsory copyright license which permits cable systems to carry local programming without the consent of, or reimbursement to, either program owners or local stations, and which permits carriage of distant signals at a set rate, without negotiating for such rights. See 17 U.S.C. 111(c), (d); 47 U.S.C. 325(b). There can be little doubt that these provisions result in a substantial subsidy to the cable industry which has permitted its rapid growth. Broadcasters pay billions of dollars to acquire programming. Cable systems may take this programming without payment, but are free to charge their subscribers for it. It is particularly unfair, in the Committee's view, for cable systems to receive such benefits without any concomitant obligations to provide carriage for broadcasters.[75] As concluded:

> [T]he lack of must carry obligations, especially when combined with the effect of the compulsory license, creates an imbalance between broadcasting and cable television. The nature and effects of this imbalance are a matter of immediate public policy concern and need to be addressed expeditiously. * * * The need for [must carry regulations] at this time is further buttressed by the fact that cable systems are currently the only multichannel carriers of programming in most markets, making it impossible for local broadcasters to negotiate on even terms with cable operators. * * * [76]

Since cable television now constitutes the means by which a majority of American households receive television service, the Committee believes that it is essential for the continued realization of the goals of the Communications Act that the public be guaranteed access to local television signals at a reasonable price. H.R. 4850 is designed to achieve that goal.

THE COMMITTEE APPROACH

This legislation seeks to preserve competition within the video industry, encouraging the further development of both local broadcasting and cable service, and ensuring that consumers have access to basic communications video services at reasonable rates. To that end, H.R. 4850 requires that cable systems provide to all subscribers a basic tier of service, at rates to be established in accordance with a formula devised by the FCC, which includes a reasonable complement of local television stations. In so doing, the Committee seeks to balance the interests of cable operators, broadcasters, and

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[75] One particularly unsettling aspect of the compulsory license is the opportunity it currently provides for a cable system to "cherry-pick" individual programs from a station's offerings or to pick individual programs from a variety of stations to construct a new composite cable channel. At the time the compulsory license was adopted, the then extant must carry rules precluded such unfair practices, at least with respect to local signals, by requiring that all must carry signals be carried in their entirety.

[76] 1990 Cable Report, 5 FCC Rcd. at 5041.

the public. H.R. 4850 thus provides for public access to local television stations. At the same time, by limiting the number of channels that may be required to be devoted to must carry signals, the legislation preserves the discretion of cable operators to provide their own choice of other programming to their subscribers.

The bill ensures that cable systems will carry a reasonable complement of local stations on secure and predictable channel positions, and provide adequate notice to those stations of any changes in carriage or channel positioning. It prohibits cable systems from requiring compensation for carriage of local stations (except where carriage of a particular station would result in the imposition of copyright liability on the cable system), but at the same time it prevents cable systems from having to fill their system with duplicative programming. It also prevents cable systems from using portions of the signals of different broadcasters to create composite channels in an effort to increase audience for cable programming, a possibility which exists under current law.

CONSTITUTIONALITY OF MUST CARRY AND CHANNEL POSITIONING REQUIREMENTS

The Committee inquired with great care into the constitutionality of this legislation and determined that imposing requirements on cable systems to carry the signals of local broadcast stations is not violative of the requirements of the Constitution.

The Committee recognizes that two previous versions of must carry regulation imposed by FCC rulemaking were held unconstitutional by the United States Court of Appeals for the District of Columbia Circuit. The court stated, however, that these decisions do not foreclose Congress from crafting valid regulations for cable carriage of local television signals and, after an extensive review of the record of the developing video marketplace, the Committee is of the firm view that the requirements of H.R. 4850 will withstand any constitutional challenge.

The First Amendment exists to assure "the widest possible dissemination of information from diverse and antagonistic sources." [77] The First Amendment also protects the editorial process—the freedom to determine what to speak or not to speak at all.[78] The signal carriage provisions of H.R. 4850 seek a balance between these two established First Amendment principles. On the one hand, the public's right to receive a diversity of voices is served by ensuring public access to free local broadcast television stations. On the other hand, some cable operators have asserted a right to exercise editorial control over their systems, including the authority to deny carriage to local broadcast signals if they so decide. The Committee believes that the signal carriage provisions of H.R. 4850 preserve both interests to the fullest extent possible. See Emerson,

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[77] *Associated Press* v. *United States*, 326 U.S. 1, 20 (1945). The Communications Act is consistent with this goal, stating that its purpose is to promote the widespread availability of efficient communications technology (47 U.S.C. 151), and directing the FCC to provide for an equitable distribution of communications services (47 U.S.C. 307(b)). See *FCC* v. *National Citizens Committee for Broadcasting*, 436 U.S. 775, 780 (1978).

[78] See e.g., *Miami Herald Publishing Co.* v. *Tornillo*, 418 U.S. 241 (1974); *CBS* v. *Democratic National Committee*, 412 U.S. 94 (1973).

"The System of Freedom of Expression" 627-30 (1970); de Sola Pool, "Technologies of Freedom" 244-51 (1983).

In the House Report accompanying the 1984 Cable Act, the Committee noted its concern that Federal law not provide the cable industry with an unfair competitive advantage in the delivery of video programming." [79] At that time, cable systems were subject to FCC must carry rules. The subsequent demise of the must carry rules, the growth of the cable industry, and the absence of effective competition to local cable systems has created just the competitive imbalance that the Committee feared in 1984.[80] The broad power of the Congress under the Commerce Clause of the Constitution provides ample authority for the enactment of legislation, including signal carriage regulations, to create a competitive balance between the cable and broadcast industries which are essential parts of the communications environment.[81]

Neither the *Quincy* nor the *Century* courts held that must carry regulations are per se unconstitutional. To the contrary, both decisions stressed their limited character. *Quincy*: "we have not found it necessary to decide whether any version of the mandatory carriage rules would contravene the First Amendment * * * Should the Commission wish to recraft the rules in a manner more sensitive to the First Amendment concerns we outline today, it is, of course, free to do so." [82] *Century*: "We do not suggest that must-carry rules are per se unconstitutional, and we certainly do not mean to intimate that the FCC may not regulate the cable industry so as to advance substantial governmental interests." [83]

As an initial matter, the Committee observes that cable television's First Amendment status remains unresolved. The Supreme Court has concluded that cable systems clearly are entitled to First Amendment protection, but the Court has not determined whether that protection is the same as that afforded newspapers, or whether cable systems, like broadcasters, have in some circumstances more restricted First Amendment rights. See *Leathers* v. *Medlock*, 111 S. Ct. 1438 (1991); *City of Los Angeles* v. *Preferred Communications, Inc.*, 476 U.S. 488 (1988). Ultimately, cable television will have to be analyzed for First Amendment purposes as a unique medium entitled to a particular balance of First Amendment rights, and these rights will have to be assessed with regard to the particular regulation then at issue. See *Kovacs* v. *Cooper*, 226 U.S. 77, 87-89 (1947), and 97 (Jackson, J., concurring).

Whatever conclusion the courts eventually reach concerning cable television's First Amendment status, economic regulations designed to promote competition and a diversity of voices in communications services have been upheld against First Amendment challenges. The leading case in this area is *Associated Press* v. *United States*, 326 U.S. 1 (1945), which upheld the application of the Sherman Act to newspapers. Under *Associated Press* and its

[79] House Report 98-934, p. 70.
[80] 1990 Cable Report, 5 FCC Rcd. at 5037-46.
[81] Cf. *City of New York* v. *FCC*, 486 U.S. 57, 60-61 (1988); *Capital Cities Cable, Inc.* v. *Crisp*, 467 U.S. 691, 701-04 (1984); *FCC* v. *Midwest Video Corp.*, 440 U.S. 681 (1974); *United States* v. *Southwestern Cable Co.*, 392 U.S. 157 (1968).
[82] *Quincy*, 768 F.2d at 1463.
[83] *Century*, 835 F.2d at 304.

progeny, the courts do not apply a heightened First Amendment test to economic regulations. The courts instead have held that government has the power to act even where the affected activity involves communications functions. Indeed, the courts have found that the First Amendment supports such regulations because they enhance the availability of a diversity of voices.[84]

In the Committee's view, *Associated Press* provides the most appropriate analysis for signal carriage regulations. In *Associated Press,* access to the association was ordered for members it otherwise might not have wanted because such membership was essential for participation in the market. The signal carriage provisions of the bill are economic regulations, similar to the antitrust laws, intended to promote a competitive balance between cable and over-the-air television as distribution systems, and to strengthen the diversity of voices available to both cable and noncable homes. The "gateway" position of local cable systems and their incentives either not to carry or to reposition the signals of local television stations, ample evidence of which was presented to the Committee,[85] has harmed and may continue to harm the system of free, universally available, local broadcasting which was central to the scheme created by the Communications Act.

The Committee concludes that carriage on cable systems is essential for local television stations to have access to viewers:

> The central dilemma of cable is that it has unlimited capacity to accommodate as much diversity and as many publishers as print, yet all of the producers and publishers use the same physical plant * * * If the cable system is itself a publisher, it may restrict the circumstances under which it allows others also to use its system.[86]

Congress has the power under the Commerce Clause to ensure that operators of communications facilities not use them in a discriminatory fashion against competitors.[87] The requirement that local signals be carried, therefore, is not at all base in the content of those signals, but rather is designed to counterbalance cable systems' commercial or economic incentives to exclude such signals.[88]

The First Amendment also supports government regulations intended to promote a diversity of voices, even if some incidental loss

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[84] See also *Metro Broadcasting, Inc.* v. *FCC,* 110 S. Ct. 2997, 3010 (1990); *FCC* v. *National Citizens Committee for Broadcasting,* 436 U.S. 775 (1978); *Lorain Journal* v. *United States,* 342 U.S. 143 (1951); *United States* v. *Paramount Pictures,* 334 U.S. 141 (1948); *Committee for an Independent P-1* v. *Hearst,* 704 F.2d 467, 482–83 (9th Cir. 1983).

[85] Testimony of Thomas L. Goodgame, Chairman of the Television Board of the National Association of Broadcasters, Hearings Before the Subcommittee on Telecommunications and Finance of the House Committee on Energy and Commerce, May 16, 1990, at ___; Comments of the National Association of Broadcasters, MM Docket No. 90–4, Sept. 25, 1991; Reply Comments of the National Association of Broadcasters, MM Docket No. 90–4, Oct. 25, 1991; see 1990 Cable Report, 5 FCC Rcd. at 5037–38, 5039–40, 5041–42, 5043, 5045.

[86] I. de Sola Pool, Technologies of Freedom 168 (1983).

[87] See *United States* v. *Western Electric Co.,* 673 F. Sup. 525 (D.D.C. 1987), remanded on other grounds, 900 F.2d 283 (D.C. Cir. 1990); see also *United States* v. *CAB,* 766 F.2d 1107 (7th Cir. 1985).

[88] Notably, similar arguments have been made by cable systems to gain access to facilities essential to their reaching subscribers. See *Community Communications Co.* v. *Boulder,* 455 U.S. 70 (1982); 47 U.S.C. 224 (regulating the rates which can be charge cable systems for pole attachments). Furthermore, long-standing policies under the Communications Act bar the use of communications facilities to gain an unfair competitive advantage. See e.g., *Mansfield Journal Co.* v. *FCC,* 180 F.2d 28 (D.C. Cir. 1950).

of editorial discretion results. *Associated Press,* 326 U.S. at 19–20; *FCC* v. *National Citizens Committee for Broadcasting,* 436 U.S. 775 (1978). Local signal carriage regulations ensure that cable subscribers receive a diversity of voices, not just the signals chosen by the cable operator. Signal carriage requirements are consistent with long-standing communications policies which seek to avoid granting one person or one entity control over all of the voices available to a community. At the same time, H.R. 4850, by limiting the number of cable channels which must be used for carrying local signals and the number of signals which are eligible for carriage, and by permitting the cable operator to choose which local signals it will carry in fulfillment of its obligations, preserves the cable operator's editorial discretion. The legislation also ensures adequate opportunity for cable program services to obtain access to cable audiences. The evidence presented to the Committee on developments in the cable industry indicates that cable system channel capacity is likely to continue to expand, particularly with the development of signal compression technologies, diminishing any incidental restrictions on the availability of cab channels for non-broadcast programming.

The Committee believes, therefore, that the signal carriage and associated channel positioning regulations required under H.R. 4850 are a reasonable exercise of Congress' power under the Commerce Clause to promote diversity and ensure fair competition in the video marketplace.[89]

Neither the *Quincy* nor the *Century* decisions considered the application of the *Associated Press* doctrine. Instead, applying the test established in *United States* v. *O'Brien,* 391 U.S. 367 (1968),[90] the *Quincy* and *Century* courts held that the FCC had failed to demonstrate the existence of a substantial governmental interest to which its signal carriage regulations related, and that the regulations were not narrowly tailored responses to the interests that the FCC had identified. The Committee believes that the signal requirements contained in H.R. 4850, even if subjected to this higher First Amendment scrutiny, are not violative of the requirements of the Constitution.

The Committee believes that the must carry provisions of H.R. 4850 would pass muster under the First amendment even if the Courts held cable systems to the same First Amendment standard as print publishers. The core of such First Amendment protection is a bar against regulation directed to suppressing free expression. *Texas* v. *Johnson,* 109 S. Ct. 2533, 2538–39 (1989); *Boos* v. *Barry,* 485 U.S. 312, 321 (1988). In making that determination, the issue is whether "the government has adopted a regulation of speech because of disagreement with the message it conveys." *Ward* v. *Rock*

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[89] The fact that signal carriage regulations apply only to cable systems does not affect their validity as economic regulations under *Associated Press.* In *Leathers* v. *Medlock,* 111 S. Ct. 1438 (1991), the court rejected arguments that economic regulations which apply differently t a particular part of the media are presumptively invalid.

[90] The analogy between must carry regulations and the type of regulation dealt with in *O'Brien* is questionable. *O'Brien* dealt with the validity of an "incidential" impact on speech of government regulation of nonspeech conduct that is combined with expressive activity. Economic regulation such as that contemplated for the cable industry is quite different from the regulations which have been generally been analyzed under *O'Brien.*

Against Racism, 109 S. Ct. 2746, 2754 (1989), citing, *Clark* v. *Community for Creative Non-Violence,* 486 U.S. 288, 295 (1984).

> The government's purpose is the controlling consideration. A regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not on others. See *Renton* v. *Playtime Theaters, Inc.,* 475 U.S. 41, 47-48 (1986). Government regulation of expressive activity is content-neutral so long as it is "justified without reference to the content of the regulated speech." [91]

Local signal carriage regulation clearly does not fall within the scope of this most exacting scrutiny. The application of the must carry rules does not depend on whether a cable operator or cable programmer expresses a particular viewpoint or opinion.[92] It also does not apply because of the particular viewpoint or ideas expressed by the broadcaster which may be entitled to carriage. Indeed, the great majority of the capacity of any cable system—and the cable operator's discretion to place on those channel the messages of his or her choice—is unaffected by signal carriage regulations.

Because any effect the must carry regulations may be found to have on protected speech is incidental to the purpose of such regulations, the Committee believes that the appropriate First Amendment standard (assuming arguendo that *Associated Press* would not be controlling) is that found in *O'Brien.* The question posed by *O'Brien* is whether "a sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitations on First Amendment freedoms." 391 U.S. at 376. The Supreme identified four subsidiary questions to be considered in making that determination: (1) whether the regulation "is within the constitutional power of the Government;" (2) whether it "furthers an important or substantial governmental interest;" (3) whether that "interest is unrelated to the suppression of free expression;" and (4) whether the "incidental restriction * * * is no greater than is essential to the furtherance of that interest." Id. at 377. The *Quincy* and *Century* decisions focused on the second and fourth inquiries—whether the must carry rules furthered a substantial governmental interest, and whether their impact was reasonably limited to achieving that purpose.[93] Applying the *O'Brien* test to the signal carriage regulations in H.R. 4850, there is no doubt, with regard to the first question, of the constitutional power of the government to regulate cable television under the Commerce

[91] *Ward,* 109 S. Ct. at 2754, quoting, *Community for Creative Non-Violence,* 468 U.S. at 293.

[92] It is worth noting that even the statute held unconstitutional in *Miami Herald Publishing Co.* v. *Tornillo,* 418 U.S. 241 (1974), only applied after a newspaper had taken an editorial stand, thus penalizing it for expressing a particular idea or concept. No analogy could be drawn between the structural regulations created by the must carry regulations in the Bill and the penalties for editorial expression which were at issue in *Tornillo.*

[93] The court pointed out in *Quincy:* "An agency typically has broad discretion over the manner in which it endeavors to effect its public interest objectives. Once we have determined that the agency action falls within the wide range of constitutionally permissible regulatory options, our task is at an end." 768 F.2d at 1459 (footnote omitted). Of course, the discretion afforded Congress in determining whether its chosen means are tailored to its legitimate ends is even greater than that afforded the FCC *Metro Broadcasting, Inc.* v. *FCC,* 1 10 S. Ct. 2997, 3008-09 (1990).

Clause. *United States* v. *Southwestern Cable Co.*, 392 U.S. 157 (1968); see *Capital Cities Cable, Inc.* v. *Crisp*, 467 U.S. 691 (1984).

The second inquiry divides itself into two subsidiary questions—are the governmental interests invoked to support the regulations substantial interests, and do the regulations further those interests? The interest supporting imposition of local signal carriage regulations are: (1) preservation of the benefits of universally available local television service, particularly over-the-air television service; (2) promotion of the widespread dissemination of information from diverse sources; and (3) promotion of fair competition in the video marketplace.

That these interests are substantial cannot seriously be questioned, particularly in light of the Supreme Court's recent decision in *Barnes* v. *Glen Theater, Inc.*, 111 S. Ct. 2456 (1991), which held that Indiana's generalized interest in public decency and morals was sufficiently substantial to justify restrictions on the expressive activity involved in nude dancing. Section 307(b) of the Communications Act which directs the FCC to ensure an equitable distribution of communications facilities across the country was enacted to promote the availability of diverse local service. This allocation system was central to the creation of the American system of free over-the-air broadcasting. Recognizing the importance of localism, the Supreme Court concluded that "[t]here can be little doubt that the comprehensive regulations developed over the past 20 years by the FCC to govern signal carriage by cable television systems reflect an important and substantial federal interest." *Capital Cities Cable*, 467 U.S. at 714; see *Chicago Cable Communications* v. *Chicago Cable Commission*, 879 F.2d 1540, 1549–50 (7th Cir. 1989). Indeed, *Quincy* did not question that preservation of local service would be a substantial governmental interest. 768 F.2d at 1459.

The importance of the governmental interest in promoting the greater diversity of views available to the public was central to the Supreme Court's decision in *Metro Broadcasting, Inc.* v. *FCC*, 110 S. Ct. 2997 (1990). The Court concluded that "the interest in enhancing broadcast diversity is, at the very least, an important governmental objective * * *." Id. at 3010.

Similarly, the promotion of competition has been accepted as a substantial governmental interest for at least a century since the passage of the Sherman and the Interstate Commerce Acts, a proposition implicit in the *Associated Press* line of decisions. Moreover, the ability of cable systems to retransmit local programming without copyright liability and without any responsibility to carry a complement of such signals on reasonable conditions is both unfair and inconsistent with the balance contemplated when the compulsory license was adopted.[94]

These interests are furthered by the signal carriage requirements in the bill. The preservation of local service is advanced by signal carriage regulations in several ways. The most obvious way, and the only one addressed in *Quincy*, is maintaining the existence of local broadcast stations and their ability to serve the public. Commercial television stations are dependent on advertising reve-

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[94] See 1990 Cable Report, 5 FCC Rcd. at 5039–40, 5041–42.

nues for their ability to provide programming, and thus may provide advertisers access to viewers. The threat to local broadcasters' ability to reach viewers in the absence of signal carriage requirements is clear. The FCC's 1988 survey showed that may cable systems, in only the first year after the *Century* decision, were dropping and repositioning hundreds of television stations. Evidence presented to the Committee convincingly demonstrates that cable subscribers will not watch stations that are not carried on the cable system. Further, even if a station continues to be carried, the lack of stable channel positions on a cable system, leads to a steady audience loss by local broadcasters.

Broadcasters who lose substantial portions of their audience will be unable to continue to provide local public service programming, and may be forced to discontinue service altogether. That result would not only lead to diminished diversity of opinion, but also to reduced competition in the local video market and the strengthening of a cable system's dominant position in providing video services, contrary to the strong governmental interest in fostering active competition. The Committee wishes to make clear that its concerns are not limited to a situation where stations are dropped wholesale by large numbers of cable systems. The incremental weakening of local broadcasters that results from being dropped across a portion of their market, or by discriminatory carriage conditions, will result in those stations' losing their ability to compete in a competitive programming market.

The almost 40 percent of American television households which do not have cable service will, as a consequence, be deprived of local program services and the diverse voices that existing local television stations provide. Such households will either lose this diversity entirely or be forced to become cable subscribers, effectively losing the benefits of the system of free local broadcasting which is at the core of the Communications Act.

Equally important is the impact that denial of carriage has on cable subscribers, a factor ignored in the *Quincy* decision. If local television stations are not carried on their cable system, cable subscribers will be denied access to federally-allocated broadcast stations, and will be deprived of the diversity of voices Congress intended them to have in the Communications Act. Instead, the programs available to them will be entirely chosen by one cable operator, contrary to the fundamental First Amendment interest in promoting the availability of programming and opinions from diverse sources. Moreover, cable systems are not subject to many of the wide range of public service obligations imposed on local broadcast stations.[95] Carriage and channel positioning regulations, therefore, will further the substantial governmental interests which are involved in the television market.

Whether the access of cable subscribers to any particular viewpoint or the preservation of any individual television station might or might not be placed at risk in the absence of signal carriage regulations is not the issue in determining their constitutionality. "[T]he validity of the regulation depends on the relation it bears to

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[95] See, e.g., *Metro Broadcasting*, 110 S. Ct. at 3019–22.

the overall problem the government seeks to correct, not on the extent to which it furthers the government's interests in an individual case." [96] Moreover, we need not wait until widespread further harm has occurred to the system of local broadcasting or to competition in the video market before taking action to forestall such consequences. Congress is allowed to make a rational prediction of the consequences of inaction and of the effects of regulation in furthering governmental interests.[97] The Committee received evidence that erosion of the local broadcast system has already occurred in the absence of signal carriage requirements and that regulatory action is needed to preserve the values served by the local broadcast system.

The second part of the *O'Brien* test is thus fully met by H.R. 4850. The reasons why the signal carriage and channel positioning regulations meet the third test—that the regulation is unrelated to the suppression of free expression—have been discussed above. The remaining issue, and the other facet of the *Quincy* and *Century* decisions, is whether the regulations do not restrict free expression greater than necessary to achieve the governmental interests at stake. Here again, the decisions since *O'Brien* have emphasized the discretion permitted the government in achieving its ends.

> So long as the means chosen are not substantially broader than necessary to achieve the government's interest, * * * the regulation will not be invalid simply because a court concludes that the government's interest could be adequately served by some less speech-restrictive alternative.[98]

The governmental interests at issue here involve the preservation of the system of local television broadcasting and access to local television stations' programming for subscribers to cable television and the substantial minority of consumers who cannot or do not subscribe to cable television. The most effective means of fulfilling these objectives is certainly regulations requiring that cable systems devote a modest portion of their channel capacity to retransmitting local television signals.[99] Because it is potentially anticompetitive carriage decisions by cable operators which present the problem to which the must carry requirements respond, it is an appropriate exercise of Congressional authority to regulate directly the decisions in which Congress has a legitimate interest. See *City Council* v. *Taxpayers for Vincent,* 466 U.S. 789, 810 (1984).[100]

Not only are the means employed in the legislation directly related to the substantive problems which are Congress' concern, the

[96] *Metro Broadcasting,* 110 S. Ct. at 3016–17; *Ward* v. *Rock Against Racism,* 109 S. Ct. at 2759; *United States* v. *Albertini,* 472 U.S. 675, 689 (1985); *Community for Creative Non-Violence,* 468 U.S. at 293.

[97] *Metro Broadcasting,* 110 S. Ct. at 3008–09, 3011; see *Albertini,* 472 U.S. at 689; *FCC* v. *National Citizens Committee for Broadcasting,* 436 U.S. at 796–97; cf. *Lewis* v. *United States,* 445 U.S. 55, 67 n. 9 (1980).

[98] *Ward,* 109 S. Ct. at 2758; *Albertini,* 472 U.S. at 689.

[99] The Committee has noted earlier its conclusion that so-called "A/B switches" and outdoor antennas cannot and should not be relied on as providing a less restrictive means of achieving these governmental interests.

[100] In *Metro Broadcasting,* the Supreme Court observed that communications policies have never placed exclusive reliance on the marketplace to ensure that the public's needs are served. 110 S. Ct. at 3012.

specific requirements of H.R. 4850 are tailored to ensure that, unlike the rules addressed in *Quincy*, they are not overly broad. First, the signal carriage regulations do not excessively restrict cable operators' discretion. The obligation to retransmit the signals of local commercial television stations is limited to only approximately one third of a system's usable channel capacity, leaving the majority of the channels to be programmed as the cable operator wishes and ensuring that cable programmers have an ample opportunity to have their programs carried. Systems with very limited channel capacity are granted a five-year exemption from carriage requirements, and those which serve only a few subscribers and which, therefore, are not likely to be able to increase their channel capacity, are permanently exempted from mandatory carriage regulations. The FCC's original must carry rules, by contrast, required carriage of all local signals regardless of the portion of a cable system's capacity that might be occupied.

Further, if there are more qualified signals than can be accommodated in the channels allocated to carriage of local stations, the cable operator retains the discretion to choose which of the qualified signals it will carry. If there are duplicate qualified signals, the cable operator is not obligated to carry more than one since carriage of duplicate signals would do nothing to increase the diversity of local voices.

The criteria for broadcast station qualification for carriage on a cable system also are reasonably related to the goals the Committee has identified. Television stations are only entitled to be carried on cable systems within their television market, defined as their Area of Dominant Influence (ADI), the most common industry definition of a television market and one used by the FCC for many years in regulations. That encompasses the area in which most television stations would be considered local and is the area to which most television stations' public service programming is directed. By the same token, stations that serve the same market as a cable system are the ones which most likely compete with the cable system for local advertising, and are thus the stations which the cable system has the greatest financial incentive to drop from carriage. The same motive is likely to exist where more than one affiliate of a network is qualified for carriage—the closest affiliate is more likely to compete with the cable system—thus the Bill requires carriage for that affiliate.

Finally, the channel positioning requirement responds to the governmental interest in promoting strong competition between local television stations and cable systems. Unless local stations are guaranteed channel stability, cable systems have the incentive to reposition their signals, which compete with the cable system for viewers and advertising, to channels which are less desirable and which viewers may have a hard time locating. For the same reason, the requirement that cable systems give affected broadcasters timely notice of any changes in carriage or channel positioning prevents anticompetitive activity by cable systems without imposing any significant hardship.

The signal carriage and channel positioning regulations, therefore, meet the fourth prong of the *O'Brien* standard—their scope is reasonably related to the problem the Congress seeks to remedy.

The Committee is satisfied that under the test established in *O'Brien*, those provisions do not violate the requirements of the Constitution.

The Committee believes that absent Congressional action, the role of local television broadcasting in our system of communications will steadily decline. The establishment of reasonable signal carriage and channel positioning regulations is an important step in ensuring that local broadcast system which has served the public interest will continue to thrive and that a broad array of views and programs from diverse, competitive, and antagonistic sources is available to all television households, whether or not they subscribe to cable service. The signal carriage and channel positioning provisions contained in H.R. 4850 are carefully tailored to achieve these goals and are entirely consistent with the Constitution.

Finally, the Committee notes that some cable operators have contended that signal carriage regulations would constitute a "taking" of their channels in violation of the Fifth Amendment. The standard for determining when a "taking" has occurred in connection with governmental regulation of communications activities is long established:

> "If the injury complained of is only incidental to the legitimate exercise of governmental powers for the public good, then there is no taking of property for the public use, and a right to compensation, on account of such injury, does not attach under the Constitution." When Congress imposes restrictions in a field falling within the scope of its legislative authority and a taking of property without compensation is alleged, the test is whether the restrictive measures are reasonably adapted to secure the purposes and objects of regulation.

Trinity Methodist Church, South v. *Federal Radio Commission*, 62 F.2d 850, 853 (D.C. Cir. 1932), quoting *Chicago, B. & Q.R. Co.* v. *Illinois*, 200 U.S. 561, 593 (1906). As we have pointed out above, the proposed restrictions on cable systems are carefully tailored to achieve the goal of preservation of diverse, vibrant local over-the-air television service, a goal clearly within Congress' legitimate authority. That alone is dispositive of any "taking" argument which cable operators might raise. See *Black Hills Video Corp.* v. *FCC*, 399 F.2d 65, 69–70 (8th Cir. 1968).

Furthermore, since signal carriage rules were central to regulation of cable television for many years, and most cable systems have continued to carry a number of local over-the-air signals, imposition of the signal carriage regulations would not disturb any reasonable expectations of investors in cable systems. See *Penn Central Transportation Corp.* v. *New York City*, 438 U.S. 104 (1978). The Committee is not aware of any evidence which suggests that compliance with reasonable carriage and channel positioning requirements would result in an unreasonable impairment of a cable system's market value. See *Pruneyard Shopping Center* v. *Robins*, 447 U.S. 74, 83 (1980). The reestablishment of signal carriage requirements will not, therefore, result in any unconstitutional taking of cable operators' property without compensation.

CARRIAGE OF NONCOMMERCIAL TELEVISION STATION

Section 615 of the legislation establishes that cable systems (with allowances for the channel capacity of small- and medium-sized operators) shall carry, upon request, all local, substantially unduplicated public television services. The legislation seeks to preserve and promote public access to the wide variety of educational, informational, cultural and instructional programming available on local public television stations serving communities throughout the United States. The Committee believes that by ensuring access to the services offered by public television stations, this section will serve the compelling government interest of furthering the educational development of all citizens and will protect the nation's substantial investment in and commitment to public television services.

At the same time, the Committee believes that section 615 represents a balanced and moderate approach that protects the legitimate interests, including the First Amendment rights, of cable operators. The effect of the public television carriage requirement on the nation's cable systems is small. The vast majority of all cable systems will be required to carry one public television station. Based on initial analysis, under the legislation only 3 percent of the nation's systems—largely limited to seven television markets—could be required to carry more than two local public television stations. Thus, the legislation advances the government's compelling interest in preserving access to public television services by all viewers across the country while imposing a minimal burden on the cable industry.

The Federal government recognized the need for noncommercial broadcasting as early as 1952 when 242 channels were set aside in the spectrum by the FCC for the exclusive use of public television. Since that time, Congress repeatedly and unequivocally has supported public telecommunications services. Congress first provided funds for public television stations in 1962 through the Education Facilities Act (Public Law No. 87-447, 76 Stat 64 (1962). Five years later, in the Public Broadcasting Act of 1967 (Public Law No. 90-129, 81 Stat 365 (1967)), Congress specifically fund that "it furthers the general welfare to encourage "public broadcasting services and that "it is necessary and appropriate for the Federal Government to complement, assist and support a national policy that will most effectively make [public broadcasting services] available to all the citizens of the United States." Congress has authorized almost $400 million since 1962 to build and improve public televisions facilities to "extend delivery of public telecommunications services to as many citizens of the United States as possible," [101] and as recently as 1988 authorized $200 million through FY 1993 to replace and upgrade the satellite system carrying public telecommunications services to stations across the country. Unimpeded access to public television programming is such an important telecommunications objective that Congress requires that the Public Broadcasting Service (PBS) maintain one clear, unencrypted satellite feed for use by satellite dish owners in unserved areas.

[101] House Report 95-1178, p. 20.

Thus, Congress long has advocated broad access to public television services, regardless of the technology used to deliver those services, in order to advance the compelling governmental interest in increasing the amount of educational, informational and local public interest programming available to the nation's audiences.

This substantial Congressional support constitutes only a small portion of the total public investment in the system. Over two-thirds of public television stations are licensed to state and local government agencies, public colleges and universities, school districts and other public groups which have provided public service programming at a state and local taxpayer investment of $4.9 billion since 1972. Moreover, private contributions of $6.1 billion since 1972 constitute the largest source of support for public television and are one indicator of the success of public television in serving the needs and interests of local communities.

With the support of Congress, state and local agencies and viewers, public television stations have developed a wide array of programming to fulfill their legislative mission and to serve the public interest, including the familiar and acclaimed "Sesame Street," "3-2-1 Contact," "Mister Rogers' Neighborhood," and "Where in the World is Carmen San Diego?" for children; informative news and public affairs programming such as "The MacNeil/Lehrer NewsHour;" unique cultural series such as "Live From Lincoln Center" and "American Playhouse;" documentaries such as "Nova" and the "National Geographic Specials;" and special series such as "The Civil War," "Ethics in America," and "Eyes on the Prize." In addition, many public television stations devote a considerable block of their daytime schedules to instructional programming. More than 29 million children attend schools that employ public television's instructional programming every day. Local public television stations also provide a variety of special services to their communities, including local news and public affairs programs, programs offering outlets for local cultural and artistic groups, and coverage of local and state government activities and personalities.

In sum, Congress and the American taxpayer have given public television unprecedented support over the last three decades, and public television stations have developed a wide variety of distinctive, award-winning program services. The government has a compelling interest in ensuring that these services remain fully accessible to the widest possible audience without regard for the technology used to deliver these educational and information services.

As cable penetration increases, and as more American television viewers rely on cable to deliver television services, ensuring carriage of public television stations on cable systems will be critical.

The Committee believes that this narrowly drawn legislation is necessary to advance the government's compelling interest in ensuring that these millions of American cable subscribers maintain access to local public television services. In reaching this conclusion, the Committee has had the benefit of its own hearings, Congress' extensive study of noncommercial and cable television over the years, a wealth of data collected by the FCC on the need for cable carriage and the FCC Cable Report which strongly recommended that Congress adopt the noncommercial "must carry" requirement contained in section 615. The Commission stated:

> Because of the unique service provided by noncommercial television stations, and because of the expressed governmental interest in their viability, we believe that all Americans should have access to them. We believe that mandatory carriage of noncommercial television stations would further this important goal.[102]

The Committee believes that absent statutory carriage requirements, there is a substantial likelihood that local public television stations will be deleted, will not be carried, or will be switched to undesirable channels on cable systems. Because cable operators are for-profit enterprises, they necessarily seek to provide customers with the package of programming and services that will maximize the operators' profits. As commercial enterprises, cable operators ordinarily lack strong incentive to carry programming that does not attract sufficient dollars or audiences. Traditionally, public television has provided precisely the type of programming commercial broadcasters and cable operators find economically unattractive. For this reason, the Committee believes that, without "must carry" provisions, public television service increasingly will become unavailable to cable subscribers.

The Committee's conclusion on this point is based on more than economic logic. Data gathered in recent years, particularly the substantial record gathered in the FCC's Mass Media Docket No. 88–138, clearly demonstrate that some of the nation's viewers have lost access to public television programming in the absence of must carry regulation. More than 100 public television stations have been dropped from cable systems since 1985, thus diminishing the ability of local audiences to receive all of the local public television stations they support. The drops disproportionately affect stations licensed to local school boards, colleges, and universities, which tend to carry more instructional and educational programming than community licensees. As could be predicted from the economic motivations of cable operators, the dropped stations are generally replaced with cable programming services.

Various technical factors lead to the conclusion that continued over-the-air broadcasting by public television stations is not an answer to this problem. In many places, due to terrain problems and buildings, high quality over-the-air signals cannot be received. Two-thirds of public television stations operate on the UHF band, which is far more vulnerable to interference from the earth's contours and atmospheric disturbance than the predominantly commercial VHF band. Cable retransmission of these signals has counteracted this UHF handicap. If cable carriage is unavailable, these public television stations would be severely disadvantaged. Even where there is no UHF or terrain handicap, cable subscribers would have to obtain both an input selector switch and an exterior antenna in order to receive high-quality television signals over the air. Evidence shows that fewer than 1 percent of cable subscribers have an outdoor antenna and an A/B switch.[103] Both the cable

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[102] Report to Congress in MM Docket N.89–600 (released July 31, 1990) at para. 163.

[103] Comments of the National Association of Broadcasters in MM Docket No. 88–138 at 24 citing 1985 study by ELRA Research Group Inc. "Outdoor Antennas, Reception of Local Television Signals and Cable Television," attached as Exhibit 1 to NAB's comments in MM Docket 85–349, filed on January 28, 1986.

and broadcast industries, in filings before the Commission and Congress, have stated that the A/B switch is not the solution. The Committee finds, based on this and other evidence before it, that the technical and economic complexities involved with the A/B switch make it an unworkable solution. Under these circumstances, the Committee believes that there is a very significant danger that millions of Americans that now subscribe to cable will be cut off from the services of this local public institution which they support.

Channel positioning requirements are also necessary to ensure that the public has meaningful access to public television services carried on a cable system. The FCC Survey reported that over 200 noncommercial education stations were repositioned, generally for economic reasons on the part of the cable operators. Typically, stations are repositioned without notice to the station or to the viewing audience. This repositioning of stations to locations that are unexpected are unknown to their typical viewing audience impedes, sometimes permanently, viewers from obtaining valuable public service programming.

THE LIMITED IMPACT OF THE LEGISLATION

The Committee believes that section 615 is a limited and appropriate response to this problem. The burden imposed on the cable industry by the legislation is minimal. Data compiled by the Association for Public Broadcasting indicate that mandatory carriage of all qualified local public television stations whose programming is substantially unduplicated would have the following effect on the cable industry:

84 percent of the nation's cable systems would be required to carry one public television service;

13 percent could be required to carry two public television services; and,

3 percent of all systems could be required to carry more than two services. All of these systems are found in seven television markets: New York, Los Angeles, Chicago, San Francisco, Boston, Washington (D.C.), and New Orleans.

Thus, a requirement for carriage of all qualified, substantially unduplicated local public television stations would, in the overwhelming majority of cases, mandate that only one cable channel be devoted to a public television station. Nevertheless, to ensure that the impact of the legislation is limited (in terms of the public television stations to be added to cable systems), the legislation has not adopted such a blanket "must carry" requirement. Instead, it requires that cable systems carry only qualified local public television stations that request carriage. In addition, the legislation minimizes the effect on small- and medium-sized cable systems by imposing caps on the number of public television stations that must be carried by systems with limited channel capacity. Furthermore, the legislation does not require systems of more than 36 channels to carry substantially duplicated public television services if such a system otherwise would have to carry more than three public stations.

Finally, cable operators need not carry noncommercial signals at their own expense; pursuant to the requirements of section 623, they can recover costs of such carriage and a reasonable profit, as defined by the Commission, as part of their basic service tier rate.

FIRST AMENDMENT CONSIDERATIONS

The Committee also has considered the implications of section 615 of the First Amendment rights of cable operators and has concluded that it satisfies the First Amendment standards.

To begin, it is questionable whether the "must carry" and channel positioning provisions necessarily raise substantial First Amendment issues. Indeed, the provisions themselves are in essence a form of legitimate economic regulation of industry; they establish public interest requirements that one enterprise enter into business relationships with another for the purpose of furthering a necessarily national goal. Economic regulation of this kind does not appear to present substantial First Amendment concerns. See generally, *Associated Press* v. *United States,* 326 U.S. 1 (1945).

In addition, section 615 will place cable operators in precisely the position they would occupy if local franchising authorities had chosen to retain control over one or more channels while franchising the others to cable operators. Such a decision not to release every cable channel to private ownership would raise no significant First Amendment issue. Just as the Government might, when distributing a tract of land to private parties, require that certain portions be preserved for use as a public park, the government may require that a small portion of the valuable cable franchise be dedicated to use that will benefit the public at large.

Even under First Amendment scrutiny, however, it is the Committee's judgment that the must carry and channel positioning provisions pass muster. Section 615 does not restrict the ability of cable operators to choose to carry whatever programming content they, in their editorial discretion, wish to carry on the channels at their disposal. Indeed, Section 615 does not dictate that cable operators carry any particular sort of content on channels that they program or those that are designated for other uses. Section 615 requires only that cable operators carry the programming of qualifying local noncommercial television stations. Such stations disseminate an enormous variety of program content, ranging from children's programs to documentaries to local cultural events. Congress has established extensive guarantees to ensure the independence of public television programming from the influence of Government officials. Consequently, there can be no claim that section 615 seeks to dictate to cable operators the content of the programming they must carry. For this reason, the concerns that the Supreme Court has expressed about government regulation that requires media outlets to carry speech of a certain content (see, e.g., *Miami Herald Publishing Co.* v. *Tornillo,* 418 U.S. 241 (1974)) are inapplicable.

Moreover, the Supreme Court has cautioned that each medium of expression raises different First Amendment issues (see, e.g., *Southeastern Promotions, Ltd.* v. *Conrad,* 420 U.S. 546, 557 (1975)) and the standard of First Amendment review that applies to cable operators remains an unsettled question (see *City of Los Angeles* v. *Preferred Communications, Inc.*, 476 U.S. 488 (1986)). Thus, it would not be appropriate to apply to the medium of cable television the rules that have been developed and tailored to suit traditional media such as newspapers.

Under section 615, the vast majority of cable operators will not be required to carry more than one noncommercial station. At the same time, section 615 serves the overriding Government interest in ensuring that the American public will have access to the programming that is available only on public television—programming that for-profit, commercial stations either cannot or will not provide. The unbridled expansion of cable television threatens public access to these kinds of programming, and must carry and channel positioning provisions are the only available means to ensure the continued availability of this programming to viewers.

The decisions in *Quincy Cable TV, Inc.* v. *FCC* [104] and *Century Communications Corp.* v. *FCC* [105] clearly leave open a constitutional avenue for enactment of this must carry legislation. In *Quincy*, the Court found that the Commission needed to move beyond a "more or less intuitive model" of cable regulations in finding that "must carry" rules were necessary to prevent cable from "undermin[ing] the financial viability of free, community-oriented television": [106]

> We reiterate that this case has not required us to decide whether, as an abstract proposition, the preservation of free, local television service qualifies as a substantial and important governmental interest. We hold only that in the particular circumstances * * * the Commission has failed adequately to demonstrate that an unregulated cable industry posed a serious threat to local broadcasting, and, more particularly, that must-carry rules in fact serve to alleviate that threat. *Should the Commission move beyond its "more or less intuitive model," as it clearly has the capacity to do, we would be extremely hesitant to second-guess its expert judgment.* As it continues to rely on wholly speculative and unsubstantiated assumptions, however, our powerful inclination to defer to the agency in its area of expertise must be tempered by our duty to assure that the government not infringe [upon] [the First Amendment. [107]

Similarly, in *Century*, the Court found that, before "must carry" rules were reimposed, the Commission first should have developed better empirical evidence regarding consumers' use of A/B switches to access local, over-the-air channels not carried on cable systems. [108]

The noncommercial "must carry" provisions of section 615 not only are substantially narrower than those invalidated in *Quincy*

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[104] 768 F.2d 1434 (D.C. Cir. 1985), cert. denied sub nom. National *Association of Broadcasters* v. *Quincy Cable TV, Inc.*, 476 U.S. 1169 (1986).
[105] 835 F.2d 292 (D.C. Cir. 1987), clarified, 837 F.2d 517 (D.C. Cir. 1988), cert. denied, 108 S. Ct. 2014 (1988).
[106] Quincy, 768 F.2d at 1440.
[107] Id. at 1459 (emphasis added).
[108] *Century*, 835 F.2d at 303.

and *Century*, but are distinguishable from those regulations in other respects as well. In the years since *Quincy* and *Century* were decided, much new information about the effect of cable television on public broadcasting has become available, and the Committee has been able to draw on that information. In particular, the Committee has had before it, among other things, extensive Congressional hearings, the Commission's "Cable System Broadcast Signal Carriage Survey Report," Sept. 1, 1988, and the record developed in the Commission's "must carry" proceeding, MM Docket No. 88-138. It has now become clear, from this additional evidence, that cable operators frequently have deleted or refused to carry noncommercial stations. In addition, there is now widespread agreement that an input selector device (such as the A/B switch), which is required to permit cable subscribers to receive over-the-air broadcasts of public television signals, is not a workable solution. On the basis of these additional sources of information, the Committee believes that the factual deficiencies that the court of appeals perceived in *Quincy* and *Century* are no longer an obstacle to the enactment of noncommercial must carry rules.

In sum, the must carry and channel positioning provisions in section 615 serve the vital, long-standing Congressional interest in protecting the viability of public television; it imposes minimal burdens on cable operators; and it accomplishes this in a way that does not restrict or promote speech on the basis of its content. Such regulation is at its core economic, rather than the speech-related. In the Committee's judgment, it does not run afoul of the First Amendment.

Hearings

The Committee's Subcommittee on Telecommunications and Finance held 3 days of hearings on a predecessor cable bill H.R. 1303, on March 20, June 18, and 27, 1991. Testimony was received from 30 witnesses, representing 30 organizations, with additional material submitted by numerous individuals and organizations.

Committee Consideration

On April 8, 1992, the Subcommittee on Telecommunications and Finance met in open session and ordered reported the "Cable Television Consumer Protection and Competition Act of 1992," a Committee Print which was later introduced as H.R. 4850, by a voice vote, a quorum being present. On June 10, 1992, the Committee met in open session and ordered reported the bill H.R. 4850, with an amendment, by a recorded vote of 31 to 12, a quorum being present.

Committee Oversight Findings

Pursuant to clause 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 cost incurred in carrying out H.R. 4850 would be between $20 and $25 million per year over the 1993–1997 period. These costs will be more than offset by the beneficial effect of the legislation insofar as cable rates are concerned.

Congressional Budget Office Estimate

U.S. Congress,
Congressional Budget Office,
Washington, DC, June 29, 1992.

Hon. John D. Dingell,
Chairman, Committee on Energy and Commerce,
U.S. House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 4850, the Cable Television Consumer Protection and Competition Act of 1992, as ordered reported by the House Committee on Energy and Commerce on June 17, 1992. We estimate that implementing the bill would cost the Federal Communications Commission (FCC) an average of $20 million to $25 million a year over the 1993–1997 period, assuming appropriation of the necessary amounts. Enactment of H.R. 4850 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

H.R. 4850 would define effective competition within the cable television industry and would permit state or other franchising authorities to regulate cable television rates for systems where effective competition does not exist. Where franchising authorities decline to do so or fail to meet the specified standards, the bill would require the FCC to regulate rates.

H.R. 4850 would establish requirements for regulated cable television systems. It would require the FCC to promulgate various regulations and guidelines concerning these systems. Additionally, the bill would require the FCC to prepare several reports.

The cost of the federal government of implementing H.R. 4850 would depend on how many states or other franchising authorities petition and are approved to regulate cable television rates—the more authorities are approved, the lower the cost to the federal government. CBO believes that most states or other authorities would prefer local control of cable rates. We therefore assume that about 80 percent of the approximately 29,000 eligible systems would be subject to local rate regulation. The processing of requests for rate increases by the remaining 6,000 systems would account for most of the projected costs to the FCC. In addition, the agency would incur costs for processing and reviewing petitions from some systems under local rate regulation, for preparing reports, and for promulgating regulations and guidelines. Costs in fiscal year 1993 are likely to be below the average, primarily because it is unlikely that a large number of rate increases would be requested immediately.

While H.R. 4850 would allow the FCC to cede responsibility for regulating basic cable rates to state and local franchising authorities, these authorities would not be required to assume this responsibility. Those opting to regulate rates would incur additional costs to obtain and exercise this authority, but CBO estimates that the requirements in the bill are not likely to result in significant costs for individual jurisdictions. Many jurisdictions maintain a small staff to monitor and regulate local cable systems; for these authorities, most cost would be associated with filing with the FCC for regulatory authority.

We estimate that state and local franchising authorities would spend, in aggregate, from $10 million to $12 million over the 1992–1994 period to prepare and process delegation requests, if their costs were similar to those estimated for the FCC. Once they are certified by the FCC, we estimated that franchising authorities nationwide would spend from $5 million to $10 million annually to oversee rates, depending on the extent and frequency of reviews. Because interest in cable rates may be more intense at the local level, it is possible that states and localities would spend somewhat more than this.

If you wish further details on this estimated, we will be pleased to provide them. The CBO staff contact is John Webb, who can be reach at 226–2860.

Sincerely,

ROBERT D. REISCHAUER,
Director.

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. 4850 will have no inflationary impact. Enactment of H.R. 4850 will have the effect of controlling rates for cable television.

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE

This section states that the short title of the bill is the "Cable Television Consumer Protection and Competition Act of 1992".

SECTION 2. FINDINGS

Subsection (a) amends Section 601 of the Communications Act of 1934 (Communications Act) and enumerates the findings made by Congress concerning the cable industry and the video programming marketplace.

The Congress finds that:

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) Broadcast television programming is supported by advertising revenues. Such programming is otherwise free to those who own television sets and do not require cable transmission to receive broadcast signals. There is a substantial governmen-

tal interest in promoting the continued availability of such free television programming, especially for viewers who are unable to afford other means of receiving programming.

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

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

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

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

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

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

(14) At the same time, broadcast programming has proven to be the most popular programming on cable systems, and a substantial portion of the benefits for which consumers pay cable systems is derived from carriage of local broadcast signals. Also, cable programming placed on channels adjacent to popular off-the-air signals obtains a larger audience than on other

channel positions. Cable systems, therefore, obtain great benefits from carriage of local broadcast signals which they have been able to obtain without the consent of the broadcaster. This has resulted in an effective subsidy of the development of cable systems by local broadcasters. While at one time, when cable systems did not attempt to compete with local broadcasters, this subsidy may have been appropriate, it is no longer and results in a competitive imbalance between the two industries.

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

SECTION 3. REQUIREMENTS FOR THE PROVISION AND REGULATION OF BASIC SERVICE TIER

The purpose of this section is to provide adjustments required by the public interest to the existing regulatory structure for the rates charged by cable operators for programming carried on their systems.

The Committee notes that since the Cable Act, the diversity and quality of cable programming networks have improved and increased. This seems especially true in regard to the so-called "basic" cable programming networks—those cable networks generally offered as part of a package to consumers. The Committee further notes that rates for cable programming have risen significantly, again especially for these so-called basic networks. Representatives of the cable industry provided evidence to the Committee that a significant portion of the increased revenues realized from these increased rates has been reinvested in improvements in programming, facilities and equipment, and customer services.

The Committee is concerned, however, that some cable operators have abused their deregulated status and have unreasonably raised the rates they charge consumers. Section 3 is designed to protect consumers from unreasonable cable rates.

Accordingly, section 3 of the Act provides a new Section 623 in the Communications Act to ensure that consumers have the opportunity to purchase basic service at reasonable rates. In addition, the section is intended to protect consumers against specific instances of unreasonable rates for subscription to cable programming services. Under this section, the only cable services potentially not subject to the Commission's regulatory authority would be services traditionally offered on a stand-alone, per-channel basis (premium channels like HBO and Showtime) or other programming that cable operators choose to offer on a per-programming service, per-channel or pay-per-view basis. However, with regard to these latter programming services, section 3 directs the FCC to scrutinize and prevent repricing, retiering, or other alterations of rate structures that could have the effect of evading the purposes of this section. The amendments made by section 3 shall take effect 120 days after the date of enactment of this legislation, except that the authority of the FCC to prescribe regulations shall be effective on the date of enactment.

Subsections (1) and (a)(2) express the preference of Congress for competition rather than regulation and prohibit Federal agencies or states from regulating the rates for the provision of cable service except to the extent provided under this section. Subsection (a)(1) empowers any franchising authority to regulate rates for the provision of cable service, or any other communications service provided over a cable system to cable subscribers only to the extent provided under this section. Federal agencies, states, and franchising authorities are prohibited from regulating the rates for cable service of a cable system that is owned or operated by a local government or franchising authority and that is the only cable system located within the jurisdiction of the government or franchising authority.

Subsection (a)(2) provides that, where the FCC finds that a cable system is subject to effective competition, there shall be no regulation of any of the system's rates by any level of government. Where the FCC finds that a cable system is not subject to effective competition, rates for basic service and cable programming service may be regulated in accordance with the terms of the Act. It is the intent of the Committee that the FCC, not the local franchise authority, determine whether a cable system is subject to effective competition.

This Committee takes note of the fact that, under the Act, services offered on a stand-alone, per-channel basis (premium channels like HBO and Showtime) or other programming that cable operators choose to offer on per-channel or pay-per-view basis are not subject to rate regulation. The Committee also notes that some cable operators are experimenting with "multiplexing"—the offering of multiple channels of commonly-identified video programming as a separate tier (e.g., HBO1, HBO2, and HBO3). The Committee intends for these "multiplexed" premium services to be exempt from rate regulation to the same extent as traditional single channel premium services when they are offered as a separate tier or as a stand-alone purchase option.

Subsection (a)(3) sets out the procedures under which a franchising authority may exercise the regulatory jurisdiction with respect to basic rates permitted under the Act. The franchising authority is required to certify in writing that it has adopted and will administer regulations that are consistent with the regulations prescribed by the FCC under subsection (b); that the franchising authority has the legal authority to adopt and the personnel qualified to administer such regulations; and that the procedural laws and regulations applicable to any rate regulation proceedings conducted by the franchising authority will provide a reasonable opportunity for interested parties to make their views known.

The Committee does not intend for the subsection to be interpreted to prohibit two or more communities served by the same cable system from jointly filing a written certification to the Commission and from jointly exercising regulatory authority pursuant to such certification. The Committee recognizes that cable systems often serve several communities, none of which alone may desire to exercise rate regulatory authority, but which may wish to jointly exercise such regulatory authority. H.R. 4850 is not intended to prohibit such joint regulatory authority, nor should it be interpreted to require such joint regulatory authority.

Subsection (a)(4) provides that the certification filed by a franchising authority under paragraph (3) will take effect 30 days after it is filed unless the FCC, after giving the franchising authority notice and an opportunity to comment, finds that the regulations adopted by the franchising authority are not consistent with, or are not being administered consistently with, the regulations prescribed by the FCC under subsection (b); that the franchising authority lacks the legal authority to adopt or the personnel qualified to administer such regulations; or that the franchising authority's procedural laws and regulations do not provide a reasonable opportunity for consideration of the views of interested parties. Any notice disapproving a franchise authority's certification shall specify the revisions or modifications needed to obtain approval.

The Committee intends for the Commission to certify any franchising authority that meets the requirements in section 623(a)(4). The Commission shall not establish as a condition of certification that the franchise agreement between a franchising authority and cable operator include a provision allowing the franchising authority to regulate the cable operator's rates. The Committee recognizes that many franchise agreements, especially those entered into or renewed since the Cable Act was enacted in 1984, may not include rate regulation provisions since approximately 97 percent of the cable systems in this nation were rate deregulated under the Cable Act—thus eliminating the need for rate regulation provisions in many franchise agreements. The Committee intends that, as a matter of federal law, except as provided in Subsection 3(j) all franchising authorities, regardless of the provisions in a franchise agreement, shall have the right to regulate basic cable service rates if they meet the conditions in section 623(a)(4).

Subsection (a)(5) deals with the revocation of a franchising authority's jurisdiction after it has been granted by the FCC. A cable operator or other interested party may petition the FCC to review the regulation of cable rates by a franchising authority. If the FCC finds the franchising authority has acted inconsistently with the requirements of this subsection, the FCC shall grant appropriate relief. If the FCC determines that state and local laws and regulations are not in conformance with the regulations prescribed by the FCC under subsection (b), the FCC shall revoke the franchising authority's jurisdiction to regulate rates. Such revocation shall only be made after the franchising authority has been given a reasonable opportunity to comment on the petition challenging its jurisdiction.

Subsection (a)(6) specifies the scope of the FCC's authority to regulate basic cable rates in lieu of a franchising authority. The FCC may exercise regulatory authority with respect to basic cable rates only in those instances where a franchising authority's certification has been disapproved or has been revoked and only until the franchising authority has qualified to exercise that jurisdiction by filing a valid certification. The FCC is directed to act on a new certification within 90 days after it is filed.

Subsection (b) directs the FCC within 120 days after the date of enactment of this legislation to promulgate regulations that will govern the provision of a low priced tier of programming, which includes all broadcast signals and other programming of interest to cable subscribers.

Subsection (b)(1)(A) requires the FCC to establish a formula for the maximum price of the basic service tier. The Committee recognizes that the cost of providing this basic service tier could vary substantially from system to system, depending upon the market and the particular characteristics and configuration of the cable system. The Commission's formula, therefore, needs to be sufficiently flexible to allow all systems to comply with a minimum of confusion.

The formula the Commission shall establish pursuant to this section must take into account the direct costs of obtaining, transmitting, and otherwise providing signals required on the basic tier and the portion of the properly allocated joint common costs of the cable operator incurred in providing the basic service tier. Examples of such joint and common costs include system facilities, equipment, maintenance, labor, and capital costs incurred by the cable operator in the operation of the system, among others.

The Committee intends that the formula established by the Commission allow cable operators a full recovery of the costs identified in that formula as well as a reasonable profit (to be defined by the Commission) on the provision of the basic service tier. Further, the Committee recognizes that many of the costs involved in the provision of basic service are subject to change. Accordingly, the Commission may provide that such formula be sufficiently flexible to take into account changes in such costs so that the maximum price for the basic service tier may be adjusted, upward or downward, by the operator as those costs change.

For example, the formula should provide for:

—the recovery of the direct costs of obtaining and transmitting video signals;

—a reasonable profit; and

—a pro rata share of the joint and common costs that are attributable to both the regulated and unregulated services offered by the cable operator.

It is the Committee's expectation that the Commission will recognize that changes in the direct costs of programming are likely to occur during a rate cycle. This subsection is intended to permit the Commission to develop a system of "pass throughs" or other appropriate regulatory mechanisms (bearing in mind the need to protect consumers' interests) to permit cable programmers to be fairly compensated for the service they provide to cable subscribers and to encourage cable systems to carry such services in the basic tier.

The formula also shall take into account the basic service rates charged by comparable cable systems, if any, that are subject to effective competition and that offer comparable services, taking into account, among other factors, similarities in facilities, the number of channels, and local conditions, including, but not limited to, demographic conditions, such as density of population and geographic conditions.

The formula also shall take into account amounts assessed as franchise fees, taxes, or charges of any kind imposed by a state or local authority on the transactions between cable operators and subscribers or any other fee, tax, or assessment of general applicability imposed against cable operators or cable subscribers. In addition, amounts required to satisfy franchise requirements for the support of public, educational and governmental (PEG) channels, or amounts for the use of such channels, or amounts for any other services required under the franchise shall be taken into account in accordance with paragraph (C). The Committee directs the Commission to attribute such costs to the basic tier only to the extent a portion of such costs are properly allocable to the costs of the basic cable service tier.

The Committee intends that the Commission establish a formula that is not cumbersome for the cable operator to implement nor for the relevant authorities to enforce. The Committee is concerned that several of the terms used in this section are similar to those used in the regulation of telephone common carriers. It is not the Committee's intention to replicate Title II regulation. The FCC should create a formula that is uncomplicated to implement, administer, and enforce, and should avoid creating a cable equivalent of a common carrier "cost allocation manual." In establishing its formula, the Commission should strive to assure that permissible joint and common costs attributed to the regulated tier are treated in the same manner as those in the unregulated tiers on a per-channel basis. In effect, this provision requires a "fully allocated" costing methodology across all cable services. The regulated tier cannot be permitted to serve as the base that allows for marginal pricing of unregulated services.

The Committee does not intend for the Commission, in determining the reasonable profit allowed cable operators, to create a traditional "rate of return" comparable to that permitted telephone common carriers. The Commission should recognize that the basic service tier constitutes only a portion of the cable operator's overall business; that an operator's revenues from the other cable services can contribute to, offset, or constitute a "reasonable profit"; and that other benefits, in forms such as enhanced asset value and continuous substantial cash flow, accrue to the cable operator. The purpose of Section 3 is to create a tier of low cost basic cable service. The Commission's definition of a "reasonable profit" should be consistent with that purpose, and a practical reflection of the benefits received by operators in the cable marketplace.

Subsection (b)(1)(B) requires the Commission to establish a formula to determine, on the basis of actual cost, the price for the installation and lease of the equipment necessary for subscribers to receive the basic tier, including a converter box and a remote control. The term "actual cost" is intended to include such normal business costs as depreciation and service. The Committee intends that the Commission, in developing this formula, consider differences in labor and material costs for aerial and underground drops as well as differences in labor and material costs for the internal wiring of private homes and for multiple dwelling units. The Commission further should consider differences in costs of addressable and non-addressable converters. The Committee is concerned that cable operators have been leasing equipment at rates that far exceed its cost. The purpose of this provision is to require cable operators to price these items fairly, and to prevent them from charging prices that have the effect of forcing subscribers to purchase these items several times over the term of the lease.

Subsection (b)(1)(C) requires the Commission to establish a formula by which cable operators will identify and allocate costs attributable to satisfying franchise requirements to support public, educational, and governmental channels or the use of such channels, or any other services required under the franchise. The Committee recognizes that any misallocation of costs under this subsection could harm consumers and threaten the viability of PEG access channels. The Committee contemplates that any formula prescribed by the Commission under subsection (b)(1)(C) should reflect the actual amortized costs of facilities, equipment and services provided by the operator to support PEG channels or the use of such channels.

For the purposes of this subsection, "franchise fee" is to be given the same meaning as it already has in existing section 622(g) of the Communications Act.

Subsection (b)(1)(D) requires the FCC to establish additional standards, guidelines, and procedures concerning the implementation and enforcement of the Commission's regulations, which shall include procedures by which cable operators may implement and franchising authorities may enforce the administration of the formulas, guidelines, and procedures established by the Commission under this subsection.

Subsection (b)(1)(D)(iii) requires the Commission to establish standards and procedures to prevent unreasonable charges for changes in subscribers' selection of services or equipment. The Committee notes that some cable operators already have established (and in some cases re-established) basic service tiers similar to those required by this section. However, in some of those cases, operators have imposed fees for a subscriber's selection of the lower priced option that appear to be designed to discourage subscribers from making such a selection. The purpose of requiring cable operators to provide a new basic service tier, pursuant to this section, is to provide consumers with a choice. That choice must not be frustrated with the imposition of unreasonable charges, fees, or other disincentives on consumers who exercise that choice.

The Committee intends that the Commission, in establishing standards and procedures, review the cost incurred by cable operators in assessing whether charges imposed on selection of a tier or equipment are reasonable. In some cases, the technical configuration of cable systems will be such that the selection back and forth between basic service and tiers offering cable programming may require equipment and labor costs to be incurred by cable operators. In such cases, reasonable charges or fees, based on actual costs, should be permitted.

However, on other cable systems, the operational and transactional costs of such selections may be relatively small. For example, for fully addressable systems the Committee expects that the costs involved in consumer selection will be nominal. The Commission is instructed to take care in assuring that such charges to consumers remain nominal. Nothing in this provision, however, should be construed to require a cable operator to convert a non-addressable system to an addressable one.

Subsection (b)(1)(D)(iv) directs the Commission to establish standards and procedures to assure that subscribers receive notice of the availability of the basic service tier. The Commission also is required under subsection (b)(1)(E) to establish an effective date for compliance by cable operators of the standards and regulations promulgated under this subsection.

Subsection (b)(2) sets forth the minimum programming that is to be offered on the regulated basic service tier. Cable systems will be required to offer on this tier all commercial and noncommercial must carry stations, any PEG access programming required by the franchise authority to be provided to subscribers, and any other broadcast signals retransmitted by the cable operator. With respect to PEG access channels, it is not the Committee's intent to modify the terms of any franchise provision either requiring or permitting the carriage of such programming on a tier of service other than the basic service tier.

The Committee believes that PEG access programming is an important complement to local commercial and noncommercial broadcasting to ensure that the government's compelling interests in fostering diversity and localism, providing educational and informational programming, and promoting the basic, underlying values of the First Amendment, are advanced by cable television. It has been demonstrated that where PEG channels exist, these interests have been well served.

PEG programming is delivered on channels set aside for community use in many cable systems, and these channels are available to all community members on a nondiscriminatory basis, usually without charge. Public access provides ordinary citizens, non-profit organizations, and traditionally underserved minority communities an opportunity to provide programming for distribution to all cable subscribers. Educational access allows local schools to supplement classroom learning and to reach those students who are beyond school age or unable to attend classes. Governmental channels allow the public to see its local government at work, thus contributing to an informed electorate, which is essential to the proper functioning of our democratic form of government. PEG channels serve a substantial and compelling government interest in diversity, a free market of deans, and an informed and well-educated citizenry. PEG access provides an effective opportunity for all citizens to contribute to, and benefit from the information age, and enables communities to take advantage of cable's broadband capabilities. Because of the interests served by PEG channels, the Committee believes that it is appropriate that such channels be available to all cable subscribers on the basic service tier and at the lowest reasonable rate.

Subsection (b)(3) prohibits cable operators from requiring subscribers to purchase any tier of service other than the regulated basic tier before being permitted to purchase programming offered on a per-channel or per-program basis. Subsection (b)(3) also prohibits discrimination between subscribers to the basic service tier and other subscribers with regard to rates charged for programming offered on a per-channel or per-program basis.

Subsection (b)(3)(B) provides cable operators with up to five years to comply with the buy-through prohibition if immediate compliance is technologically impossible. Should an operator update its equipment so that elimination of buy-through requirements becomes technologically possible within five years, the operator immediately will be required to comply with the prohibition. Subsection (b)(3)(C) directs the FCC to, within four years after the date of enactment of this Act, initiate a proceeding to consider the costs and benefits to consumers and cable operators of the requirements of this subsection. If the Commission determines that the five year deadline for compliance with this subsection imposes unreasonable costs on cable subscribers or cable operator, the Commission may extend the deadline by two years.

Subsection (b)(4) permits a cable operator to identify as a separate line item on each regular bill of each subscriber the amount of the total bill assessed as a franchise fee; the amount of the total bill assessed to satisfy PEG requirements; and any other tax, fee, or assessment of any kind imposed on the transaction between the cable operator and subscriber. A cable operator shall include in such itemized costs only direct and verifiable costs. A cable operator shall not include in itemized costs indirect costs. For example, a cable operator shall not include in the itemized cost of providing PEG channels the value of such channels if they were used for commercial purposes. The cable operator shall not identify cost itemized pursuant to section (b)(4) as separate costs over and beyond the amount the cable operator charges a subscriber for cable service. The Committee intends that such costs shall be included as part of the total amount a cable operator charges a cable subscriber for cable service. For example, a cable operator might itemize pursuant to section (b)(4) a $1.50 per month charge to account for a five percent franchise fee obligation. If a cable operator charges $30 per month for basic cable service, the $1.50 itemized charge shall be included in such amount; the cable operator cannot provide the cable subscriber a basic cable bill for $28.50, with a $1.50 additional charge added as a franchise fee. Thus, the bill would show a total charge of $30, but the cable operator would have the right to include in a legend a statement that the $30 basic cable service rate includes a five percent franchise fee, which amounts to $1.50.

Regulation of unreasonable rates

The Committee recognizes that since cable rates were deregulated in 1986 there has been an increase in the quality and diversity of cable programming. While most cable operators have been responsible about rate increases in this deregulated environment, a minority of cable operators have abused their deregulated status and have unreasonably raised subscribers' rates. In some cases brought to the attention of the Committee, those rate increases have been egregious. In order to protect consumers, it is necessary for Congress to establish a means for the FCC, in individual cases, to identify unreasonable rates and to prevent them from being imposed upon consumers.

Subsection (c) requires the Commission to establish criteria for identifying, in individual cases, rates for cable programming that are unreasonable. In establishing these criteria, the Commission shall consider, among other factors:

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

(2) the rates for comparable cable systems, if any, that are subject to effective competition and that offer comparable services, taking into account, among other factors, similarities in facilities, the number of cable channels, the number of subscribers, and local conditions;

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

(4) the rates, as a whole, for all the cable programming, equipment, and services provided by the system;

(5) the capital operating costs of the cable system;

(6) the quality and cost of customer service provided by the cable system; and

(7) the revenues, if any, received by the cable operator from advertising from programming that is carried as part of the service for which a rate is being established, and changes in such revenue.

The Commission also is required to establish fair and expeditious procedures for the receipt, consideration, and resolution of complaints from franchising authorities or other relevant state and local governmental entities alleging that a rate for cable programming services is unreasonable.

After these regulations are established, franchising authorities or relevant government entities (such as a state cable regulatory commission) shall have six months in which to contest an existing cable rate as unreasonable. After six months following the effective date of the Commission's regulations, complaints may be filed only within a reasonable period following an increase in the cable rates.

Any complaint filed by a franchising authority or governmental entity must make a prima facie case that rates are unreasonable, based on criteria for a minimum showing to be established by the Commission. The Committee intends that the Commission dismiss any complaint that does not satisfy its prima facie requirement.

If a complaint filed with the FCC satisfies this prima facie standard, the operator would then be given a full and fair opportunity to respond. The FCC should consider all of the evidence and arguments made by the complainant and the cable operator in light of the factors established by the Commission.

In responding to a complaint which has met the prima facie standard, the cable operator should be entitled to submit proprietary financial information to the FCC on a confidential basis. The Committee believes it appropriate that any proprietary information required in this proceeding be kept confidential from other multichannel video programming distributors that compete with the cable operator in question.

Subsection (c)(1)(C) requires the Commission to establish procedures to be used to reduce rates for cable programming services that are determined by the Commission to be unreasonable. The Committee notes that there will be a period of time between the filing of an unreasonable cable rate complaint and the Commission determination of a reasonable rate. If a cable operator is found to have unreasonable rates, the aggregate amount of subscriber money that may be held by such cable operators pending resolution of a complaint may be substantial. Therefore, the Committee intends that consumers be reimbursed for such payments of unreasonable rates that occur while a complaint is pending resolution. Refunds shall be provided only for such portion of the rate that is determined to be unreasonable.

Subsection (c)(1)(C) ensures the consumer's right to a refund for unreasonable rate payments between the filing of a rate complaint and the determination that the rate is unreasonable. The procedure for granting such refunds is to be determined by the Commission.

The Committee intends for these procedures to establish the appropriate remedies for the situation involved. A finding that rates are unreasonable is not to be deemed a violation of law subject to the penalties and forfeitures of the Communications Act. Compliance with a Commission order to reduce rates shall be deemed compliance with applicable law.

Subsection (d) permits a state or franchising authority, without regard to any other rate regulation proscription contained in this Act, to regulate the rate charged for any national championship game or games between professional teams in baseball, basketball, football, or hockey. This provision applies to the World Series, the NBA Finals, the Super Bowl, and the Stanley Cup Finals. It does not apply to any other playoff contest, conference final contest, or, with regard to Major League Baseball, league championship finals contests.

Subsection (e) states that nothing in this title shall be construed as prohibiting any Federal agency, state, or franchising authority from prohibiting discrimination among customers of basic cable service, except that no Federal agency, state, or franchising authority may prohibit a cable operator from offering reasonable discounts to senior citizens or economically disadvantaged groups. Subsection (e) further provides that nothing in this title shall be construed as prohibiting any Federal agency, state, or franchising authority from requiring and regulating the installation or rental of equipment that facilitates the reception of basic cable service by hearing impaired individuals.

Subsection (f) prohibits a cable operator from charging a subscriber for individually-priced channel or channels of video programming or for any pay-per-view video programming that the subscriber has not affirmatively requested. A subscriber's failure to refuse a cable operator's proposal to provide such programming shall not be considered to be an affirmative request for such programming.

Subsection (g) directs the Commission to require, by regulation, cable operators to file, within 60 days after the effective date of the regulations prescribed under this subsection and annually thereafter, financial information necessary to administer and enforce this section. This subsection further requires the Commission to submit to each House of Congress, by January 1, 1994, a report on the financial condition, profitability, rates, and performance of the cable industry, including such recommendations as the Commission considers appropriate in light of such information.

Subsection (h) requires the FCC, within 120 days following the date of enactment of this legislation, to establish, by regulation, standards, guidelines, and procedures to prevent evasions of the rates, services, and other requirements of this section.

Subsection (i) is designed to give the FCC broad regulatory authority to prevent the retiering, repricing and other service or equipment charges required or permitted under this section from resulting in unreasonable rates for any cable service. Particularly, the Committee intends that the FCC in no way condone any sort of evasion or manipulation of the rate provisions of the legislation, such as a manipulation of tiers, bundles, or any other combination or fragmentation of programming in violation of the rate provisions. For example, the Committee intends for the FCC to view a change in cable service from one tier offering a broad package of programming for $15/month or two tiers offering the same programming for $5/month (for the basic service tier) plus $15/month (for an expanded basic tier) as a $5/month increase. The Committee notes, however, that an increase in rates such as that described above is not, standing alone, dispositive of whether such increases would be unreasonable under this section.

Subsection (i) requires the FCC, in developing and prescribing regulations pursuant to this section, to design such regulations to reduce the administrative burden and cost of compliance for cable systems with 500 or fewer subscribers.

Subsection (j) exempts from the provisions of this subsection the cable system of a cable operator who has, before July 1, 1990, entered into an agreement with a franchising authority that authorizes the franchising authority to regulate the rates of such cable system for basic cable service where such system was not subject to effective competition on July 1, 1990 for the term of the agreement.

Subsection (k) requires the Commission to publish quarterly reports on the average rates for basic service and other cable programming as well as for converter boxes, remote control units, and other equipment. Subsection (k)(1) requires rates charged by systems subject to effective competition to be reported while subsection (k)(2) requires reporting of rates charged by systems that the Commission does not find subject to effective competition. Data from these reports are intended to be used in the basic rate setting formula under subsection (b), and the determination of unreasonable rates for cable programming services under subsection (c).

Subsection (l)(i) defines effective competition as meaning that (1) fewer than 30 percent of households in the franchise area subscribe to cable; (2) at least two sources of multichannel video programming are offered to 50 percent of households and subscribed to by at least 15 percent of households; or (3) a multichannel video programming distributor owned by the franchising authority for that franchise area offers video programming to at least 50 percent of the households of that franchise area.

Subsection (l)(2) defines "cable programming service" as any video programming provided over a cable system, regardless of service tier. Excluded from the term "cable programming service" is video programming required to be carried under subsection (b)(2) and programming offered on a stand-alone, per channel basis (such as HBO and Showtime and some regional sports channels). Per channel offerings available to subscribers upon purchase of the basic tier can enhance subscriber choice and encourage competition among programming services. In addition, as discussed in connection with subsection (a)(2), it is the intent of the Committee that "multiplexed" premium services such as HBO1, HBO2, and HBO3 also be excluded from the term "cable programming service". The Committee does not intend that the trend toward offering multiple channels of commonly-identified video programming, that traditionally or historically were offered on a per-channel or stand-alone basis, should result in an otherwise exempt service becoming subject to rate regulation.

SECTION 4. MULTIPLE FRANCHISES

Subsection (a) amends Section 621(a) of the Communications Act and prohibits a franchising authority, in awarding franchises within its jurisdiction, from granting an exclusive franchise, or from unreasonably refusing to award additional franchises because of the previous award of a franchise to another cable operator. Refusal to award a franchise shall not be considered unreasonable if, for example, it is on the ground: (1) of technical infeasibility; (2) of inadequate assurance that the cable operator will provide adequate public, educational, and governmental access channel capacity, facilities, or financial support; (3) of inadequate assurance that the cable operator will, within a reasonable period of time, provide universal service throughout the entire franchise area; (4) that such award would interfere with the right of the franchising authority to deny renewal; or (5) of inadequate assurance that the cable operator has the financial, technical, or legal qualifications to provide cable service. Nothing in this subsection shall be construed as limiting the authority of local governments to assess fees or taxes for access to public rights of way.

Subsection (b) amends Section 621 of the Communications Act and stipulates that nothing in this Act shall be construed to (1) prohibit a local or municipal authority that also is, or is affiliated with, a franchising authority from operating as a multichannel video programming distributor in the geographic areas within the jurisdiction of the franchising authority, notwithstanding the granting of one or more franchises by such franchising authority, or (2) require such local or municipal authority to secure a franchise to operate as a multichannel video programming distributor.

Subsection (c) amends Section 613(d) of the Communications Act and states that nothing in this section shall be interpreted to prevent any State or franchising authority from prohibiting the ownership or control of any cable system in a jurisdiction by any person (1) because of such person's ownership or control of any other cable system in such jurisdiction; or (2) in circumstances in which the State or franchising authority determines that the acquisition of such a cable system may eliminate or reduce competition in the delivery of cable service in such jurisdiction.

The amendment to subsection 613(d) clarifies the meaning of the subsection. The amendment to subsection 613(d) is not intended to prohibit a franchising authority from denying any person's right to acquire ownership or control of a cable system in circumstances under which such acquisition may reduce or eliminate competition in the delivery of cable services in that market.

The meaning of subsections 613(c) and 613(d) was called into question by *Cable Alabama Corp.* v. *City of Huntsville*, 768 F. Supp. 1484 (N.D. Ala. 1991). In that case, the City of Huntsville denied the transfer of a franchise to a cable operator who planned to combine the two competing cable systems in the city and operate them as one cable system—thus ending competitive cable service in Huntsville. The court ruled that subsections (c) and (d) of section 613, when read together, authorized the FCC "to regulate the ownership and control of local cable television systems by persons on the basis of ownership or control of other local cable television systems and that local franchising authorities * * * may not prohibit the ownership or control of a local cable television system because of ownership or control of any other cable television system." *Cable Alabama Corp.*, 768 F. Supp. at 1496. This ruling clearly is inconsistent with the intent of subsections 613(c) and 613(d). Moreover, it is inconsistent with one of the major purposes of the Cable Act, which is to "promote competition in cable communications," section 601(6) of the Cable Act, 47 U.S.C. sec. 521(6).

The amendment to subsection 613(d) clarifies the right of franchising authorities to promote competition by denying a franchise to a person if the grant of the franchise would limit competitive cable service in a franchise area. The amendment to section 613(d) also overturns the decision in *Cable Alabama Corp.*

Subsection (d) amends Section 613(b)(2) of the Communications Act and clarifies that common carriers are not prohibited from providing multiple channels of communication to an entity pursuant to a lease agreement under which the carrier retains, consistent with section 616, the option to purchase such entity upon the taking effect of a future amendment that would permit common carriers generally to provide video programming directly to subscribers in such carrier's telephone service area. The intent of this amendment is to remove any obstacle to telephone companies from building a cable delivery system and retaining an ownership interest in the form of a purchase option. This provision is necessary because such contingent ownership interests have been deemed violative of the cable-telco prohibition contained in section 613.

This amendment is intended only to make clear that a telephone company which provides facilities to a franchised cable operator under existing law may negotiate with the cable operator for the contingent right to purchase the operator if section 613 is amended to permit common carrier generally to provide video programming to subscribers in their telephone service area. It does not otherwise affect any of the existing rules and policies implementing section 613, including the affiliation and carrier-user rules.

SECTION 5. CARRIAGE OF LOCAL COMMERCIAL TELEVISION SIGNALS

Section 5 amends the Communications Act by adding a new section 614. The principal purpose of section 615 is to define the obligations of cable systems with respect to the carriage of commercial television stations.

Subsection (a) provides that, as part of the basic service tier required under the amendment to section 623, each cable operator shall carry on its system the signals of qualified local commercial television stations required to be carried under this section. As explained in the "Background and Need for Legislation" section of this Report, this provision invokes Congressional authority under the Commerce Clause of the Constitution to preserve and enhance competition in the video marketplace by preventing practices that will restrict the availability of free over-the-air television; which promotes the achievement of First Amendment principles by assuring the widest possible dissemination of information from diverse and antagonistic sources, and which ensures the continued vitality of the system of local broadcasting established by the Communications Act of 1934. Thus, the bill helps to restore competitive and regulatory balance between the cable and broadcast industries.

While requiring carriage of a complement of local commercial broadcast signals, this section also provides that local operators may, in their discretion, carry any additional broadcast television stations. Nothing in this provision, however, is intended to affect federal copyright law, nor is this provision intended to affect the FCC's authority to restrict the retransmission by cable operators of particular copyrighted broadcast programs on distant broadcast stations where local broadcast stations have secured the exclusive local rights to such programs, or to make other appropriate changes in its regulations.

Subsection (b)(1)(A) requires cable systems with 12 or fewer usable activated channels to carry at least three local commercial television stations. A system with 12 or fewer channels that serves fewer than 300 subscribers is exempted from any carriage obligations under this section so long as such system does not delete from carriage by that system any signal of a broadcast television station.

Subsection (b)(1)(B) requires cable systems with more than 12 usable activated channels to carry the signals of local commercial television stations up to one third of their usable activated channel capacity.

Subsection (b)(2) provides that, in situations where there are more local commercial television signals than a cable system is required to carry, the cable operator will have full discretion to choose which of the local commercial television stations it will carry, except that a cable system that chooses to carry an affiliate of a broadcast network (as such term is defined by the FCC) must, if more than one affiliate of that network qualifies for carriage, carry the affiliate closest to the cable system's principal headend. This requirement will help to ensure that cable subscribers will receive the network affiliate most likely to be responsive to their local needs and interests.

Subsection (b)(3)(A) requires that a cable system retransmit in its entirety the primary audio and video signal and the closed captioning transmission of each local commercial television station carried on the system, and, to the extent technically feasible, also retransmit any program-related material transmitted by the broadcaster on a subcarrier or in the vertical blanking interval (VBI). The Committee intends that the cable operator shall retain discretion whether or not to retransmit other material which may be transmitted in the vertical blanking interval or on subcarriers which may be unrelated to the main program service. Carriage of other program-related material in the vertical blanking interval and on subcarriers or other enhancements of the primary video and audio signal (such as teletext and other subscription and advertiser-supported information) is left to the discretion of the cable operator. The Committee does not intend that this provision be used to require carriage of secondary uses of the broadcast transmission, including the lease or sale of time on subcarriers or the vertical blanking interval for the creation or distribution of material by persons or entities other than the broadcast licensee. Moreover, where appropriate and feasible, operators are free to strip signal enhancements (such as ghost-cancelling) from the broadcast signal and employ such enhancements at the system headend. It is the Committee's intent that these provisions not impede the use by cable operators of technological improvements that better would facilitate the delivery of broadcast television programming to subscribers.

The Committee encourages cable operators, when retransmitting a commercial or public broadcast station's signal or a cable programming service, to preserve and deliver to consumers intact all enhancements of that signal provided for the purposes of wider access for under-served audiences, including closed captioning which utilizes the VBI, and video descriptions and alternative languages which employ the Separate Audio Program (SAP) channel. The Committee also encourages cable operators to pass on to consumers without alteration similar future services which may evolve, such as Program Information and Identification which also may be placed in the VBI.

The Committee notes that television manufacturers estimate that ten million televisions with the caption feature will be sold next year and at least twenty million per year thereafter. The Committee believes it is essential that more cable television programming be accessible to people with hearing disabilities, through the greater use of the closed-captioning technology by cable programmers. It has come to the Committee's attention that only 4 percent of basic cable programming and 35 percent of pay cable programming is captioned, compared with 70 percent of network television and nearly 100 percent of nationally broadcast public television programming. The Committee urges the cable industry to be more responsive to serving this constituency by captioning more of its programming.

Subsection (b)(3)(B) prohibits "cherry picking" of programs from television stations by requiring cable systems to carry the entirety of the program schedule of television stations they carry, except to the extent that FCC rules intended to preserve local stations' exclusivity rights either permit cable systems to delete individual programs or insert substitutions for programs which cannot be carried on the cable system.

Subsection (b)(4)(A) provides that, in carrying the signal of a qualified local commercial television station, a cable operator may not materially degrade the quality of that signal. In addition, the

Commission is instructed to adopt standards to ensure that, to the extent technically feasible, the technical quality of the signal processing and carriage afforded qualified local commercial stations is no less than that afforded comparable types of signals retransmitted by the system. In adopting this provision, the Committee realizes that differences in quality are expected among the different types of signals (i.e., digital v. analog, AM v. FM, etc.) processed and carried on a cable system.

The issue of "advanced television" is addressed in subsection (b)(4)(B). The Committee recognizes that the Commission may, in the future, modify the technical standards applicable to television broadcast signals. In the event of such modifications, the Commission is instructed to initiate a proceeding to establish technical standards for cable carriage of such broadcast signals which have been changed to conform to such modified signals.

Subsection (b)(5) exempts cable systems from the obligation to carry signals that substantially duplicate the signal of another local commercial television station or from having to carry the signal of more than one station affiliated with a particular broadcast network, although the cable system has the discretion to carry such signals if it chooses. However, if a cable system carries a substantially duplicated qualified signal or carries the signals of more than one qualified commercial television signal affiliated with a particular broadcast network entity, all such signals shall be counted toward the number of signals the system is required to carry under subsection 5(a)(1). This provision is intended to preserve the cable operator's discretion while ensuring access by the public to diverse local signals.

The FCC is required to adopt regulations defining the circumstances under which the programming of one station will be deemed to "substantially duplicate" the programming of another station. The term "substantially duplicates" is intended to refer to the simultaneous transmission of identical programming on two stations which are each eligible to assert signal carriage protections under this section, and which constitutes a majority of the programming on each station. The Committee does not intend, however, that if two stations air programs of the same category (such as cartoons, movies, or comedies), that each station's programming be considered as duplicating that of the other. The duplication criteria should balance appropriately the competing commercial interests of cable systems and the public interest associated with the services provided by commercial television.

Subsection (b)(6) governs the channel position on which must carry signals will be carried. In general, signals carried under this section shall be carried, at the election of the station, on either the station's on-air channel position; the channel on which the station was carried on the cable system on July 19, 1985, the date of the *Quincy* decision invalidating the FCC's must carry rules; or such other channel position as is mutually agreed upon by the station and cable operator. Disputes concerning channel positioning will be resolved by the FCC.

Subsection (b)(7) specifies that all must carry signals be provided to every subscriber of a cable system. The signals carried under an operator's must carry obligations must be viewable on each of a subscriber's television receivers which the cable operator connects to the cable system or for which the cable operator provides a connection. If the cable operator installs wiring for several television stations within a household, it must ensure that all of the must carry signals can be viewed on each set so connected. If, however, the cable operator does not provide a subscriber with additional connections to the cable system, but merely authorizes subscribers to install such connections themselves, it is only obligated to inform such subscribers which broadcast stations carried on the cable system cannot be viewed without a converter and to offer to sell or lease a converter in accordance with the rates established in section 623(b)(1)(B).

Under subsection (b)(8), cable operators are required to identify, to any person making a request, the signals they carry in fulfillment of their obligations under this section.

Subsection (b)(9) requires cable operators to provide written notice to any qualified local commercial television station carried on the system at least 30 days before dropping that station from carriage or repositioning it. A cable operator may not drop or reposition any such station during a "sweeps" period when major television ratings services measure the size of audiences of local commercial television stations. The notification provisions of this paragraph shall not be used to undermine or evade the channel positioning or carriage requirements imposed upon cable operators under this section.

Subsection (b)(10) bars cable operators from seeking or accepting any consideration, monetary or otherwise, in exchange for carriage in fulfillment of a cable system's must carry obligations or for carriage on any of the channel positions prescribed under subsection (b)(6). Three exceptions are provided: (1) a television station may be required by the cable system to pay any costs necessary for the cable system to receive a good quality signal from the station; (2) if a local commercial television station agrees to indemnify a cable operator of the incremental copyright costs incurred by the cable system as a result of its carriage of the station, the cable operator may accept such reimbursement; and (3) if a cable system and a local commercial television station entered into an agreement relating to carriage or channel positioning prior to June 26, 1990, the cable operator may continue to accept any compensation specified in such agreement for the remaining life of the agreement.

Subsection (c) sets forth the procedures to be followed when a cable system fails to meet the obligations imposed in this section and the remedies for such failure. The enforcement mechanisms established by this subsection are essentially the same as those established in Section 615(j) relating to the carriage of qualified noncommercial television stations. If a local television station believes that a cable operator is not in compliance with this section either with respect to carriage or channel positioning, it must so notify the cable system in writing stating the reasons why it believes it is entitled to carriage or otherwise has been denied its rights under this section. Within 30 days of being notified, the cable operator must either rectify the noncompliance or explain in writing why it believes that it has complied with the requirements imposed in this section. A television station may seek review of any such response by filing a complaint with the FCC.

The FCC shall provide the cable operator with an opportunity to respond to the complaint, and the Commission must determine whether the cable operator has met its obligations under this section within 120 days after the date a complaint is filed. If the FCC determines that the cable operator has not met its obligations with respect to carriage or channel positioning of one or more qualified local commercial television signals, it shall state with particularity the basis for such finding and shall either order repositioning of a station's signal or, in the case of an obligation to carry a station, order the cable operator to carry a signal for at least 12 months. This paragraph is not intended to deprive parties of any contractual or other remedies they may have under agreements between cable operators and stations.

Subsection (d) prohibits imposing on cable systems any responsibility to either provide subscribers with input selector—so-called "A/B"—switches or inform subscribers of them or other similar devices. This provision is consistent with the evidence presented to the Committee showing that such devices are often cumbersome and ineffective, and create unnecessary burdens for consumers. Accordingly, reliance on such devices would not achieve the goals of this section. Nothing in this section is intended, however, to prevent cable operators from voluntarily offering to provide to make available switching devices and/or information relating to such devices.

Subsection (e) directs the FCC to issue regulations implementing the carriage requirements imposed in this section within 180 days after its enactment.

Subsection (f) leaves to cable operators the discretion to decide whether to carry and on which tier to carry the signals of commercial television stations and other programming services predominately utilized for the transmission of sales presentations. This provision is not intended to apply to stations which program sales presentations or program length commercials during only a portion of their broadcast day.

Subsection (g) provides that nothing in this section shall be construed to modify or otherwise affect the operation of the copyright laws.

Subsection (h)(i) defines the term a "local commercial television station" to mean any full service commercial television station licensed and operating on a channel assigned to its community by the FCC that, with respect to a particular cable system, is in the same television market as the cable system.

Subsection (h)(1)(A) provides that a television station that would be deemed a distant signal on a cable system under 17 U.S.C. sec. 111 must agree to indemnify the cable operator for any increased copyright liability incurred by the cable system as a result of its carriage for the station to be deemed a "local commercial television station" (as used in this Act) with respect to that cable system. Stations subject to this provision may elect whether or not to indemnify cable operators on a system-by-system basis or may agree with certain cable operators to waive indemnification.

Subsection (h)(1)(B) defines the minimum signal strength requirements for stations to be considered local commercial television stations. Stations are responsible for delivering to cable systems signals of this quality either over-the-air or using a baseband video signal.

Subsection (h)(2) provides that the term "local commercial television station" does not include low power television stations, television translators, or other passive repeater stations.

Subsection (h)(3)(A) provides that a broadcasting station's market for purposes of this section shall be determined as provided for in 47 C.F.R. sec. 73.3555(d)(3)(i) as in effect on May 1, 1991. That regulation deems a television station's market to be in its Area of Dominant Influence (ADI) as established by the Arbitron ADI Market Index. The Committee recognizes that ADI lines establish the markets in which television buy programming and sell advertising. ADI lines are currently used by the FCC to determine television markets for purposes of its national multiple ownership rules. The Committee believes that ADI lines are the most widely accepted definition of a television market and more accurately delineate the area in which a station provides local service than any arbitrary mileage-based definition.

The Committee recognizes that since ADIs are drawn along county lines, they may, in some instances, inaccurately reflect the stations which are local to a particular community. The Committee notes, however, that in most instances a station's ADI is consistent with the area where such station provides local service. H.R. 4850 provides that where the presumption in favor of ADI carriage would result in cable subscribers losing access to local stations because they are outside the ADI in which a local cable system operates, the FCC may make an adjustment to include or exclude particular communities from a television station's market consistent with Congress' objective to ensure that television stations be carried in the areas which they serve and which form their economic market. The FCC also may determine that certain communities are local to more than one television market, such as a community which is in one ADI, but is geographically close to television stations in another ADI and which also is served by those television stations.

Subsection (h)(3)(B) establishes certain criteria which the Commission shall consider in acting on requests to modify the geographic area in which stations have signal carriage rights. These factors are not intended to be exclusive, but may be used to demonstrate that a community is part of a particular station's market. The criteria include such factors as historical carriage patterns for the station or other stations licensed to the same community, local service to the community by the station which may include programming (including news and public affairs programs) and other public service activities, viewing patterns in the community, and whether events of interest to the community are covered by other stations which are entitled to carriage.

The provisions of subsection (h)(3)(B) reflect a recognition that the Commission may conclude that a community within a station's ADI may be so far removed from the station that it cannot be deemed part of the station's market. It is not the Committee's intention that these provisions be used by cable systems to manipulate their carriage obligations to avoid compliance with the objectives of this section. Further, this section is not intended to permit a cable system to discriminate among several stations licensed to the same community. Unless a cable system can point to particularized evidence that its community is not part of one station's market, it should not be permitted to single out individual stations serving the same area and request that the cable system's community be deleted from the station's television market.

Under this subsection, the FCC is directed to handle these requests on an expedited basis. This subsection also requires that when the FCC has been requested to change a television station's market definition, that cable systems continue to carry any affected stations during the pendency of such proceedings.

SECTION 6. CARRIAGE OF NONCOMMERCIAL STATIONS

This section amends the Communications Act by adding a new section 615, which sets forth the obligations of cable systems with respect to carriage of noncommercial or "public" television stations.

The precise number of qualified noncommercial stations that a cable system is required to carry will vary depending on the system's usable activated channel capacity and/or the number of such stations that the system was carrying as of March 29, 1990. In any event, however, the requirements of this section in no way restrict or limit the number of noncommercial stations, qualified or nonqualified, that any cable system may choose to carry. Noncommercial television stations would be carried on the basic service tier offering local television broadcast signals. For purposes of this section, a noncommercial television station is considered local if (a) it is licensed in a community within 50 miles of the cable system's principal headend or (b) its Grade B contour encompasses the principal headend. A station is qualified if it (a) holds a noncommercial educational license and is qualified to receive a community service grant from the Corporation for Public Broadcasting (CPB) according to the eligibility criteria set forth by Congress in section 396(k)(6)(B) of the Communications Act; or (b) is owned and operated by a municipality and transmits predominantly noncommercial programs for educational purposes.

Subsection (a) states that for the purpose of providing a basic service tier pursuant to the amendment to section 623, each cable operator shall carry on its cable system the signals of qualified noncommercial television stations.

Subsection (b) establishes a requirement (with allowances for the channel capacity of small and medium sized operators) for cable carriage of all qualified local noncommercial television stations that request carriage of a cable operator. By requiring cable systems to carry only those public television stations requesting carriage, the legislation avoids burdening cable system operators with responsibility for canvassing their service areas to identify the qualified local public stations to be carried. Conditioning carriage on requests also will reduce the number of stations that cable systems are required to carry, because it is expected that local public television stations only will request carriage to serve the needs and interests of local communities, in accordance with the licensing principles of the Communications Act. Stations carried as of March 29, 1990 are not required to request carriage to preserve existing carriage arrangements.

In addition to establishing the general carriage requirement described above, subsection (b) sets forth certain carriage exceptions relating to the channel capacity of individual systems. A cable system with usable, activated capacity of 12 or fewer channels is required to carry only one qualified local public television station, unless the cable system carried additional such channels on March 29, 1990. The cable operator may carry other qualified public television stations at its discretion. If no station meeting the "local" definition is available to a system with 12 or fewer channels, the system operator must select and carry the signal of one qualified public television station. If all of the system's channels are occupied, the cable operator must provide carriage on the first available channel on the system. However, the operator is not required to remove any programming service that was provided to subscribers on March 29, 1990, for purposes of complying with the section. It is the Committee's intent that the term "usable activated channels" have the same meaning in this section as it has in the amendment creating section 614 of the Communications Act.

Systems with a usable, activated capacity of 13 to 16 channels must carry at least one qualified local public television station but are not required to carry more than three such stations, unless the cable system carried additional such stations on March 29, 1990. This provision does not diminish the general requirement confirmed in H.R. 4050 for carriage for all qualified local noncommercial educational television stations. Rather, the provision acts as an affirmative requirement for carriage of up to three such stations that request carriage on cable systems in this category. Carriage of additional stations is left to the discretion of the cable operator. As with systems that have 12 or fewer channels, a system of 13 to 36 channels must select and carry the signal of at least one qualified public television station if no such local station is available. Similarly, if all of the system's channels are occupied, the cable operator must provide carriage on the first available channel on the system. However, the operator is not required to remove any programming service that was provided to subscribers on March 29, 1990, for purposes of complying with the section. The number of cable systems in this category that will be required to carry three public television stations is expected to be quite small. Any such system that expands its capacity beyond 36 channels on or after March 29, 1990 must carry each qualified local public television station requesting carriage (subject to the duplication provisions of subsection (e)).

Subsection (b) would not require a cable operator that carries a qualified local public television station affiliated with a state public television network to carry any additional qualified services affiliated with the same network if the programming of the additional service is substantially duplicated by the programming of the qualified local noncommercial educational television station receiving carriage.

Subsection (c) preserves carriage arrangements, in existence on March 29, 1990, for qualified local public television stations. This carriage requirement may be waived only upon the written consent of the cable operator and such stations. Cable operators who voluntarily carry local public television stations already recognize the public benefits of providing such carriage. Because cable operators have made these arrangements in the absence of any carriage rules, this provision does not impose any burden on cable systems. The legislation does not mandate continued carriage of distant public television stations that currently may be imported by certain cable systems.

Subsection (d) provides that cable systems required to add the signals of qualified local public television stations to comply with this legislation may do so, with the approval of the franchising authority, by placing the signals on public, educational or governmental (PEG) channels not in use for their intended purpose. This provision is consistent with the legislation's objective of maximizing carriage of public television services while permitting cable operators to make the most efficient use of channel capacity. In addition, placement of public television stations on unused PEG channels comports with the public interest principles that led Congress to create the channels. Section 615(d) is not intended to impair the right of a franchising authority under section 611 of the Communications Act to regulate PEG channels, including, but not limited to, the right under section 611(d)(2) of the Communications Act to establish rules and procedures under which use of a PEG channel to carry noncommercial stations pursuant to section 615 shall cease.

Subsection (e) clarifies that cable systems that (1) have capacity of more than 36 channels and (2) are required to carry three qualified local public television stations are not required to add additional such stations if the programming of those stations substantially duplicates the programming of any other qualified public station required to be carried on the system. This subsection requires the FCC to develop duplication criteria that promote access to distinctive public television services.

In subsection (f), the Committee recognizes that in some situations, a public television station may be considered "local" under the provisions of the legislation and "distant" for purposes of the "network non-duplication rules" established by the Commission in section 76.92, title 47, Code of Federal Regulations. Under the network non-duplication rules, television stations may require cable operators to delete network programming broadcast by stations that are more than 35 miles from the area served by the cable system if the network programming of such a "distant" station duplicates programming carried by the local station. Public stations are "local" under the legislation, however, if their community of license is within 50 miles of the principal cable headend. To avoid any conflict in the operation of the Commission's Rules and the legislation, Subsection (f) makes explicit that qualified local public television stations may not assert network non-duplication rights against other qualified local public television stations. Non-duplication rights against public stations that are not "local," as defined in this legislation, are preserved.

Subsection (g)(1) requires cable systems to carry the entire primary audit, accompanying video, and line 21 closed caption transmission of each qualified local public television station, unless otherwise agreed upon by the cable operator and the station, including (to the extent technically feasible) program-related material carried in the vertical blanking interval (VBI), on subcarriers or through other enhancements of the signal, that may be necessary for receipt of programming by handicapped persons or for educational or language purposes.

Public television stations have pioneered the use of broadcast spectrum to deliver closed-captioning, descriptive video and other important program-related services that serve the special needs of vision- or hearing-impaired viewers. For example, to serve visually impaired individuals, PBS uses a channel in the aural subcarrier to provide a Descriptive Video Service, which narrates the key visual elements of programming. Similarly, PBS serves non-English speaking audiences by using a channel in the aural subcarrier to simulcast selected programs in a second language. PBS also delivers lesson plans and other data on the VBI to accompany the educational programming delivered to the nation's schools.

Minority and physically challenged viewers should not lose these valuable services simply because they rely on cable to gain access to public television programming. It is the intent of this legislation that any second language supplied in the subcarriers of public television signals be retransmitted by cable systems, to the extent technically feasible, for purposes of meeting the needs of local audiences, where there is a significant second language population.

Carriage of any other material contained in the vertical blanking interval or on subcarriers is to be within the discretion of the individual cable operators. This provision does not require cable systems that are technically unable to retransmit some or all such material to their subscribers to retrofit their systems or otherwise modify their facility to comply with this carriage requirement. Nor does it require systems to discontinue other uses of the vertical blanking interval or subcarriers in order to retransmit material, other than programming provided for handicapped persons or educational or foreign language material, provided on the broadcast signal. Nor does it require cable systems to supply any subscriber equipment which may be necessary to receive such material. Program-related material is meant to include integral matter such as subtitles for hearing-impaired viewers and simultaneous translations into another language. It is not meant to include tangentially related matter such as a reading list shown during a documentary or the scores of games other than the one being telecast or other information about the sport or particular players.

Subsection (g)(2) requires cable operators to furnish each qualified local public television station carried on the system with bandwidth and technical capacity equivalent to that provided to the commercial television broadcast stations carried on the system. Cable operators also are required to carry the signal of each qualified local public television station without material degradation.

Subsection (g)(3) imposes restrictions on a cable operator's ability to reposition a public television station. First, the cable operator may only reposition a station pursuant to subsection (g)(5). Under subsection (g)(5), a station shall be carried on the channel number on which the station is broadcast over the air or on the channel number on which it was carried on July 19, 1985, at the station's election, or on another channel number mutually agreed upon by the station and the cable operator. Second, a station may only be repositioned to a channel that is part of the basic service tier as required in subsection 623(b)(2). If a repositioning occurs pursuant to subsection (g)(5), or if the cable system deletes a station pursuant to the terms of this section (e.g., a station that does not request carriage is deleted), subsection (g)(3) requires the system operator to give the station and all the subscribers of the cable system at least 30 days written notice of the repositioning or deletion. Advance notification is designed to permit the station to notify its viewers of changes in carriage well before the changes occur so that audiences' viewing of public television programming is not disrupted. The notification provision in subsection (g)(3) shall not be used to undermine or evade the channel positioning or carriage requirements imposed upon cable operators under this section. For the purposes of this section, repositioning means assignment of a qualified local public television station to a cable system channel number different from the cable system channel number to which the station was assigned as of March 29, 1990 or deletion of the station from the cable system.

Subsection (g)(4) is intended to ensure that public television stations carried under the terms of the legislation deliver an adequate broadcast signal to the cable headend for purposes of retransmission. The Commission may set the necessary technical standards required to carry out this subsection. The Committee intends the term "principal headend" to have the same meaning for purposes of this section as for section 614 of the Communications Act.

Subsection (g)(5) provides channel positioning protection for public television stations carried on cable systems. It requires the cable system operator to carry each station pursuant to the obligations in this section: (1) on the same channel number on which the station is broadcast over the air; (2) on the same channel number on which that station was carried on July 19, 1985; or (3) on another channel mutually agreed upon by the station and the cable operator. The station may elect option (1) or (2) at its discretion, or may reach agreement with the cable operator pursuant to option (3). Subsection (g)(5) further provides that any disputes regarding channel positioning of a station will be resolved by the Commission. The notification provision previously set forth in subsection (g)(3) applies where a channel repositioning occurs under this subsection.

Subsection (h) requires that all stations carried pursuant to the carriage obligations of this section shall be carried as part of the cable system's lowest priced service tier as required in section 623(b)(2). Subsection (h) makes it clear that the service tier on which the qualified local noncommercial signals are carried must also include the local commercial television signals carried pursuant to section 614.

Subsection (i) addresses the issue of payments for carriage. As a general rule, paragraph (i)(1) bars cable operators from requesting or accepting monetary payment or other valuable consideration in exchange for the carriage of any qualified local noncommercial station in fulfillment of the cable operator's obligations under this section, except that a cable system may require a station to bear the costs associated with delivering a good quality signal to the cable system where the station seeks to overcome the exemption granted in subsection 615(g)(4).

Subsection (i)(2), which is similar to the "network nonduplication" provisions of subsection (f), is designed to address the relationship between the legislation and federal copyright law. In some instances, a qualified public television station may meet the definition of a "local" station under subsection (1)(2) of the legislation, while simultaneously qualifying as "distant" under section 111 of the Copyright Act (and therefore triggering the payment of copyright royalties). This situation could arise, for example, if a public television station's principal community reference point is within 50 miles of the cable system's principal headend but more than 35 miles away from any point in the cable community. A cable operator is to required to add any such public television station under this legislation unless the station agrees to reimburse the operator for the incremental costs assessed against the system under copyright law with respect to the carriage of such station.

Subsection (i)(2) thus creates a very limited exception to the general rule against payment for carriage. It is applicable only to stations that are "local" under this legislation but "distant" under the Copyright Act; only to stations that are required to be carried on the cable system; and only to stations that were not carried as of March 29, 1990. Moreover, these provisions are not mandatory and may be waived by the system operator.

In those cases in which a cable operator may seek reimbursement from a public television station under this subsection, it may seek to collect only the operator's "incremental" copyright costs. By including the term "incremental" in this paragraph, the Committee intends that the amount of reimbursement be computed at the marginal cost actually attributable to the addition of that particular station.

Subsection (j) outlines the remedies for public television stations that believe a cable system has failed to meet its carriage obligations. A station denied carriage may file a complaint with the FCC. Such complaint must contain specific allegations concerning the manner in which the system has failed to fulfill its obligations under this section and the basis for such allegations. The Commission, after permitting the cable system an opportunity to respond, will determine, within 120 days after the complaint is filed, whether the cable system has complied with this section and will issue any orders necessary to bring noncompliant systems into compliance. Any decision finding that a cable system has failed to meet its obligations under this section must state with particularity the basis for such finding and shall be accompanied by an order directing the cable system to take such action as is necessary to meet the requirements of this section. If, in response to a complaint filed pursuant to this subsection, the FCC determines that the system is not in violation of its obligations under this section, the complaint is to be dismissed.

Subsection (k) provides that upon request, a cable operator must identify the signals carried on the system in compliance with this section.

The definition of a public television station to be carried under the terms of this legislation relies on two fundamental concepts: whether the station is "qualified," and whether the station is "local." Both terms are defined in Subsection (1).

A "qualified" noncommercial television station is one that is licensed by the FCC as a noncommercial educational television broadcast station and is qualified to receive a community service grant from CPB on the basis of the formula set forth in section 396(k)(6)(B) of the Communications Act (47 U.S.C. 396(k)(6)(B)). Through the grant process, CPB directly carries out the intent of Congress to "encourage and facilitate the expansion and development of noncommercial broadcasting and of program diversity" (Public Broadcasting Act of 1967, P.L. 90–129, S. Rep. No. 222 at 6 (1967)). By incorporating the public interest principles already contained in the Communications Act, this definition provides stations with substantial incentive to provide distinctive, unduplicated services that meet the needs and interests of their local communities.

A station that is owned and operated by a municipality and transmits predominantly noncommercial programs for educational purposes (i.e. more than one half of such a station's programming is noncommercial programming for educational purposes, as measured in broadcast hours) is also deemed to be "qualified" as defined in subsection (1). An example of such a station is WNYC in New York.

A "qualified" station includes any translator, as defined by the FCC's rules, that operates at five watts of power or higher and rebroadcasts the entire signal of a qualified noncommercial educational television station. Under the Commission's existing rules, translators may originate up to 30 seconds of programming per hour. The Committee does not intend for the Commission to change that rule. Translators are particularly important to state public television networks in extending television signals to rural areas that are located far from the principal communities of the main station. Including translators in the definition ensures carriage by cable systems in remote areas not served by the primary public television licensee. it is the intent of the legislation that translators qualifying for carriage should be serving the local community served by the cable system. In addition, the translator must deliver an adequate signal under subsection (g)(4) of this section and cannot be licensed as a low power television station under the Commission's Rules.

A qualified "local" noncommercial station is defined in two ways. First, it is a qualified public television station that is licensed to a principal community whose reference point, as defined in the FCC's rules, is within 50 miles of the cable system's principal headend. Alternatively, it is a station whose Grade B contour encompasses the cable system's principal headend. Local programming service is a hallmark of public television stations, and this definition provides for carriage of stations that are most likely to address the special needs and interests of the communities served by a given cable system.

SECTION 7. CONSUMER PROTECTION AND CUSTOMER SERVICE

An area of paramount concern to the Committee is customer service. The Committee recognizes that many cable operators are conscientious about the quality of service they provide to consumers. Nonetheless, the Committee has received substantial evidence that many complaints about telephone accessibility, installations, outages and service calls, and communications between cable operators and consumers, are not isolated phenomena. In adopting its own "Recommended Cable Industry Customer Service Standards," the NCTA has acknowledged the industry's deficiencies in delivering a consistently high level of service.

The Committee recognizes the difficulty of establishing a uniform set of national standards that can be applied equally to all cable systems, regardless of size, and in all parts of the country, regardless of marketplace characteristics. The industry's voluntary standards, which have been adopted not only the NCTA but also by the CATA, another trade association of cable operators, attempt to address these differences. The industry's voluntary standards represent a welcome initiative, which the Commission may use a benchmark in establishing customer service standards.

Section 7 amends section 632 of the Communications Act. Subsection 632(a) allows franchising authorities to establish and enforce, as part of a franchise, including a modification, renewal, or transfer thereof, provisions for enforcement of customer service requirements, construction schedules and other construction-related requirements including construction-related performance requirements of the cable operator.

Subsection 632(b) requires the FCC, within 180 days of enactment, to establish federal customer service standards which may be required in local cable franchises and enforced by local franchising authorities. Such standards shall include, at a minimum, cable system office hours and telephone availability, installations, outages and service calls, and communications between the cable operator and the customer (including standards governing bills and refunds). These standards should assure sufficient telephone capacity to provide customers with a reasonable and efficient means to register service and other complaints with the cable operator. It also is intended that these standards will include requirements related to the installation or disconnection of service, including the establishment of reasonable office proximity and timetables to assure that all service calls are completed within a reasonable time. Finally, the FCC's standards should provide guidelines governing the provision of rebates and credits to customers due to system failures or other interruptions of service. Overall, these standards should be flexible in nature and should allow a local franchising authority to tailor the requirements to meet the needs of the local cable community.

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

SECTION 8. CUSTOMER PRIVACY RIGHTS

The intent of Section 8 is to clarify that the privacy rights guaranteed to cable subscribers in section 631 of the Communications Act of 1934 (47 U.S.C. 551) also include new wire and radio telecommunications services.

Citizens want and deserve to have adequate notice about what information is being collected by communications companies, and consumers must be given the opportunity to exercise informed consent before personal information collection about them can be used for any other purpose.

As traditional cable service expands and becomes more diversified and sophisticated, the Committee believes it is important to ensure that the privacy rights articulated in the Communications Act are reinforced as such diversity occurs.

Section 8 redefines the terms "cable operator" and "other service" to ensure that new communications services provided by cable operators are covered by the privacy protection embodied in section 631 of the Communications Act.

The term "other service" is defined to include any wire or radio communications service provided using any of the facilities of a cable operator that are used in the provision of cable services. The intent of the Committee is to reach those services that make use of any of the facilities or equipment of the cable operator that are related to cable service; the intent is not to reach those services that are wholly divorced from cable service. This definition means that the same privacy protections extended to subscribers of cable services are also extended to subscribers of other services offered by the cable operator and that such "other services" include, but are not limited to, wire or radio communications services.

The term "cable operator" is defined so as to include, in addition to those persons within the definition of cable operator in section 602 of the Communications Act, any person who is owned or controlled by or under common ownership or control with, a cable operator, and provides any wire or radio communications service. This expanded definition was included to ensure that affiliated entities of the cable operator were included so that such entities could not avoid the privacy provisions merely because they were not directly offering cable service. For example, a cable operator could set up a separate subsidiary to offer radio communications service, or a cable operator could be a subsidiary of, or affiliated with, an entity offering wire or radio communications services. The

Committee finds that such subsidiary or entity offering wire or radio communications services should adhere to the privacy provisions embodied in the Act and thus "cable operator" was defined for the purposes of this section of the Act to include any such person affiliated with the cable operator.

Finally, section 8 does not apply to subsection (h) of section 631, because the Committee was concerned that such a broad scope may interfere with the legitimate need for access to radio or wire communications recognized in section 705 and elsewhere in the law.

SECTION 9. CONSUMER ELECTRONICS EQUIPMENT COMPATIBILITY

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

The Congress finds that:

(1) New and recent models of television receivers and video cassette recorders often include premium features that are disabled or inhibited by cable scrambling, encoding, or encryption technologies and devices, including converter boxes and remote control devices required by cable operations to receive programming.

(2) If such problems persist, consumers will be less likely to purchase, and electronics equipment manufacturers less likely to develop, manufacture, or sell, television receivers and video cassette recorders with innovative features and functions.

(3) Cable operators should use technologies that will prevent signal theft while permitting consumers to benefit from the innovative features and functions included in such receivers and recorders.

Subsection 624A(b) directs the Commission, within one year after the enactment of this section, in consultation with representatives of the consumer electronics and cable industries, to report to the Congress on means of assuring compatibility between televisions and video cassette recorders and cable systems, consistent with the need to prevent theft of cable service, so that cable subscribers will be able to enjoy the full benefits of both the programming available on cable systems and the functions available on their televisions and video cassette recorders. Within 2 years after the date of enactment of this section, the Commission shall issue such regulations as may be necessary to require the use of interfaces that assure such compatibility.

Subsection 624A(c) directs the Commission, within one year after the date of submission of the report required in subsection (b), to prescribe regulations necessary to increase compatibility between television receivers equipped with premium functions and features, video cassette recorders, and cable systems. In prescribing such regulations, the Commission shall consider (1) the costs and benefits of requiring cable operators to adhere to technical standards for scrambling or encryption of video programming in a manner that will minimize interference with or nullification of the special functions of subscribers' television or video cassette recorders, while providing effective protection against theft or unauthorized reception of cable service, including functions that permit the subscriber (a) to watch a program on one channel while simultaneously using a video cassette recorder to tape a program on another channel; (b) to use a video cassette recorder to tape two consecutive programs that appear on different channels; or (c) to use advanced television picture generation and display features; (2) the potential for achieving economies of scale by requiring manufacturers to incorporate technologies to achieve such compatibility in all television receivers; (3) the costs and benefits to consumers of imposing compatibility requirements on cable operators and television manufacturers; and (4) the need for cable operators to protect the integrity of their signals against theft or to protect such signals against unauthorized reception.

Subsection 624A(c) further requires the Commission to prescribe regulations necessary (1) to establish the technical requirements that permit a television receiver or video cassette recorder to be sold as "cable ready"; (2) to establish procedures by which manufacturers may certify television receivers that comply with the technical requirements established under this subsection in a manner that, at the point of sale, is easily understood by potential purchasers of such receivers; (3) to provide appropriate penalties for willful misrepresentation concerning such certifications; (4) to promote the commercial availability, from cable operators and retail vendors that are not affiliated with cable systems, of converters and remote control devices compatible with converters; (5) to require a cable operator who offers subscribers the option of renting a remote control to notify subscribers that they may purchase a commercially available remote control from any source that sells such devices rather than renting it from the cable operator and to specify the types of remote controls that are compatible with the converter box supplied by the cable operator; and (6) to prohibit a cable operator from taking any action that prevents or in any way disables the converter box supplied by the cable operator from operating compatibly with the commercially available remote control units.

Subsection 624A(d) requires the Commission to review periodically and, if necessary, to modify the regulations established under this section in light of any actions taken in response to regulations issued under subsection 624A(c) and to reflect improvements and changes in cable systems, television receivers, video cassette recorders, and similar technology.

Subsection 624A(e) directs the Commission to adopt standards under this section that are technologically and economically feasible, taking into account the cost and benefit to cable subscribers and purchasers of television receivers of such standards. The Committee notes that responsibility for compatibility problems does not rest on any single industry and that the ultimate solution of this issue requires cooperation between the cable industry and the consumer electronics industry.

SECTION 10. TECHNICAL STANDARDS; EMERGENCY ANNOUNCEMENTS

Subsection (a) amends subsection 624(e) of the Communications Act to require the FCC, within one year after enactment, to adopt minimum technical and signal quality standards for the operation of cable systems which may be required and enforced by franchising authorities as part of a local franchise (including a modification, to renewal or transfer thereof pursuant to the provisions of Title VI). The Committee notes that since 1974, the FCC has preempted local franchising authorities from imposing more stringent technical standards than those adopted by the FCC. The Committee concurs with the FCC's recommendations, contained in the FCC Cable Report, that continued federal preemption of technical standards is necessary to prevent the development of a patchwork of inconsistent local technical standards. The Committee notes that the development of uniform technical standards could facilitate the sale of converter boxes and remote controls, which Section 624A of H.R. 4850 requires the FCC to promote.

The Committee is sensitive, however, to the concerns expressed by some franchising authorities that the adoption of technical standards that are inflexible would preclude them from imposing franchise requirements that incorporate new technical developments and state-of-the-art technological advances. Accordingly, this subsection requires and FCC to adopt national standards and to periodically update its technical standards to reflect improvements in technology. In considering new standards, the Commission shall require cable operators to comply with the standards it establishes within a reasonable period of time. The Commission should, however, consider permitting reasonable phase-in periods so that operators and ultimately consumers may not unreasonably be required to pay for replacing equipment in place prior to the end of its useful life. The consumer should receive the benefit of cable rebuilds and upgrades, but the Committee is concerned that such activity might be greatly discouraged if cable operators are vulnerable to technical requirements that might render a rebuilt system obsolete shortly after completion.

Subsection (a) also allows franchising authorities to petition the FCC for a waiver of its preemption authority to allow them to impose technical standards more stringent than those prescribed by the FCC under this subsection. It is the intent of this subsection that such waivers should not be granted routinely, but only in instances where the franchising authority is able to demonstrate unique local circumstances requiring the imposition of standards that differ from those established by the Commission. In considering requests for such waivers, the Commission may consider the existence of an agreement between the franchising authority and the cable operator to impose on the cable operator technical standards more stringent than the Commission's standards.

Subsection (b) requires the Commission to prescribe, and cable operators to comply with, standards to ensure that viewers of video programming on cable systems are afforded the same emergency information as is afforded the same emergency information as is afforded by the emergency broadcasting system (EBS) pursuant to Commission regulations contained in subpart G of part 73, title 47, Code of Federal Regulations. Information provided to the Committee indicates that only five to ten percent of cable systems have the ability to participate in EBS. The Committee finds that this level of participation is unsatisfactory. The Committee believes that emergency information should be accessible to all television viewers, regardless of the distribution medium in use. The Committee believes that it is appropriate for cable operators to participate in EBS because cable television has become the predominant mode of distribution of video programming for American households.

Subsection (c) authorizes a franchising authority to require a cable operator to do one or more of the following: (1) provide 30 days advance written notice of any changes in channel assignment or in the video programming service provided over any such channel; (2) inform subscribers in writing that comments on programming and channel position changes are being recorded by the franchising authority.

SECTION 11. REGULATION OF CARRIAGE AGREEMENTS

Section 11 amends the Communications Act by adding a new Section 616 which requires the FCC to establish regulations governing program carriage agreements and related practices between multichannel video programming distributors and video programming.

The Commission must establish regulations to prevent multichannel video programming distributors from coercing from a program vendor a financial interest in a program service as a condition for distribution on one or more of their systems.

The Commission's regulations must prohibit multichannel video programming distributors from coercing a video programming vendor to provide exclusive rights against other multichannel video programming distributors as a condition of distribution. The term "coercing" is to be broadly construed. The regulations should be designed to prevent a cable operator from coercing from a programmer an agreement to enter into exclusive contracts as a condition of carriage. The regulations also should be designed to prevent a cable operator from taking any kind of retaliatory action against a programmer for refusing to grant exclusivity to the operator.

The Commission's regulations must prevent a multichannel video programming distributor from engaging in conduct the effect of which is to restrain unreasonably the ability of an unaffiliated video programming distribution on the basis of affiliation or nonaffiliation in the selection, terms, or conditions for distribution. This provision was crafted to ensure that a multichannel video programming operator does not discriminate against an unaffiliated video programming vendor in which it does not hold a financial interest. The Committee intends that the term "discrimination" is to be distinguished from how that term is used in connection with actions by common carriers subject to title II of the Communications Act. The Committee does not intend, however, for the Commission to create new standards for conduct in determining discrimination under this section. An extensive body of law exists addressing discrimination in normal business practices, and the Committee intends the Commission to be guided by these precedents.

The FCC's regulations shall provide for expedited review of complaints made pursuant to this section, provide for appropriate remedies and penalties, including carriage, and provide for penalties against frivolous complaints.

This legislation provides new FCC remedies and does not amend, and is not intended to amend, existing antitrust laws. All antitrust and other remedies that can be pursued under current law by video programming vendors are unaffected by this section.

SECTION 12. EQUAL EMPLOYMENT OPPORTUNITY

The legislative record accompanying the Cable Act stated that "* * * women and minorities still are significantly underrepresented as employees and owners in the industry." The Committee believes now, as it did in 1984, that increased equal employment opportunities (EEO) for women and minorities, particularly in decision-making and managerial positions, "* * * is a crucial means of assuring that program service will be responsive to a public consisting of a diverse array of population groups." House Committee on Energy and Commerce, H.R. Rep. No. 934, 98th Cong., 2nd Sess. (1984) (House Report) at 85.

Since the adoption of the Cable Act, the U.S. Supreme Court has recognized the nexus that exists between minority participation in the media industry and the First Amendment principle of diversity in the expression of views and viewpoints. *Metro Broadcasting, Inc.* v. *FCC,* 100 S. Ct. 2997, 1990. The *Metro Broadcasting* decision supports and underscores the Committee's belief that there is a need for employment of increased numbers of women and minorities in upper-management positions in the cable industry and other media industries to enhance the diversity of viewing choices available to the American public.

The Committee believes that despite the cable industry's efforts to recruit, hire, promote and conduct business with women and minorities, since passage of the Cable Act, women and minorities continue to be underrepresented in policy and decision making positions. A comparison of FCC Employment Trend Reports for 1985 and 1991 demonstrates that: (1) the majority of female and minority employees continue to be clustered in low-paying positions, particularly office and clerical positions, and (2) the percentage of professional positions held by ethnic minorities has failed to increase significantly since 1985, and that for black males the percentage actually has decreased (i.e., black males held 4.1 percent of professional positions in 1985 compared with 3.6 percent in 1991; the percentage of professional positions held by minorities increased from 15.2 percent in 1985 to 15.7 percent in 1991).

The Committee notes that, while representation of women and minorities in the cable industry overall has improve since adoption of the Cable Act, the industry's performance can be improved further. The Committee believes that it is essential for the Commission to reevaluate its policies and enforcement practices with a view towards improving the representation of women and minorities in all job categories—especially in policy and decision making positions. In adopting this amendment to Section 634 of the Communications Act, the Committee seeks to remedy the continuing problem of underrepresentation of women and minorities in policymaking positions in the industry. The Committee finds that continued rigorous enforcement of equal employment opportunity rules and regulations is required in order to deter effectively racial and gender discrimination.

Section 634(d)(1) of the Communications Act is amended to require the Commission, within 270 days after the date of enactment of this legislation, to adopt revisions in its rules that may be necessary to implement the amendments made to section 634. In developing such revisions, the Commission is directed to seek to promote equal employment opportunities in each of the job categories itemized in subsection 634(d)(3) with a view towards achieving the policy goal of diversity in the expression of views in the electronic media.

Subsection 634(d)(3) is amended to require cable operators, in their annual statistical reports, to identify by race, sex, and job title the number of employees within each job category. The reports shall be made on separate forms, provided by the FCC, for full-time and part-time employees. The Committee believes that this requirement will not be burdensome for the industry and will afford the Commission an added means of ensuring that employees are categorized in an accurate and uniform manner.

Subsection 634(d)(3) also expands from nine to fifteen the job categories for which employee information is required, by prescribing six new job categories—Corporate Officers, General Manager, Chief Technician, Comptroller, General Sales Manager, and Production Manager—to be added to those itemized in the Cable Act (subsection (d)(3) (i)–(vi).) The Commission is directed to adopt definitions that will ensure that only principal decisionmakers and employees with supervisory authority are reported for such categories.

The addition of these new categories reflects the increasing complexity and specialization of tasks in the cable industry and is intended to improve the Commission's ability to monitor industry employment trends and to evaluate the effectiveness of its rules and enforcement practices with regard to the representation of women and minorities in senior positions. The addition of a reporting requirement for these additional categories also should present no unreasonable burden for operators.

The method for comparing the composition of the cable operator's workforce with that of the relevant labor market has not been changed, except that the six new job categories are to be included with the previous top four job categories. The Committee anticipates that the Commission shall continue to use processing guidelines as a means of assessing EEO compliance and as an indicator of the need for additional Commission scrutiny. The Committee does not intend that endorsement of the Commission's use of processing guidelines be considered an endorsement of numerical hiring quotas.

The Commission is directed to define the nine remaining job categories (managers, professionals, technicians, sales, office and clerical, skilled craftspersons, semiskilled operatives, unskilled laborers, and service workers) in a manner that is consistent with Commission policies in effect on June 1, 1990, including the Commission's 1985 Report and Order in which it followed the directive of the

House Report, "[to ensure] that the definitions accurately reflect the nature of the categories and the specific positions within them." Amendment to part 76 of the Commission's Rules, 102 FCC 2d 562, 575, (1985) (citing the House Report at 91.) The Commission may utilize, reexamine and redefine all existing job categories.

The FCC is required to prescribe the method by which entities are required to compute and report the number of minorities and women in the job categories above, with the exception of the office and clerical, skilled craftspersons, semiskilled operatives, unskilled laborers, and service workers categories, and the number of minorities and women in all the job categories above in proportion to the total number of qualified minorities and women in the relevant labor market. The report is required to include information on hiring, promotion, and recruitment practices that the FCC will need to evaluate the compliance of entities with this section. The report will be available for public inspection at the entity's central location and at every location where five or more full-time employees are regularly assigned to work. This subsection does not prohibit the FCC from collecting or continuing to collect statistical or other employment information to implement this section.

In an effort to strengthen the Commission's enforcement practices, subsection 634(f)(2) is amended to increase the forfeiture penalty for violations of Section 634 from $200 to $500 for each violation. The increase in forfeiture penalty is intended to deter further cable operators from discriminating on the basis of race or gender.

Subsection 634(h)(1) is amended to extend the requirements of this section to not only cable and Satellite Master Antenna Television operators, but to "any multichannel video programming distributor." This provision reflects the Committee's belief that it is important to ensure women and minorities equal employment and promotion opportunities in new, emerging, and alternative technologies.

Subsection (f) requires the Commission, within 240 days after the date of enactment of this legislation, and after opportunity for public discussion, to submit to Congress a comprehensive report on the effectiveness of its procedures, regulations, policies, standards and guidelines governing the EEO performance of the broadcast industry. The Commission is expected to evaluate the effectiveness of its "best efforts" policy and all aspects of its EEO enforcement. The Commission is directed to evaluate the effectiveness of its policies in promoting: (1) equal employment opportunities; (2) opportunities for promotion; and (3) the policy of Congress favoring increased employment opportunities for women and minorities in upper management positions. Specifically, the Committee directs the Commission to consider whether Commission policies, particularly the "best efforts" approach, have improved the EEO performance of the broadcast industry and whether there is any need for policy revision. The Commission also is required to include in its report to Congress legislative recommendations it deems necessary to improve equal employment opportunity in the broadcasting industry.

Equal employment opportunity obligations of must-carry stations

It is well established that the Commission has the authority to promote minority involvement and regulate employment practices in the communications industry. In *Metro Broadcasting, Inc.* v. FCC, 110 S. Ct. 2997 (1990), the Supreme Court upheld the Commission's program awarding an enhancement for minority ownership in comparative proceedings for new licensees, as well as the minority "distress sale" program, which permits a limited category of exiting radio and television broadcast stations to be transferred only to minority-owned firms. The Court in *Metro Broadcasting* highlighted Congressional findings that "the effects of past inequities stemming from racial and ethnic discrimination have resulted in a severe under-representation of minorities in the media of mass communications."

Among the Commission's efforts in recent years to remedy the effects of past and present discrimination has been the enforcement of equal employment opportunity standards in the broadcast television and cable industries. Section 617 endorses and extends those standards with respect to "must-carry stations," i.e., those local commercial stations and qualified noncommercial stations that will be eligible for carriage pursuant to Sections 614 and 615.

This Committee previously has recognized, in the context of the cable industry, that because of the potentially large impact television programming has on the public, "the employment practices of the television industry have an importance greater than that suggested by the number of its employers, and that equal employment opportunity requirements are particularly important in the mass media area where employment is a critical means of assuring that program service will be responsible to a public consisting of a diverse array of population groups." House Committee on Energy and Commerce, H.R. Rep. No. 934, 98th Congress., 2nd Sess. (1984) at 85. The Committee strongly believes that the importance of a strong EEO policy is as great in the context of the broadcast television industry.

The Courts and the Commission have consistently recognized the increasing amount of programming designed to address the needs and interests of minorities and women is fundamentally related to the number of minority and women employees in the upper level positions within media companies. In addition, the Committee recognizes that a strong EEO policy is necessary to assure sufficient numbers of minorities and women gain professional and management level experience within the television industry, and thus that significant numbers of minorities and women obtain the background and training to take advantage of existing and future television broadcasting ownership opportunities.

The Committee notes that while the employment record of the broadcast television industry has improved in the year since the Commission first adopted equal employment opportunity regulations, women and minorities are still significantly under-represented as employees and owners in the industry.

In adopting Section 617, the Committee seeks to remedy the continuing problem of under-representation of women and minorities in policy-making positions in the broadcast television industry. The Committee finds that vigorous enforcement of equal employment opportunity rules is required in order to deter effectively racial and gender discrimination.

Section 617, which is modeled on the cable EEO provisions set forth in Section 634, codifies and strengthens the Commission's existing equal employment opportunity regulations. It requires the Commission to certify annually that an employment unit or "entity," whether a licensee for a television station eligible for carriage under Section 614 or 615, or an entity engaged primarily in the management or operation of any such licensee, is in compliance with prescribed EEO standards. An entity will be in violation of those standards, and subject to penalties under this Section, where it does not provide equal opportunity for women and minorities.

Subsection 618(a) defines which entities are subject to this Section's application, and includes both individual licensees and the companies or other entities that are primarily engaged in their management or operation. Section 617 applies to "entities" (including corporations, partnerships, associations, joint-stock companies, or trusts) but not to individual persons, that manage or operate licensees.

Aside from the Section's application to licensees of stations eligible for carriage under must-carry, the Committee intends that this Section apply only to entities engaged primarily in the management or operation of a licensee. Thus, if only a subsidiary or affiliate of a corporation or other entity has primary responsibility for the management or operation of one or more licensees, the affiliate or subsidiary (and the licensees it manages or operates) will be subject to the requirements of this Section as separate employment units; the parent entity will not be subject to the requirement of this Section. Similarly, other affiliates or subsidiaries of the parent entity, if not engaged primiarly in the management or operation of any licensee, also will not be subject to the requirements of this Section.

For example, DEF Television Co., which owns, operates and manages multiple licensees throughout the country, and GHI Entertainment, Inc., which provides programming to licensees, are subsidiaries of BCD Company. BCD Company is a conglomerate owning various communications, publishing and entertainment properties, but BCD's headquarters itself is not directly engaged primarily in the operation or management of any licensee. Under this scenario, DEF Television Co. and each licensee operated by DEF Television Co. would be subject to this Section. BCD Company and GHI Entertainment, Inc. would not be subject to the requirements of this Section.

Subsection (b) sets forth the requirement that each entity afford equal opportunity in employment, and prohibits discrimination on the basis of race, color, religion, national origin, age, or sex.

Subsection (c) requires each employment unit to establish, maintain, and execute a specific prescribed program of practices designed to ensure the development of equality of employment opportunity and to promote the hiring of a workforce that reflects the diversity of the entity's community. This program shall include: defining and monitoring managerial and supervisory performance of equal employment opportunity goals; informing employees, employee organizations, and sources of qualified applicants of the entity's equal employment opportunity policy; and monitoring the entity's job structure and employment practices in order to eliminate discrimination and to ensure equal opportunity throughout its organizational units, occupations, and levels of responsibility.

Subsection (d) requires the Commission, within 270 days of the effective date of this title, following notice and an opportunity to comment, to establish prescribed rules to enforce and effectuate the requirements of this Section. In establishing these rules it is the intent of the Committee that the FCC seek to promote equal employment opportunities in each of the job categories itemized in subsection (d)(3) with the view towards achieving the policy goal of diversity in the expression of views in the electronic media.

The rules adopted under subsection (d) may be amended from time to time by the Commission. Such rules shall specify, among other things, the terms under which covered entities must: disseminate information concerning their equal opportunity programs to applicants, employees, and others; encourage job referrals from minority and women's organizations or other similar potential sources of minority and female applicants; compare their employment profiles and workforce turnover against the availability of women and minorities in their service areas; undertake to offer promotions of minorities and women to positions of greater responsibility; conduct business with minority and female entrepreneurs; and analyze the results of their equal opportunity programs.

Subsection (d) also requires an employment unit with more than 5 full-time employees to file with the Commission, and make available to the public, an annual statistical report profiling the race and sex of its employees in all full-time and part-time job categories. In developing rules pursuant to this Section, the Commission shall consider and define job categories for the specific purpose of ensuring that the definition accurately reflect the nature of the categories and the specific position within them. The Committee intends that upper job category employment in any entity shall be limited to a reasonable level, and that the FCC adopt definitions for job categories (A) through (F) that will ensure that only principal decision-makers and employees with supervisory authority are reported for such categories. The rules should guard against the practice of giving employees who perform largely clerical or support staff functions job titles or descriptions which would result in their being considered upper job category workers.

The report required by subsection (d) must also state the number of job openings that occurred during the year and must either certify that the openings were filled in accordance with the entity's EEO program (required by subsection (c)) or provide the reasons for not filling those openings in accordance with the program.

Further, nothing in this subsection should be construed as prohibiting the Commission from collecting or continuing to collect statistical or other employment information in a manner that it deems appropriate to carry out this section. For example, the Commission's rules may prescribe the method by which entities are required to compute and report the number of minorities and women in itemized job categories (A) through (J), and the number of minorities and women in all of the itemized job categories in proportion to the total number of qualified minorities and women in the relevant labor market.

Subsection (e) requires the Commission to certify annually that licensees and other entities are in compliance with prescribed EEO standards. In making a determination with respect to compliance, the Commission shall consider statistical reports required to be filed by employment units and any other available relevant information, such as complaints of violations by employees or applicants for employment, and information submitted to the Commission by public or private agencies or organizations.

In order to ensure compliance with this Section, the Commission is encouraged to perform random on-site audits of some reporting units. These audits will provide the Commission with a basis for determining whether employment profiles are accurately reported on the required annual reports, and whether job classifications and employee responsibilities are accurately defined.

Subsection (f) requires the Commission to establish procedures for the enforcement of this Section, including the investigation of complaints of violations for this Section brought by employees, applicants for employment, and other interested persons. Pursuant to its rules, the Commission may investigate such complaints and enforce the requirements of the Section, or may refer such complaints to any other appropriate Federal agency. It is intended that the Commission's complaint, investigation and report procedures should supplement, rather than supplant, those afforded by other Federal civil rights statutes.

Subsection (g) authorizes the Commission to impose a forfeiture penalty of $200 per day for each violation of the requirements of this Section. Although this subsection provides that a licensee or entity shall not be liable for more than 180 days of forfeiture accruing prior to notification by the Commission of a potential violation, the Committee stresses that this limitation applies only to the accrual of forfeiture penalties. It is not the intent of the Committee to limit forfeiture imposed on the employment units as a result of violations that continue subsequent to such notification, nor is it the Committee's intent to create an 180-day general statute of limitation with respect to an entity's liability based on when a violation occurred. Moreover, violations that have reached the accrued forfeiture limit shall not prevent an entity from being subject to all other penalties or remedies available to the Commission under this Section or other authority.

Subsection (g) also authorizes the FCC to condition, suspend, or revoke any licensee of any person found liable for forfeiture penalty under this section. Knowingly making false statement or submitting false documentation known to be false statement or submitting false documentation known to be false shall constitute a violation of this Section.

Subsection (h) provides that State and local governments may establish or enforce equal employment opportunity standards consistent with this Section, including requirements which impose more stringent standards than are provided under this title. The Committee does not intend to preclude State or local authorities from considering local circumstances or needs that may necessitate more stringent employment standards. Subsection (h) also authorizes State and local authorities to establish or enforce requirements for conducting business with minority or locally-operated enterprises.

The Committee expects that the Commission will include the licensees and entities covered by this Section in its existing memorandum of understanding with the Equal Employment Opportunity Commission (EEOC) concerning the disposition of individual complaints, or will develop a new memorandum of understanding concerning those licensees and entities. In making determinations regarding compliance with the requirements of this Section, the Commission shall consider information received from individual complainants, but the Committee does not intend that the FCC, as opposed to the EEOC, should become the forum for the resolution and granting of relief in cases of discrimination against specific individuals.

The principles set forth in the Age Discrimination in Employment Act of 1967, as amended, and Title VII of the Civil Rights Act of 1964, as amended, shall govern proceedings before the Federal Communications Commission under this Act. Nothing in the Act shall be interpreted as limiting Section 703(e) of the Civil Rights Act of 1964, as amended, Section 701(j) of the 1972 amendment to Title VII of the Civil Rights Act, 703(h) of the Civil Rights Act of 1964, as amended, or Section 623(f) of the Age Discrimination in Employment Act of 1967, as amended.

SECTION 13. HOME WIRING

This section amends section 624 of the Communications Act by adding a new subsection (g) and requires the Commission, within 120 days after the date of enactment of this section, to prescribe rules and regulations concerning the disposition, after a subscriber to a cable system terminates service, of any cable installed by the cable operator within the premises of such subscriber. This provision applies only to internal wiring contained within the home and does not apply to any of the cable operator's other property located inside the home (e.g., converter boxes, remote control units, etc.) or any wiring, equipment or property located outside of the home or dwelling unit.

The Committee believes that subscribers who terminate cable service should have the right to acquire wiring that has been installed by the cable operator in their dwelling unit. This right would enable consumers to utilize the wiring with an alternative multichannel video delivery system and avoid any disruption the removal of such wiring may cause. However, the Committee also is cognizant of the serious theft of service problems that confront the cable industry. Because theft of service increases the cost of service for all consumers, the Committee believes that the rules and regulations promulgated by the Commission under this section should not pertain to situations where service has been terminated for nonpayment or for theft of service. The Committee is concerned especially about the potential for theft of service within apartment buildings. Therefore, this section limits the right to acquire home wiring to the cable installed within the interior premises of a subscriber's dwelling unit.

This section does not address matters concerning the cable facilities inside the subscriber's home prior to termination of service. In this regard, the Committee does not intend that cable operators be treated as common carriers with respect to the internal cabling installed in subscribers' homes. Cable operators continue to have legal responsibility to prevent signal leakage, since improper installation or maintenance could threaten safety services that operate on critical frequencies. Nothing in this section should be construed to create any right of a subscriber to inside wiring that would frustrate the cable operator's ability to prevent or protect against signal leakage during the period the cable operator is providing service to such subscriber.

This section deals with internal wiring within a subscriber's home or individual dwelling unit. In the case of multiple dwelling units, this section is not intended to cover common wiring within the building, but only the wiring within the dwelling unit of individual subscribers.

SECTION 14. SALES OF CABLE SYSTEMS

This section amends the Communications Act by adding a new section 618. Subsection (a) prohibits a cable operator from selling or otherwise transferring ownership in a cable system within a 36-month period following either the acquisition or initial construction of such system, except as provided in this section.

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

Subsection (c) exempts any transfer of ownership interest in any cable system that is not subject to Federal income tax liability and any sale required by operation of any law or any act of any Federal agency, any state or political subdivision of a state, or any franchising authority, or any sale, assignment, or transfer, to one or more purchasers, assignees, or transferees controlled by, controlling, or under common control with, the seller, assignor, or transferrer.

Subsection (c)(3) of section 618 would permit the sale, assignment, or transfer of cable television systems within three years to purchasers controlled by, controlling, or under common control with the seller, assignor, or transferrer. This provision is intended to exempt transfers between affiliated entities, whether the purchasing entity is controlled by, controlling, or under common control with the selling entity by virtue of stock ownership, other equity or debt ownership, or management control. Transfers of this nature historically have occurred without abuse in the cable television industry, and occur most commonly in connection with short-term bridge financing type transactions or in situations involving corporate or partnership reorganizations. These kinds of transfers are not profiteering transactions of the kind sought to be limited by the 3-year holding period, and would not appear adversely to affect cable television rates or service in the community served by the transferred cable system. The Commission should craft regulations adopted pursuant to this subsection in a manner that permits the kinds of transfers described among affiliated entities, but does not create a broad or general exception to the 3-year holding period requirement.

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

The Committee does not intend that the 3-year holding period requirement expand or restrict the current rights that any franchise authority may have concerning approval of transfers or sales. The 3-year holding requirement also is not intended to circumscribe the ability of lenders to obtain such security as they may usually require in agreeing to finance an acquisition of a cable system. Consequently, exercise of foreclosure or other rights intended to protect the value of collateralized property normally found in financing agreements constitutes the type of transaction that could be viewed as a transfer in a particular situation and that may be considered by the Commission under its waiver authority. Any waiver request would be ripe for consideration by the FCC at any time prior to exercise of any such rights, including the period during the process in which a purchaser negotiates (or renegotiates) its loan agreements with its creditors.

Subsection (e) limits the duration of time a franchising authority has to disapprove a transfer. After the initial 36-month period following the sale or transfer of ownership of a cable system, if the franchise requires franchising authority approval of a sale or transfer, a franchising authority has 120 days to act upon any request for approval of such sale or transfer that contains or is accompanied by such information as is required in accordance with Commission regulations. If the franchising authority fails to render a final decision on the request within 120 days, the request shall be deemed granted, unless the requesting party and the franchising authority agree to an extension of time.

The Committee intends that the 120-day limitation on franchise approval of a sale or transfer required under subsection (e) shall not commence until the cable operator has provided the franchising authority all information required under the Commission's regulations. The time limit may be extended by mutual agreement of the franchising authority and any party requesting approval of the sale or transfer.

The Committee intends that the FCC regulations will be designed to ensure that every franchising authority receives the information required to begin an evaluation of a request for approval of a sale or transfer. Such information may include detailed financial information showing the effect of the transfer or sale on rates and services; the contracts and agreements underlying the sale or transfer; information concerning the legal, financial and technical qualifications of the transferee; and information concerning the transferee's plans for expanding (or eliminating) services to subscribers. The amendment is not intended to limit, or give the FCC authority to limit, local authority to require in franchises that cable operators provide additional information or guarantees with respect to a cable sale or transfer. The subsection also is not intended to limit, or give the FCC authority to limit, a franchising authority's right to grant or deny a request for approval of a sale or transfer, in its discretion, consistent with the franchise and applicable law.

The 120-day limitation does not apply to any request for approval of a cable sale or transfer subject to Section 618(a). The 120-day limitation also would not apply to requests for approval of sales or transfers submitted prior to adoption of the FCC regulations, given that such requests, by definition, could not include the information required to activate the 120-day limit.

SECTION 15. CABLE CHANNELS FOR COMMERCIAL USE

Subsection 15(a) amends section 612(c) of the Communications Act and requires the Commission, within 180 days after the date of enactment of this legislation, to establish, by regulation, (1) a formula to determine the maximum rates a cable operator may charge for commercial use of channel capacity by persons not affiliated with the cable operator; (2) standards concerning the terms and conditions for such use; (3) standards concerning methods for collection and billing for commercial use of such channel capacity; and (4) procedures for the expedited resolution of disputes concerning rates or carriage under this section.

Subsection 15(b) contains a further amendment to section 612 of the Communications Act and adds a new subsection (i). Under the current statutory provision, systems with 36 or more "activated channels" are required to set aside 10 to 15 percent of that capacity for commercial "leased access" by unaffiliated entities. Systems with fewer than 36 channels are exempt from this provision but must comply with any existing leased access obligations under their franchise. Cable operators may use any unused channel capacity designated for commercial use, but such use if preemptible.

Under new subsection 612(i) a cable operator would be permitted to provide programming from a qualified minority or educational programming source or sources on up to 33 percent of the cable system's leased access channels. Thus, if a cable operator were required to provide three channels for commercial leased access, one of those channels could be dedicated to minority or educational cable programming. For purposes of calculating the number of channels that can be used to provide minority or educational programming, fractions of channels in excess of 50 percent should be rounded up to the nearest whole number. Such programming may derive from any minority or educational programming source, whether or not it is affiliated with the cable operator.

Programming that already is being provided over a cable system on July 1, 1990 shall not qualify as minority or educational programming for the purpose of this subsection. The purpose of this limitation is to discourage operators from deleting an existing minority or educational programming source in order to take advantage of this section.

A qualified minority programming source is defined as a programming source that devotes a significant amount of its programming to coverage of minority viewpoints, or to programming directed at persons of minority groups, and which is more than 50 percent minority-owned as the term "minority" is defined in 47 U.S.C. § 309(i)(3)(C)(ii). For the purposes of this subsection, the term "minority programming sources" is not intended to include television broadcast stations.

The commercial access provisions contained in current Section 612 of the Communications Act promote the goal of increasing the diversity of programming provided by cable television systems. The Committee believes that increasing the availability of minority programming sources also would contribute greatly to the diversity of programming available to cable viewers and will help to assure the widest possible diversity of information services to the public. New subsection 612(i) is intended to provide cable operators increased incentives to carry minority programming services and is consistent with FCC and Congressional objectives designed to increase the diversity of viewpoints by encouraging minority ownership of the communications media. The constitutionality of regulatory and legislative initiatives intended to increase minority ownership of and participation in the media recently was upheld by the United States Supreme Court. *Metro Broadcasting, Inc.* v. *FCC,* 58 U.S.L.W. 5053, 111 L.Ed. 2d 445 (1990).

A qualified educational programming source is defined as a programming source that devotes significantly all of its programming to educational or instructional programming of such a nature that it promotes public understanding of mathematics, the sciences, the humanities, and the arts and has a documented annual expenditure on programming exceeding $15 million. Programming expenditures include all annual costs incurred by the channel originator to produce or acquire programs that are scheduled to appear on air, and specifically exclude marketing, promotion, satellite transmission and operational costs, and general administrative costs. The Committee intends that new subsection 612(i) in no way interfere with cable operators' obligation to carry qualified, noncommercial educational television stations pursuant to Section 615.

SECTION 16. CABLE FOREIGN OWNERSHIP RESTRICTIONS

Subsection (a) enumerates the findings made by the Congress regarding foreign ownership of cable systems.

The Congress finds that:

(1) Restrictions on alien or foreign ownership of broadcasting and common carriers first were enacted by Congress in the Radio Act of 1912.

(2) Cable television service currently is available to more than 90 percent of American households, more than 62 percent of American households subscribe to such services, and the majority of viewers rely on cable as the conduit through which they receive terrestrial broadcast signals.

(3) Many Americans receive a significant portion of their daily news, information, and entertainment programming from cable television systems, and such systems should not be controlled by foreign entities.

(4) The policy justifications underlying restrictions on alien ownership of broadcast or common carrier licenses have equal application to alien ownership of cable television systems, DBS systems, and multipoint distribution services.

Subsection (b) amends section 310(b) of the Communications Act and provides that no cable system in the U.S. shall be owned or otherwise controlled by any alien, representative, or corporation as described in section 310(b) of the Communications Act. Subsection (b) also provides that no such alien, representative, or corporation shall be required to sell or dispose of any ownership interest held or contracted for on June 1, 1990 and that no such alien, representative, or corporation that owns, has contracted on or before June 1, 1990 to acquire ownership, or otherwise controls two or more cable systems shall be prohibited from acquiring ownership or control of additional cable systems if the total number of households passed by all the cable systems that such alien, representative, or corporation would, as a result of such acquisition, own or control does not exceed 2,000,000.

The Committee intends that the restrictions on foreign ownership of cable systems and other multichannel video services under Section 16 be enforced in a manner consistent with existing Section 310 of the Communications Act.

Subsection (b) defines, for purposes of such restrictions, broadcast station licenses to include licenses or authorizations for: (1) cable auxiliary relay services; (2) multipoint distribution services; (3) DBS services; and (4) other services with licensed facilities that may be devoted substantially toward providing programming or other information services within the editorial control of the licensee.

SECTION 17. THEFT OF CABLE SERVICE

This section amends section 633(b) of the Communications Act and brings into conformity penalties and remedies for theft of cable service with those for theft of satellite signals.

SECTION 18. STUDIES

Subsection 18(a)(1) requires the Commission to conduct a review and study to determine whether it is necessary or appropriate in the public interest to prohibit or constrain acts and practices that may unreasonably restrict diversity and competition in the market for video programming. In conducting such a review and study, the Commission shall consider the necessity and appropriateness of imposing limitations on the degree to which multichannel video programming distributors may engage in the creation or production of such programming. The Commission is required under this subsection to impose limitations on the proportion of the market, at any stage in the distribution of video programming, which may be controlled by any multichannel video programming distributor or other person engaged in such distribution.

Subsection (a)(2) requires the Commission, within one year after the date of enactment of this legislation, to submit a report on such review and study to the House Committee on Energy and Commerce and the Senate Committee on Commerce, Science, and Transportation. This subsection requires the Commission, thereafter, to continue to monitor, and summarize in the Commission's annual reports, the status of diversity and competition in the marketplace for video programming.

Subsection (a)(3) requires the Commission, within 180 days after the date of enactment of this legislation, to initiate a rulemaking proceeding to impose, with respect to any DBS system that is not regulated as a common carrier under the Communications Act, public interest or other requirements on such systems providing video programming. Any regulations prescribed pursuant to such rulemaking shall, at a minimum, apply the access to broadcast time requirement of Section 312 of the Communications Act and the use of facilities requirements of Section 315 of the Communications Act to DBS systems providing video programming. The Committee does not intend for the Commission, in formulating any additional public interest obligations, to impose retroactively common carrier status on any DBS system not regulated as a common carrier at the time such regulations are enacted. The Commission also is directed to examine the implications of the establishment of DBS systems for the principle of localism under the Communications Act and the methods by which such principle may be served through technological and other developments in, or regulation of, such systems.

Subsection (a)(4) mandates that the Commission require, as a condition of any initial authorization, or renewal thereof, for a DBS system providing video programming, that the provider of such service reserve not less than 4 percent or more than 7 percent of the channel capacity of such service exclusively for noncommercial public service uses. The Committee intends that the Commission consider the total channel capacity of a DBS system in establishing reservation requirements. Accordingly, the Commission may determine to subject DBS systems with relatively large total channel capacity to a greater reservation requirement than systems with relatively less total capacity. In determining a DBS system's channel capacity, the Commission may consider the availability of or the use by a DBS operator of compression technologies. This subsection permits a provider of such service to use any unused channel capacity designated pursuant to this subsection until the use of channel capacity is obtained, pursuant to a written agreement, for public service use.

"Public service uses" are defined to include programming produced by (1) public telecommunications entities, including programming furnished to such entities by independent production services; (2) public or private educational institutions or entities for educational, instructional, or cultural purposes; and (3) any entity to serve the disparate needs of specific communities of interest, including "linguistically distinct" groups, minority and ethnic groups, and other groups.

The requirements of subsection (a)(4) are intended to apply only to direct broadcast satellite providers, which the Commission shall interpret to mean a person that uses the facilities of a direct broadcast satellite system to provide point-to-multipoint video programming for direct reception by consumers in their homes. The Committee does not intend that the licensed operator of the DBS satellite itself be subject to the requirements of this subsection unless it seeks to provide video programming directly.

Subsection (a)(4) provides further that the direct broadcast satellite service provider may recover only the direct costs of transmitting public service programming on the reserved channels. Direct costs include only the costs of transmitting the signal to the uplink facility and the direct costs of uplinking the signal to the satellite, and shall not include any indirect costs, such as marketing, administration, or other similar overhead costs.

Subsection (a)(4)(B) also establishes a study panel, comprised of a representative of the CPB, the NTIA, and the Office of Technology Assessment selected by the head of each such entity. This subsection requires such study panel, within two years after the date of enactment of this legislation, to submit a report to Congress containing recommendations on (1) methods and strategies for promoting the development of programming for transmission over the public use channels reserved pursuant to this subsection; (2) methods and criteria for selecting programming for such channels that avoid conflicts of interest and the exercise of editorial control by the DBS service provider; and (3) identifying existing and potential sources of funding for administrative and production costs for such public use programming.

Subsection (a)(5) defines the term "direct broadcast satellite systems" to include satellite systems licensed under Part 100 of the Commission's rules and high power Ku-band fixed service satellite systems providing video service directly to the home and licensed under Part 25 of the Commission's rules.

Subsection (b) requires the Commission to conduct an ongoing study on carriage of local, regional, and national sports programming by broadcast stations and cable programming networks and pay-per-view services. The study shall investigate and analyze, on a sport-by-sport basis, trends regarding the migration of such programming from carriage by broadcast stations to carriage over cable programming networks and pay-per-view systems, including the economic causes and the economic and social consequences of such trends. This subsection further requires the Commission, on or before July 1, 1993 and July 1, 1994, to submit an interim and final report, respectively, on the results of such study to the House Committee on Energy and Commerce and the Senate Committee on Commerce, Science, and Transportation. Such reports shall include a statement of the results, on a sport-by-sport basis, of the analysis of the trends evaluated by the Commission and any appropriate legislative or regulatory recommendations.

The Committee observes that the migration of sports programming away from free over-the-air television to pay television outlets has become an increasingly important issue in recent years. A significant reduction in the quality of quantity of sports programming available on free television, whether professional or collegiate, would be of great concern to this Committee. In many instances, utilization of cable technology has increased the availability of sports programming, or resulted in telecasts of sports programming that previously were not available to sport viewers. It has been suggested, however, that some arrangements result in consumers paying for events previously available free on broadcast television, thereby reducing consumer access to such events.

The Committee's concern about sports migration is not confined to professional sports. Evidence has been submitted to the committee suggesting that, in recent years, contracts between cable sports channels and college athletic conferences have effectively precluded local television stations from obtaining rights to broadcast local college games. College athletic conferences enter into contracts with cable sports channels for all conference games scheduled at particular times on Saturday afternoons. These cable sports channels will telecast one game during this time period. The remainder of the conference's games are not telecast by the cable sports channel. Nevertheless, local television stations are precluded from contracting directly with individual schools to broadcast any of that conference's games whether or not they are being telecast by the cable sports channel. Prior to such arrangements, local television stations often were able to secure the rights to broadcast their local college games. The Committee has received evidence that such contracts have prevented the broadcast of college football games in California, Washington, Iowa and Arizona. In addition, it has been reported to the Committee that at least one university, the University of Tennessee, previously placed all of its football games during a season on pay-per-view for local distribution.

The Committee believes that an in-depth study regarding the migration of sports programming is warranted. In preparing its report, the FCC should analyze the impact of the differences in the economics of the broadcasting and cable television industries on sports migration. Television broadcasters must bid for sports rights based on a single revenue stream—advertising. Cable services, whether pay-per-view, cable sports channels, or basic service channels are able to bid for sports programming based on at least two revenue streams, advertising and subscriber fees. To the extent possible, the Commission should determine whether this market structure will lead to additional sports migration in the future.

The Committee believes the Commission specifically should address the following issues:

(1) Trends over the past decade with regard to the total number of professional and collegiate games, regular season, playoff and championships, that have appeared on free, over-the-air television, basic cable channels, cable sports channels and pay-per-view. To the extent possible, based on contracts for carriage and other available information, the Commission also should project future sports carriage trends.

(2) The number of professional and college sporting events that could be made available to local television stations, but for exclusive arrangements between cable sports services, basic cable sports services and pay-per-view services.

(3) The impact of continued sports migration on consumers who do not subscribe to cable.

(4) The effect of the current professional sports antitrust exemption on the distribution of professional sports carriage rights.

(5) Whether further losses of sporting events from free over-the-air television negatively affect broadcast television stations' ability to compete with cable and other multichannel providers.

(6) Whether there have been significant changes in the broadcast and cable marketplace since the FCC's sports migration rules were eliminated.

The Committee notes that at hearings held by the Subcommittee on Telecommunications and Finance in 1990, it was disclosed that certain national and regional contracts between sports leagues or teams and video programming services had the effect of discriminating between different technologies in the delivery of sports programming. Because some video programming services are cable-exclusive, sports programming carried over such services are available only to cable subscribers. Subscribers of other services, such as DBS or wireless cable, are denied access to games carried over cable-exclusive services. At the same hearing, major league sports commissioners stated to the Subcommittee that it was the policy of professional team sports to ensure the widest possible audience for their games.

The Committee is concerned that, because of exclusive national coverage contracts, certain sports programming will be available only to subscribers of given technologies—whether cable, MMDS, or DBS. As the sports leagues enter their next contract negotiating period, the Committee will monitor events closely and carefully to determine whether the resulting contracts discriminate against particular technologies or subscribers to such technologies in the availability of sports programming.

Finally, the Committee notes that during 1992 and 1993, the National Hockey League, Major League Baseball, The National Basketball Association, and the National Football League will enter negotiations for national carriage rights of their regular season games, playoffs and championship events. Many of the issues of concern to the Committee will be addressed by the new league television contracts. The reports required by this subsection will provide the Congress with the information necessary to propose remedies if the Committee determines that Congressional action is necessary to protect consumers.

Subsection (c) contains requirements for the FCC to conduct a proceeding with respect to areas receiving poor over-the-air signals. This subsection requires the Commission to initiate an inquiry and rulemaking to examine the feasibility of providing access to network and independent broadcasting station signals to persons who subscribe to DBS service and are unable to receive such signals (of grade B quality) over the air from a local licensee or from a cable system. In undertaking such rulemaking, the Commission shall consider the extent to which individuals in rural underserved areas are unable to receive broadcast television transmissions. The Commission also shall consider potential ways in which DBS operators or the manufacturers or distributors of receiving equipment might enhance the ability of such persons to receive and readily access additional video distribution.

SECTION 19. ANTITRUST IMMUNITY

Subsection (a) states that nothing in this legislation shall be construed to create any immunity to any civil or criminal action under any Federal or state antitrust law, or to alter or restrict in any manner the applicability of any Federal or state antitrust law.

SECTION 20. EFFECTIVE DATE

This section states that the provisions of this legislation shall take effect 60 days after its enactment, except where otherwise expressly provided.

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 III—PROVISIONS RELATING TO RADIO

PART I—GENERAL PROVISIONS

* * * * * * *

LIMITATION ON HOLDING AND TRANSFER OF LICENSES

SEC. 310. (a) The station license required under this Act shall not be granted to or held by any foreign government or the representative thereof.

(b)*(1)* No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by—

[(1)] *(A)* any alien or the representative of any alien;

[(2)] *(B)* any corporation organized under the laws of any foreign government;

[(3)] *(C)* any corporation of which any officer or director is an alien or of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country;

[(4)] *(D)* any corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens, or of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

(2)(A) No cable system (as such term is defined in section 602) in the United States shall be owned or otherwise controlled by any alien, representative, or corporation described in subparagraph (A), (B), (C), or (D) of paragraph (1) of this subsection.

(B) Subparagraph (A) of this paragraph shall not be applied—

(i) to require any such alien, representative, or corporation to sell or dispose of any ownership interest held or contracted for

on or before June 1, 1990, or acquired in accordance with clause (ii); or

(ii) to prohibit any such alien, representative, or corporation that owns, has contracted on or before June 1, 1990, to acquire ownership, or otherwise controls, any cable system from acquiring ownership or control of additional cable systems if the total number of households passed by all the cable systems that such alien, representative, or corporation would, as a result of such acquisition, own or control does not exceed 2,000,000.

(3)(A) For purposes of paragraph (1) of this subsection, a license or authorization for any of the following services shall be deemed to be a broadcast station license:

(i) cable auxiliary relay services;

(ii) multipoint distribution services;

(iii) direct broadcast satellite services; and

(iv) other services the licensed facilities of which may be substantially devoted toward providing programming or other information services within the editorial control of the licensee.

(B) Subparagraph (A) of this paragraph shall not be applied to any cable operator to the extent that such operator is eligible for the exemptions contained in subparagraph (B) of paragraph (2).

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TITLE VI—CABLE COMMUNICATIONS

PART I—GENERAL PROVISIONS

[PURPOSES] *PURPOSES; FINDINGS*

SEC. 601. *(a) PURPOSES.*—The purposes of this title are to—

(1) * * *

* * * * * * *

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

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

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

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

(4) There is a substantial governmental and first amendment interest in promoting a diversity of views provided through multiple technology media.

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

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

(B) public television is a local community institution, supported through local tax dollars and voluntary citizen contributions in excess of $10,800,000,000 between 1972 and 1990 that provides public service programming that is responsive to the needs and interests of the local community;

(C) the Federal Government, in recognition of public television's integral role in serving the educational and informational needs of local communities, has invested more than $3,000,000,000 in public broadcasting between 1969 and 1992; and

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

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

(A) promotes localism and provides a significant source of news, public affairs, and educational programming;

(B) is necessary to serve the goals contained in section 307(b) of this Act of providing a fair, efficient, and equitable distribution of broadcast services; and

(C) will enhance the access to such signals by Americans living in areas where the quality of reception of broadcast stations is poor.

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

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

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

(10) Secure carriage and channel positioning on cable television systems are the most effective means through which off-air broadcast television can access cable subscribers. In the absence of rules mandating carriage and channel positioning of broad-

cast television stations, some cable system operators have denied carriage or repositioned the carriage of some television stations.

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

(12) Cable systems provide the most effective access to television households that subscribe to cable. As a result of the cable operator's provision of this access and the operator's economic incentives described in paragraph (11), negotiations between cable operators and local broadcast stations have not been an effective mechanism for securing carriage and channel positioning.

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

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

DEFINITIONS

SEC. 602. For purposes of this title—

(1) * * *

* * * * * * *

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

distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming;

[(11)] *(12)* the term "other programming service" means information that a cable operator makes available to all subscribers generally;

[(12)] *(13)* the term "person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity;

[(13)] *(14)* the term "public, educational, or governmental access facilities" means—

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

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

[(14)] *(15)* the term "service tier" means a category of cable service or other services provided by a cable operator and for which a separate rate is charged by the cable operator;

[(15)] *(16)* the term "State" means any State, or political subdivision, or agency thereof; and

[(16)] *(17)* 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

* * * * * * *

CABLE CHANNELS FOR COMMERCIAL USE

SEC. 612. (a) * * *

* * * * * * *

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

* * * * * * *

(4) The Commission shall, not later than 180 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, by regulation establish—

(A) a formula to determine the maximum rates which a cable operator may establish under paragraph (1) of this subsection;

(B) standards concerning the terms and conditions which may be so established;

(C) standards concerning methods for collection and billing for commercial use of channel capacity made available under this section; and

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

* * * * * * *

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

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

(3) For purposes of this subsection, the term "qualified educational programming source" means a programming source which devotes significantly all of its programming to educational or instructional programming of such a nature that it promotes public understanding of mathematics, the sciences, the humanities, and the arts and has a documented annual expenditure on programming exceeding $15,000,000. Programming expenditures shall mean all annual costs incurred by the channel originator to produce or acquire programs which are scheduled to appear on air, and shall specifically exclude marketing, promotion, satellite transmission and operational costs, and general administrative costs. Nothing in this subsection shall substitute for the requirements to carry qualified noncommercial educational television stations as specified under section 615.

OWNERSHIP RESTRICTIONS

SEC. 613. (a) * * *

(b)(1) * * *

(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. *This paragraph shall not prohibit a common carrier from providing multiple channels of communication to an entity pursuant to a lease agreement under which the carrier retains, consistent with section 616, an option to purchase such entity upon the taking effect of an amendment to this section that permits common carriers generally*

to provide video programming directly to subscribers in such carrier's telephone service area.

* * * * * * *

(d) Any State or franchising authority may not prohibit the ownership or control of a cable system by any person because of such person's ownership or control of any *other* media of mass communications or other media interests. *Nothing in this section shall be construed to prevent any State or franchising authority from prohibiting the ownership or control of a cable system in a jurisdiction by any person (1) because of such person's ownership or control of any other cable system in such jurisdiction; or (2) in circumstances in which the State or franchising authority determines that the acquisition of such a cable system may eliminate or reduce competition in the delivery of cable service in such jurisdiction.*

* * * * * * *

SEC. 614. CARRIAGE OF LOCAL COMMERCIAL TELEVISION SIGNALS.

(a) CARRIAGE OBLIGATIONS.—Each cable operator shall carry, on the cable system of that operator, the signals of local commercial television stations as provided by the following provisions of this section. Carriage of additional broadcast television signals on such system shall be at the discretion of such operator.

(b) SIGNALS REQUIRED.—

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

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

(2) SELECTION OF SIGNALS.—Whenever the number of local commercial television stations exceeds the maximum number of signals a cable system is required to carry under paragraph (1), the cable operator shall have discretion in selecting which such stations shall be carried on its cable system, except that if the cable operator elects to carry an affiliate of a broadcast network (as such term is defined by the Commission by regulation), such cable operator shall carry the affiliate of such broadcast network whose city of license reference point, as defined in section 76.53 of title 47, Code of Federal Regulations (in effect on January 1, 1991), or any successor regulation thereto, is closest to the principal headend of the cable system.

(3) CONTENT TO BE CARRIED.—(A) A cable operator shall carry in its entirety, on the cable system of that operator, the primary video, accompanying audio, and line 21 closed caption transmission of each of the local commercial television stations carried on the cable system and, to the extent technically feasible, program-related material carried in the vertical blanking interval or on subcarriers. Retransmission of other material in the

vertical blanking internal or other nonprogram-related material (including teletext and other subscription and advertiser-supported information services) shall be at the discretion of the cable operator. Where appropriate and feasible, operators may delete signal enhancements, such as ghost-canceling, from the broadcast signal and employ such enhancements at the system headend or headends.

(B) The cable operator shall carry the entirety of the program schedule of any television station carried on the cable system unless carriage of specific programming is prohibited, and other programming authorized to be substituted, under section 76.67 or subpart F of part 76 of title 46, Code of Federal Regulations (as in effect on January 1, 1991), or any successor regulations thereto.

(4) SIGNAL QUALITY.—

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

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

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

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

operator. Any dispute regarding the positioning of a local commercial television station shall be resolved by the Commission.

(7) SIGNAL AVAILABILITY.—Signals carried in fulfillment of the requirements of this section shall be provided to every subscriber of a cable system. Such signals shall be viewable via cable on all television receivers of a subscriber which are connected to a cable system by a cable operator or for which a cable operator provides a connection. If a cable operator authorizes subscribers to install additional receiver connections, but does not provide the subscriber with such connections, or with the equipment and materials for such connections, the operator shall notify such subscribers of all broadcast stations carried on the cable system which cannot be viewed via cable without a converter box and shall offer to sell or lease such a converter box to such subscribers at rates in accordance with section 623(b)(1)(B).

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

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

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

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

(B) a cable operator may accept payments from stations which would be considered distant signals under section 111 of title 17, United States Code, as reimbursement for the incremental copyright costs assessed against such cable operator for carriage of such signal; and

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

(c) REMEDIES.—

(1) COMPLAINTS BY BROADCAST STATIONS.—Whenever a local commercial television station believes that a cable operator has

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

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

(3) REMEDIAL ACTIONS; DISMISSAL.—Within 120 days after the date a complaint is filed, the Commission shall determine whether the cable operator has met its obligations under this section. If the Commission determines that the cable operator has failed to meet such obligations, the Commission shall order the cable operator to reposition the complaining station or, in the case of an obligation to carry a station, to commence carriage of the station and to continue such carriage for at least 12 months. If the Commission determines that the cable operator has fully met the requirements of this section, it shall dismiss the complaint.

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

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

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

(e) REGULATIONS BY COMMISSION.—Within 180 days after the date of enactment of this section, the Commission shall, following a rulemaking proceeding, issue regulations implementing the requirements imposed by this section.

(f) SALES PRESENTATIONS AND PROGRAM LENGTH COMMERCIALS.—Nothing in this Act shall require a cable operator to carry on any tier, or prohibit a cable operator from carrying on any tier, the signal of any commercial television station or video programming service that is predominantly utilized for the transmission of sales presentations or program length commercials.

(g) EFFECT ON OTHER LAW.—Nothing in this section shall be construed to modify or otherwise affect title 17, United States Code.

(h) DEFINITION.—

(1) LOCAL COMMERCIAL TELEVISION STATION.—For purposes of this section, the term "local commercial television station" means any television broadcast station, determined by the Commission to be a commercial station, licensed and operating on a channel regularly assigned to its community by the Commission that, with respect to a particular cable system, is within the same television market as the cable system. If such a television broadcast station—

(A) would be considered a distant signal under section 111 of title 17, United States Code, it shall be deemed to be a local commercial television station for purposes of this section upon agreement to indemnify the cable operator for the increased copyright liability as a result of being carried on the cable system; or

(B) does not deliver to the principal headend of a cable system either a signal level of −45dBm for UHF signals or −49dBm for VHF signals at the input terminals of the signal processing equipment, it shall be responsible for the costs of delivering to the cable system a signal of good quality or a baseband video signal.

(2) EXCLUSIONS.—The term "local commercial television station" shall not include low power television stations, television translator stations, and passive repeaters which operate pursuant to part 74 of title 47, Code of Federal Regulations, or any successor regulations thereto.

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

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

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

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

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

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

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

(D) In the rulemaking proceeding required by subsection (e), the Commission shall provide for expedited consideration of requests filed under this subsection.

SEC. 615. CARRIAGE OF NONCOMMERCIAL EDUCATIONAL TELEVISION.

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

(b) REQUIREMENTS TO CARRY QUALIFIED STATIONS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) CONDITIONS OF CARRIAGE.—

(1) CONTENT TO BE CARRIED.—A cable operator shall retransmit in its entirety the primary video, accompanying audio, and line 21 closed caption transmission of each qualified local noncommercial educational television station whose signal is carried on the cable system, and, to the extent technically feasible,

program-related material carried in the vertical blanking interval, or on subcarriers, that may be necessary for receipt of programming by handicapped persons or for educational or language purposes. Retransmission of other material in the vertical blanking interval or on subcarriers shall be within the discretion of the cable operator.

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

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

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

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

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

(i) PAYMENT FOR CARRIAGE PROHIBITED.—

(1) IN GENERAL.—A cable operator shall not accept monetary payment or other valuable consideration in exchange for carriage of the signal of any qualified local noncommercial educational television station carried in fulfillment of the require-

ments of this section, except that such a station may be required to bear the cost associated with delivering a good quality signal to the principal headend of the cable system.

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

(j) REMEDIES.—

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

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

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

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

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

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

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

(ii) has as its licensee an entity which is eligible to receive a community service grant, or any successor grant thereto, from the Corporation for Public Broadcasting, or any successor organization thereto, on the basis of the formula set forth in section 396(k)(6)(B) (47 U.S.C. 396(k)(6)(B)); or

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

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

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

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

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

SEC. 616. REGULATION OF CARRIAGE AGREEMENTS.

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

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

(2) include provisions designed to prohibit a cable operator or other multichannel video programming distributor from coercing a video programming vendor to provide, and from retaliating against such a vendor for failing to provide, exclusive rights against other multichannel video programming distributors as a condition of carriage on a system;

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

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

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

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

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

SEC. 617. EQUAL EMPLOYMENT OPPORTUNITY OBLIGATIONS OF MUST-CARRY STATIONS.

(a) APPLICATION OF SECTION.—This section shall apply to—

(1) the licensee for any television broadcasting station that is eligible for carriage under section 614 or 615; and

(2) any corporation, partnership, association, joint-stock company, trust, or affiliate or subsidiary thereof engaged primarily in the management or operation of any such licensee.

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

(c) EMPLOYMENT POLICIES AND PRACTICES REQUIRED.—Any entity specified in subsection (a) shall establish, maintain, and execute a positive continuing program of specific practices designed to ensure equal opportunity in every aspect of its employment policies and practices and to promote the hiring of a workforce that reflects the diversity of its community. Under the terms of its programs, such entity shall—

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

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

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

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

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

(d) COMMISSION RULES REQUIRED.—

(1) DEADLINE FOR RULES.—Not later than 270 days after the date of enactment of this section, and after notice and opportunity for hearing, the Commission shall prescribe rules to carry out this section.

(2) CONTENT OF RULES.—*Such rules shall specify the terms under which an entity specified in subsection (a) shall, to the extent possible—*

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

(B) use minority organizations, organizations for women, media, educational institutions, and other potential sources of minority and female applicants, on an ongoing basis as a potential source of referrals for whenever jobs may become available;

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

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

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

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

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

(A) Corporate officers.

(B) General Manager.

(C) Chief Technician.

(D) Comptroller.

(E) General Sales Manager.

(F) Production Manager.

(G) Managers.

(H) Professionals.

(I) Technicians.

(J) Sales.

(K) Office and Clerical.

(L) Skilled Craftspersons.

(M) Semiskilled Operatives.

(N) Unskilled Laborers.

(O) Service Workers.

(4) ADDITIONAL CONTENTS OF REPORTS.—*In addition, such report shall state the number of job openings occurring during the course of the year and (A) shall certify that the openings were filled in accordance with the program required by subsection (c), or (B) shall contain a statement providing reasons for not filling such positions in accordance with such program. The statistical report shall be available to the public at the central office and at every location where more than 5 full-time employees are regularly assigned to work.*

(5) RULES AMENDMENTS.—*The Commission may amend such rules from time to time to the extent necessary to carry out the*

provisions of this section. Any such amendment shall be made after notice and opportunity for comment.

(e) ENFORCEMENT.—

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

(2) LICENSE RENEWAL REVIEWS.—The Commission shall, at the time of license renewal, review the employment practices of each entity described in subsection (a), in the aggregate, as well as in individual job categories, and determine whether such entity is in compliance with the requirements of subsections (b), (c), and (d), including whether such entity's employment practices deny or abridge minorities and women equal opportunities. As part of such investigation, the Commission shall review whether the entity's reports filed pursuant to subsection (d)(3) accurately reflect employee responsibilities in the reported job classifications and accurately reflect compliance with the equal employment opportunity plan in filing its annual reports.

(f) COMPLAINTS.—Employees or applicants for employment who believe they have been discriminated against in violation of the requirements of this section, or rules under this section, or any other interested person, may file a complaint with the Commission. A complaint by any such person shall be in writing, and shall be signed and sworn to by that person. The rules prescribed under subsection (d)(1) shall specify a program, under authorities otherwise available to the Commission, for the investigation of complaints and violations, and for the enforcement of this section.

(g) PENALTIES.—

(1) IN GENERAL.—Any person who is determined by the Commission, through an investigation pursuant to subsection (e) or otherwise, to have failed to meet or failed to make best efforts to meet the requirements of this section, or rules under this section, shall be liable to the United States for a forfeiture penalty of $200 for each violation. Each day of continuing violation shall constitute a separate offense. Any entity defined in subsection (a) shall not be liable for more than 180 days of forfeitures which accrued prior to notification by the Commission of a potential violation. Nothing in this paragraph shall limit the forfeiture imposed on any person as a result of any violation that continues subsequent to such notification. In addition, any person liable for such penalty may also have any license under this Act conditioned, suspended, or revoked. Whoever knowingly makes any false statement or submits documentation which he knows to be false, pursuant to an application for certification under this section shall be in violation of this section.

(2) ADDITIONAL REMEDIES.—The provisions of paragraphs (2)(D), (3), and (4), of section 503(b) shall apply to forfeitures under this subsection.

(3) NOTICE OF PENALTIES.—The Commission shall provide for notice to the public of any penalty imposed under this section.

(h) Effect on Other Laws.—Nothing in this section shall affect the authority of any State or local government—

(1) to establish or enforce any requirement which is consistent with the requirements of this section, including any requirement which affords equal employment opportunity protection for employees; or

(2) to establish or enforce any provision requiring or encouraging any entity specified in subsection (a) to conduct business with enterprises which are owned or controlled by members of minority groups (as defined in section 309(i)(3)(C)(ii)) or which have their principal operations located within the local service area of such entity.

SEC. 618. SALES OF CABLE SYSTEMS.

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

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

(c) Exceptions.—Subsection (a) of this section shall not apply to—

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

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

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

(d) Waiver Authority.—The Commission may, consistent with the public interest, waive the requirement of subsection (a), except that, if the franchise requires franchise authority approval of a transfer, the Commission shall not waive such requirements unless the franchise authority has approved the transfer.

(e) Limitation on Duration of Franchising Authority Power To Disapprove Transfers.—In the case of any sale or transfer of ownership of any cable system after the 36-month period following acquisition of such system, a franchising authority shall, if the franchise requires franchising authority approval of a sale or transfer, have 120 days to act upon any request for approval of such sale or transfer that contains or is accompanied by such information as is required in accordance with Commission regulations and by the franchising authority. If the franchising authority fails to render a final decision on the request within 120 days, such request shall be deemed granted unless the requesting party and the franchising authority agree to an extension of time.

PART III—FRANCHISING AND REGULATION

GENERAL FRANCHISE REQUIREMENTS

SEC. 621. (a)(1) * * *

* * * * * * *

(4) A franchising authority shall not, in the awarding of franchises within its jurisdiction, grant an exclusive franchise, or unreasonably refuse to award additional franchises because of the previous award of a franchise to another cable operator. For purposes of this paragraph, refusal to award a franchise shall not be unreasonable if, for example, such refusal is on the ground—

(A) of technical infeasibility;

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

(C) of inadequate assurance that the cable operator will, within a reasonable period of time, provide universal service throughout the entire franchise area under the jurisdiction of the franchising authority;

(D) that such award would interfere with the right of the franchising authority to deny renewal; or

(E) of inadequate assurance that the cable operator has the financial, technical, or legal qualifications to provide cable service.

(5) Nothing in this subsection shall be construed as limiting the authority of local governments to assess fees or taxes for access to public rights of way.

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

* * * * * * *

(f) No provision of this Act shall be construed to—

(1) prohibit a local or municipal authority that is also, or is affiliated with, a franchising authority from operating as a multichannel video programming distributor in the geographic areas within the jurisdiction of such franchising authority, notwithstanding the granting of one or more franchises by such franchising authority, or

(2) require such local or municipal authority to secure a franchise to operate as a multichannel video programming distributor.

* * * * * * *

[REGULATION OF RATES

[Sec. 623. (a) Any Federal agency or State may not regulate the rates for the provision of cable service except to the extent provided under this section. Any franchising authority may regulate the rates for the provision of cable service, or any other communications service provided over a cable system to cable subscribers, but only to the extent provided under this section.

[(b)(1) Within 180 days after the date of the enactment of this title, the Commission shall prescribe and make effective regulations which authorize a franchising authority to regulate rates for the provision of basic cable service in circumstances in which a cable system is not subject to effective competition. Such regulations may apply to any franchise granted after the effective date of such regulations. Such regulations shall not apply to any rate while such rate is subject to the provisions of subsection 9(c).

[(2) For purposes of rate regulation under this subsection, such regulations shall—

[(A) define the circumstances in which a cable system is not subject to effective competition; and

[(B) establish standards for such rate regulation.

[(3) The Commission shall periodically review such regulations, taking into account developments in technology, and may amend such regulations, consistent with paragraphs (1) and (2), to the extent the Commission determines necessary.

[(c) In the case of any cable system for which a franchise has been granted on or before the effective date of this title, until the end of the 2-year period beginning on such effective date, the franchising authority may, to the extent provided in a franchise—

[(1) regulate the rates for the provision of basic cable service, including multiple tiers of basic cable service;

[(2) require the provision of any service tier provided without charge (disregarding any installation or rental charge for equipment necessary for receipt of such tier); or

[(3) regulate rates for the initial installation or the rental of 1 set of the minimum equipment which is necessary for the subscriber's receipt of basic cable service.

[(d) Any request for an increase in any rate regulated pursuant to subsection (b) or (c) for which final action is not taken within 180 days after receipt of such request by the franchising authority shall be deemed to be granted, unless the 180-day period is extended by mutual agreement of the cable operator and the franchising authority.

[(e)(1) In addition to any other rate increase which is subject to the approval of a franchising authority, any rate subject to regulation pursuant to this section may be increased after the effective date of this title at the discretion of the cable operator by an amount not to exceed 5 percent per year if the franchise (as in effect on the effective date of this title) does not specify a fixed rate or rates for basic cable service for a specified period or periods which would be exceeded if such increase took effect.

[(2) Nothing in this section shall be construed to limit provisions of a franchise which permits a cable operator to increase any rate at the operator's discretion; however, the aggregate increases per year allowed under paragraph (1) shall be reduced by the amount of any increase taken such year under such franchise provisions.

[(f) Nothing in this title shall be construed as prohibiting any Federal agency, State, or a franchising authority, from—

[(1) prohibiting discrimination among customers of basic cable service, or

[(2) requiring and regulating the installation or rental of equipment which facilitates the reception of basic cable service by hearing impaired individuals.

[(g) Any State law in existence on the effective date of this title which provides for any limitation or preemption of regulation by any franchising authority (or the State or any political subdivision or agency thereof) of rates for cable service shall remain in effect during the 2-year period beginning on such effective date, to the extent such law provides for such limitation or preemption. As used in this section, the term "State" has the meaning given it in section 3(v).

[(h) Not later than 6 years after the date of the enactment of this title, the Commission shall prepare and submit to the Congress a report regarding rate regulation of cable services, including such legislative recommendations as the Commission considers appropriate. Such report and recommendations shall be based on a study of such regulation which the Commission shall conduct regarding the effect of competition in the marketplace.]

SEC. 623. REGULATION OF RATES.

(a) COMPETITION PREFERENCE; LOCAL AND FEDERAL REGULATION.—

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

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

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

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

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

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

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

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

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

(A) the franchising authority has adopted or is administering regulations with respect to the rates subject to regulation under this section that are not consistent with the regulations prescribed by the Commission under subsection (b);

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

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

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

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

(6) EXERCISE OF JURISDICTION BY COMMISSION.—If the Commission disapproves a franchising authority's certification under paragraph (4), or revokes such authority's jurisdiction under paragraph (5), the Commission shall exercise the franchising authority's regulatory jurisdiction under paragraph (2)(A) until the franchising authority has qualified to exercise that jurisdiction by filing a new certification that meets the requirements of paragraph (3). Such new certification shall be effective upon approval by the Commission. The Commission

shall act to approve or disapprove any such new certification within 90 days after the date it is filed.

(b) ESTABLISHMENT OF BASIC SERVICE TIER RATE LIMITATIONS.—

(1) COMMISSION REGULATIONS.—Within 120 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission shall, by regulation, establish the following:

(A) BASIC SERVICE TIER RATES.—A formula to establish the maximum price of the basic service tier, which formula shall take into account—

(i) the number of signals carried on the basic service tier;

(ii) the direct costs (if any) of obtaining, transmitting, and otherwise providing such signals, including signals and services carried on the basic service tier pursuant to paragraph (2)(B), and changes in such costs;

(iii) such portion of the joint and common costs of the cable operator as is determined, in accordance with regulations prescribed by the Commission, to be properly allocable to obtaining, transmitting, and otherwise providing such signals, and changes in such costs;

(iv) a reasonable profit (as defined by the Commission) on the provision of the basic service tier;

(v) rates for comparable cable systems, if any, that are subject to effective competition and that offer comparable services, taking into account, among other factors, similarities in facilities, the number of cable channels, the number of cable subscribers, and local conditions;

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

(vii) any amount required, in accordance with subparagraph (C), to satisfy franchise requirements to support public, educational, or governmental channels or the use of such channels or any other services required under the franchise.

(B) EQUIPMENT.—A formula to establish, on the basis of actual cost, the price or rate for—

(i) installation and lease of the equipment necessary for subscribers to receive the basic service tier, including a converter box and a remote control unit and, if requested by the subscriber, such addressable converter box or other equipment as is required to access programming described in paragraph (3); and

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

(C) COSTS OF FRANCHISE REQUIREMENTS.—A formula to identify and allocate costs attributable to satisfying franchise requirements to support public, educational, and gov-

ernmental channels or the use of such channels or any other services required under the franchise.

(D) IMPLEMENTATION AND ENFORCEMENT.—Additional standards, guidelines, and procedures concerning the implementation and enforcement of the regulations prescribed by the Commission under this subsection, which shall include—

(i) procedures by which cable operators may implement and franchising authorities may enforce the administration of the formulas, standards, guidelines, and procedures established by the Commission under this subsection;

(ii) procedures for the expeditious resolution of disputes between cable operators and franchising authorities concerning the administration of such formulas, standards, guidelines, and procedures;

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

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

(E) EFFECTIVE DATES.—An effective date or dates for compliance with the formulas, standards, guidelines, and procedures established under this subsection.

(2) COMPONENTS OF BASIC TIER SUBJECT TO RATE REGULATION.—

(A) MINIMUM CONTENTS.—Each cable operator of a cable system shall provide its subscribers a separately available basic service tier to which the rates prescribed under paragraph (1) shall apply and to which subscription is required for access to any other tier of service. Such basic service tier shall, at a minimum, consist of the following:

(i) All signals carried in fulfillment of the requirements of sections 614 and 615.

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

(iii) Any signal of any broadcast station that is provided by the cable operator to any subscriber.

(B) PERMITTED ADDITIONS TO BASIC TIER.—A cable operator may add additional video programming signals or services to the basic service tier. Any such additional signals or services provided on the basic service tier shall be provided to subscribers at rates determined under paragraph (1)(A).

(3) BUY-THROUGH OF OTHER TIERS PROHIBITED.—

(A) PROHIBITION.—A cable operator may not require the subscription to any tier other than the basic service tier required by paragraph (2) as a condition of access to video programming offered on a per channel or per program basis. A cable operator may not discriminate between subscribers to the basic service tier and other subscribers with regard to the rates charged for video programming offered on a per channel or per program basis.

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

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

(ii) 5 years after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, subject to subparagraph (C).

(C) STUDY; EXTENSION OF LIMITATION.—(i) The Commission shall, within 4 years after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, initiate a proceeding to consider (I) the benefits to consumers of subparagraph (A), (II) whether the cable operators or consumers are being forced (or would be forced) to incur unreasonable costs for complying with subparagraph (A), and (III) the effect of subparagraph (A) on the provision of diverse programming sources to cable subscribers.

(ii) If, in the proceeding required by clause (i), the Commission determines that subparagraph (A) imposes unreasonable costs on cable operators or cable subscribers, the Commission may extend the 5-year period provided in subparagraph (B)(ii) for 2 additional years.

(4) NOTICE OF FEES, TAXES, AND OTHER CHARGES.—Each cable operator may identify, in accordance with the formulas required by clauses (vi) and (vii) of paragraph (1)(A), as a separate line item on each regular bill of each subscriber, each of the following:

(A) the amount of the total bill assessed as a franchise fee and the identity of the authority to which the fee is paid;

(B) the amount of the total bill assessed to satisfy any requirements imposed on the operator by the franchise agreement to support public, educational, or governmental channels or the use of such channels; and

(C) any other fee, tax, assessment, or charge of any kind imposed on the transaction between the operator and the subscriber.

(c) REGULATION OF UNREASONABLE RATES.—

(1) COMMISSION REGULATIONS.—Within 180 days after the date of enactment of the Cable Television Consumer Protection

and Competition Act of 1992, the Commission shall, by regulation, establish the following:

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

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

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

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

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

(B) the rates for comparable cable systems, if any, that are subject to effective competition and that offer comparable services, taking into account, among other factors, similarities in facilities, the number of cable channels, the number of cable subscribers, and local conditions;

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

(D) the rates, as a whole, for all the cable programming, equipment, and services provided by the system;

(E) capital and operating costs of the cable system, including costs of obtaining video signals and services;

(F) the quality and costs of the customer service provided by the cable system; and

(G) the revenues (if any) received by a cable operator from advertising from programming that is carried as part of the service for which a rate is being established, and changes in such revenues.

(3) LIMITATION ON COMPLAINTS CONCERNING EXISTING RATES.—On and after 180 days after the effective date of the regulations prescribed by the Commission under paragraph (1), the procedures established under subparagraph (B) of such paragraph shall be available only with respect to complaints filed within a reasonable period of time following a change in rates that is initiated after that effective date.

(d) REGULATION OF PAY-PER-VIEW CHARGES FOR CHAMPIONSHIP SPORTING EVENTS.—A State or franchising authority may, without regard to the regulations prescribed by the Commission under subsections (b) and (c), regulate any per-program rates charged by a cable operator for any video programming that consists of the national championship game or games between professional teams in baseball, basketball, football, or hockey.

(e) DISCRIMINATION; SERVICES FOR THE HEARING IMPAIRED.—Nothing in this title shall be construed as prohibiting any Federal agency, State, or a franchising authority from—

(1) prohibiting discrimination among customers of basic service, except that no Federal agency, State, or franchising authority may prohibit a cable operator from offering reasonable discounts to senior citizens or other economically disadvantaged group discounts; or

(2) requiring and regulating the installation or rental of equipment which facilitates the reception of basic cable service by hearing impaired individuals.

(f) NEGATIVE OPTION BILLING PROHIBITED.—A cable operator shall not charge a subscriber for any individually-priced channel of video programming or for any pay-per-view video programming that the subscriber has not affirmatively requested. For purposes of this subsection, a subscriber's failure to refuse a cable operator's proposal to provide such channel or programming shall not be deemed to be an affirmative request for such programming.

(g) REVIEW OF FINANCIAL INFORMATION.—

(1) COLLECTION OF INFORMATION.—The Commission shall, by regulation, require cable operators to file, within 60 days after the effective date of the regulations prescribed under subsection (c)(1) and annually thereafter, such financial information as may be needed for purposes of administering and enforcing this section.

(2) CONGRESSIONAL REPORT.—The Commission shall submit to each House of the Congress, by January 1, 1994, a report on the financial condition, profitability, rates, and performance of the cable industry. Such report shall include such recommendations as the Commission considers appropriate in light of such information. Such report also shall address the availability of discounts for senior citizens and other economically disadvantaged groups.

(h) PREVENTION OF EVASIONS.—Within 120 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission shall, by regulation, establish standards, guidelines, and procedures to prevent evasions of the rates, services, and other requirements of this section and shall, thereafter, periodically review and revise such standards, guidelines, and procedures.

(i) SMALL SYSTEM BURDENS.—In developing and prescribing regulations pursuant to this section, the Commission shall design such regulations to reduce the administrative burdens and cost of compliance for cable systems that have 500 or fewer subscribers.

(j) RATE REGULATION AGREEMENTS.—The provisions of this section (and the regulations thereunder) shall not apply to a cable system during the term of an agreement by a cable operator with a fran-

chising authority that was entered into before July 1, 1990, and that authorizes the franchising authority to regulate the rates of such cable system for basic cable service, if such system was not subject to effective competition pursuant to the rules of the Commission in effect on July 1, 1990.

(k) REPORTS ON AVERAGE PRICES.—The Commission shall publish quarterly statistical reports on the average rates for basic service and other cable programming, and for converter boxes, remote control units, and other equipment, of—

(1) cable systems that the Commission has found are subject to effective competition under subsection (a)(2), compared with

(2) cable systems that the Commission has found are not subject to such effective competition.

(l) DEFINITIONS.—As used in this section—

(1) The term "effective competition" means that—

(A) fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system;

(B) the franchise area is—

(i) served by at least two unaffiliated multichannel video programming distributors each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and

(ii) the number of households subscribing to programming services offered by multichannel video programming distributors other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area; or

(C) a multichannel video programming distributor operated by the franchising authority for that franchise area offers video programming to at least 50 percent of the households in that franchise area.

(2) The term "cable programming service" means any video programming provided over a cable system, regardless of service tier, other than (A) video programming carried on the basic service tier, and (B) video programming offered on a per channel or per program basis.

REGULATION OF SERVICES, FACILITIES, AND EQUIPMENT

SEC. 624. (a) * * *

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

(1) in its request for proposals for a franchise (including requests for renewal proposals, subject to section 626), may establish requirements for facilities and equipment, but may not, *except as provided in subsection (h),* establish requirements for video programming or other information services; and

* * * * * * *

[(e) The Commission may establish technical standards relating to the facilities and equipment of cable systems which a franchising authority may require in the franchise.]

(e) Within one year after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Com-

mission shall prescribe regulations which establish minimum technical standards relating to cable systems' technical operation and signal quality. The Commission shall update such standards periodically to reflect improvements in technology. A franchising authority may require as part of a franchise (including a modification, renewal, or transfer thereof) provisions for the enforcement of the standards prescribed under this subsection. A franchising authority may apply to the Commission for a waiver to impose standards that are more stringent than the standards prescribed by the Commission under this subsection.

* * * * * * *

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

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

(1) to provide 30 days advance written notice of any change in channel assignment or in the video programming service provided over any such channel;

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

(i) Within 120 days after the date of enactment of this subsection, the Commission shall prescribe rules concerning the disposition, after a subscriber to a cable system terminates service, of any cable installed by the cable operator within the premises of such subscriber.

SEC. 624A. CONSUMER ELECTRONICS EQUIPMENT COMPATIBILITY.

(a) FINDINGS.—The Congress finds that—

(1) new and recent models of television receivers and video cassette recorders often contain premium features and functions that are disabled or inhibited because of cable scrambling, encoding, or encryption technologies and devices, including converter boxes and remote control devices required by cable operators to receive programming;

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

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

(b) COMPATIBLE INTERFACES.—Within 1 year after the date of enactment of this section, the Commission, in consultation with representatives of the cable industry and the consumer electronics industry, shall report to the Congress on means of assuring compatibility between televisions and video cassette recorders and cable systems, consistent with the need to prevent theft of cable service, so that

cable subscribers will be able to enjoy the full benefit of both the programming available on cable systems and the functions available on their televisions and video cassette recorders. The Commission shall issue such regulations as may be necessary to require the use of interfaces that assure such compatibility.

(c) Rulemaking Required.—

(1) In general.—Within 1 year after the date of submission of the report required by subsection (b), the Commission shall prescribe such regulations as are necessary to increase compatibility between television receivers equipped with premium functions and features, video cassette recorders, and cable systems.

(2) Factors to be considered.—In prescribing the regulations required by this subsection, the Commission shall consider—

(A) the costs and benefits of requiring cable operators to adhere to technical standards for scrambling or encryption of video programming in a manner that will minimize interference with or nullification of the special functions of subscribers' television receivers or video cassette recorders, while providing effective protection against theft or unauthorized reception of cable service, including functions that permit the subscriber—

(i) to watch a program on 1 channel while simultaneously using a video cassette recorder to tape a program on another channel;

(ii) to use a video cassette recorder to tape 2 consecutive programs that appear on different channels; or

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

(B) the potential for achieving economies of scale by requiring manufacturers of television receivers to incorporate technologies to achieve such compatibility in all television receivers;

(C) the costs and benefits to consumers of imposing compatibility requirements on cable operators and television manufacturers; and

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

(3) Regulations required.—The regulations prescribed by the Commission under this section shall include such regulations as are necessary—

(A) to establish the technical requirements that permit a television receiver or video cassette recorder to be sold as "cable ready";

(B) to establish procedures by which manufacturers may certify television receivers that comply with the technical requirements established under subparagraph (A) of this paragraph in a manner that, at the point of sale is easily understood by potential purchasers of such receivers;

(C) provide appropriate penalties for willful misrepresentations concerning such certifications;

(D) to promote the commercial availability, from cable operators and retail vendors that are not affiliated with

cable systems, of converters and of remote control devices compatible with converters;

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

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

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

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

(d) REVIEW OF REGULATIONS.—The Commission shall periodically review and, if necessary, modify the regulations issued pursuant to this section in light of any actions taken in response to regulations issued under subsection (c) and to reflect improvements and changes in cable systems, television receivers, video cassette recorders, and similar technology.

(e) FEASIBILITY AND COST.—The Commission shall adopt standards under this section that are technologically and economically feasible. In determining the feasibility of such standards, the Commission shall take into account the cost and benefit to cable subscribers and purchasers of television receivers of such standards.

* * * * * * *

PART IV—MISCELLANEOUS PROVISIONS

PROTECTION OF SUBSCRIBER PRIVACY

SEC. 631. (a)(1) * * *

[(2) For purposes of this section, the term "personally identifiable information" does not include any record of aggregate data which does not identify particular persons.]

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

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

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

(C) the term "cable operator" includes, in addition to persons within the definition of cable operator in section 602, any person who (i) is owned or controlled by, or under common ownership or control with, a cable operator, and (ii) provides any wire or radio communications service.

* * * * * * *

[CONSUMER PROTECTION

[Sec. 632. (a) A franchising authority may require, as part of a franchise (including a franchise renewal, subject to section 626), provisions for enforcement of—

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

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

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

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

SEC. 632. CONSUMER PROTECTION AND CUSTOMER SERVICE.

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

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

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

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

(1) cable system office hours and telephone availability;

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

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

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

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

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

UNAUTHORIZED RECEPTION OF CABLE SERVICE

SEC. 633. (a) * * *

(b)(1) * * *

(2) Any person who violates subsection (a)(1) willfully and for purposes of commercial advantage or private financial gain shall be fined not more than [$25,000] *$50,000* or imprisoned for not more than [1 year] *2 years*, or both, for the first such offense and shall be fined not more than [$50,000] *$100,000* or imprisoned for not more than [2 years] *5 years*, or both, for any subsequent offense.

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

* * * * * * *

EQUAL EMPLOYMENT OPPORTUNITY

SEC. 634. (a) * * *

* * * * * * *

[(d)(1) Not later than 270 days after the effective date of this section, and after notice and opportunity for hearing, the Commission shall prescribe rules to carry out this section.]

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

* * * * * * *

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

[(A) officials and managers;
[(B) professionals;
[(C) technicians;
[(D) sales persons;
[(E) office and clerical personnel;
[(F) skilled craft persons;
[(G) semiskilled operatives;
[(H) unskilled laborers; and
[(I) service workers.

The report shall include the number of minorities and women in the relevant labor market for each of the above categories. The statistical report shall be available to the public at the central office and at every location where more than 5 full-time employees are regularly assigned to work.]

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

title the number of employees in each of the following full-time and part-time job categories:

(i) Corporate officers.

(ii) General Manager.

(iii) Chief Technician.

(iv) Comptroller.

(v) General Sales Manager.

(vi) Production Manager.

(vii) Managers.

(viii) Professionals.

(ix) Technicians.

(x) Sales.

(xi) Office and Clerical.

(xii) Skilled Craftspersons.

(xiii) Semiskilled Operatives.

(xiv) Unskilled Laborers.

(xv) Service Workers.

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

* * * * * * *

(f)(1) * * *

(2) Any person who is determined by the Commission, through an investigation pursuant to subsection (e) or otherwise, to have failed to meet or failed to make best efforts to meet the requirements of this section, or rules under this section, shall be liable to the United States for a forefeiture penalty of [$200] *$500* for each violation. Each day of a continuing violation shall constitute a separate offense. Any entity defined in subsection (a) shall not be liable for more than 180 days of forfeitures which accrued prior to notification by the Commission of a potential violation. Nothing in this paragraph shall limit the forfeiture imposed on any person as a result of any violation that continues subsequent to such notifica-

tion. In addition, any person liable for such penalty may also have any license under this Act for cable auxiliary relay service suspended until the Commission determines that the failure involved has been corrected. Whoever knowingly makes any false statement or submits documentation which he knows to be false, pursuant to an application for certification under this section shall be in violation of this section.

* * * * * * *

(h)(1) For purposes of this section, the term "cable operator" includes any operator of any satellite master antenna television system, including a system described in section 602(6)(A) *and any multichannel video programming distributor.*

* * * * * * *

ADDITIONAL VIEWS OF MESSRS. TAUZIN, HARRIS, COOPER, SYNAR, ECKART, BRUCE, SLATTERY, BOUCHER, HALL, HOLLOWAY, UPTON, AND HASTERT

We are very concerned about H.R 4850, as reported by the full Committee, omitted the provision included in the Subcommittee mark on access to programming for alternative multichannel video program distribution.

The bill reported by the Subcommittee, as well as the Senate version of the bill (S.12), contained access to programming provisions. This approach to promoting competition was supported by a majority of the members of the Telecommunications and Fiance Subcommittee. Prior to full Committee consideration of H.R. 4850, however, the access to programming provisions were deliberately removed by the Committee in order to avoid a potentially time consuming referral process. While we understand the full Committee chairman's efforts to expedite the progress of H.R. 4850 to the House floor and to conference, we believe that the record must reflect our endorsement of strong access to programming provisions as part of any cable legislation approved by this Congress. Although the substitute offered by Rep. Lent did contain an access to programming provisions, we feel the approach taken in that amendment was inadequate to create a truly competitive multichannel video programming distribution market.

Enactment of a strong access to programming provision is critical to providing competition in the video distribution industry. Real competition to cable can be achieved only through the creation of the proverbial "level playing field." This principle has already been well established through both FCC and Congressional policy which specifically encourages the development of emerging technologies in order to achieve competition in the local television market place. The challenge of these new multichannel video distribution technologies therefore is to acquire programming substantial enough to attract a viable subscriber base and so promote competition. However, much of that programming is available only from the regional monopoly which happens to be the competition—i.e., cable. There appears to us to be a basic inequity when an emerging technology is forced to buy its programming from an owner who is simultaneously an entrenched video distributor, hardly a set of circumstances designed to induce a competitive environment.

Our view is further bolstered by the Federal Communications Commission's July, 1990 Cable Report to the Congress, in which the Commission stated:

"Indeed, if provided reasonable access to programming services, wireless cable, second competitive cable systems and SMATV operators have the potential to provide significant competition to cable. In addition, DBS has the potential * * * to become a strong competitor by the mid 1990's if * * * DBS can obtain reasonable access to programming." (Emphasis added.)

The access to programming language is the only truly competitive portion of the cable bill. Effective competition is the key to lower rates and better service for consumers in the multichannel video distribution market place. Also, with access to programming, alternative multichannel video program distributors will be able to serve areas that are not currently served by cable, bringing new video services to millions of Americans, especially those living in rural America.

We hope that the House will follow the will of the majority of the Telecommunications Subcommittee members in ensuring that strong access to programming provisions are included in the final product.

BILL TAUZIN.
JIM COOPER.
CLAUDE HARRIS.
MIKE SYNAR.
DENNIS ECKART.
TERRY BRUCE.
JIM SLATTERY.
RICK BOUCHER.
RALPH HALL.
CLYDE HOLLOWAY.
FRED UPTON.
DENNIS HASTERT.

ADDITIONAL VIEW OF THOMAS J. MANTON

I believe that H.R. 4850, as reported by the Energy and Commerce Committee, represents a significant improvement over the version of the bill reported by the Telecommunications and Finance Subcommittee. I am particularly pleased that changes have been made in the so-called "anti-buy through" and "equipment compatibility" provisions of bill—two provisions that could substantially add to the consumer cost of cable service.

While the changes to these provisions do not necessarily go as far as I would have like, they represent an improvement over the language originally reported by the Telecommunications and Finance Subcommittee. I urge the FCC, in implementing these provisions, to take steps to minimize the costs of compliance.

I also am pleased that the bill as reported does not contain the overly-broad forced access to programming provision reported by the subcommittee. The proponents of program access contend that legislation addressing this issue is necessary to ensure the ability of new technologies to compete with cable. However, the particular provisions put forward by the supporters of program access go well beyond what is necessary to protect against anti-competitive behavior and would unnecessarily trample on the property rights of cable networks.

H.R. 5267, which passed the House last Congress, contained a strong, yet reasonable, program access provision to prohibit vertically integrated program suppliers from unreasonably refusing to deal with any multichannel video system operator. The bill expressly permitted exclusive arrangements between a programmer and an operator where such arrangements did not have the effect of significantly impeding competition.

The program access language reported by the subcommittee would have gone much further, requiring vertically integrated program suppliers to sell their product to all comers under the same price, terms, and conditions (subject to a few narrowly limited cost-based exceptions). Furthermore, it would have expressly prohibited exclusive contractual arrangements.

While H.R. 4850 as reported by the Energy and Commerce Committee does not contain any program access provision, I am cognizant of the fact that an effort may be made to add the provision reported by the subcommittee (or a similar provision) to the bill on the floor of the House. I will strongly oppose any such effort.

Contrary to the arguments of the proponents of the program access provision reported by the subcommittee, cable's competitors are not being denied access to popular cable programming. Indeed, witnesses testifying before the subcommittee acknowledged that all of the popular cable networks, except Turner Network Television, are available to all of cable's competitors. (The subcommittee bill would have exempted existing exclusive agreements involving TNT.)

This debate is not about access, it is about wholesale pricing. Cable's competitors want programming at wholesale prices set by government.

There is no reason for the government to go beyond existing anti-trust laws to prevent anti-competitive actions. The testimony received by the subcommittee revealed that cable's competitors, because of their lower capital costs, currently are offering service at retail prices that are comparable or even lower than the prices charged by cable, notwithstanding higher wholesale programming costs. In other words, cable's competitors already have access to cable programming at wholesale prices that permit them to compete profitably at the retail level. Under these circumstances, there is no justification for government intervention to set wholesale prices for cable programming.

Furthermore, there is no justification for Congress to single out the cable industry by barring exclusive arrangements that do not significantly impede competition. Other creators and owners of intellectual property have the right to control the distribution of their product. The recognition of exclusive rights gives programmers and cable operators an incentive to invest in new and improved programming, thereby increasing program quality and diversity. Barring exclusive arrangements would have a chilling effect on the development of new products. Why spend the money to develop and market a new product if you are forced to hand that product over to all comers at a government regulated price?

In summary, the type of program access legislation reported by the subcommittee is unwarranted and unfair. As long as a cable programmer is not engaging in practices which impede competition, that programmer should be left free to realize the benefits of his or her investment without government intervening to dictate the profit margin of either the programmer or the distributors.

THOMAS J. MANTON.

ADDITIONAL VIEWS OF MESSRS. ECKART, LEHMAN, TAUZIN, LENT, FIELDS, McMILLAN (NC), AND HOLLOWAY

We are concerned that H.R. 4850, as reported by the full committee, omitted the provision included in the subcommittee mark amending section 325 of the Communications Act (47 U.S.C. § 325) to establish the right of broadcast stations to control the use of their signals by cable systems and other multichannel video programming distributors.

This provision, as contained in the subcommittee bill, enjoyed the strong support of members of the Telecommunications subcommittee. Prior to full committee consideration of H.R. 4850, however, the retransmission consent provision was deliberately removed by the committee in order avoid a potentially time consuming referral to the House committee on the Judiciary. While we support the full committee chair in his effort to expedite the movement of H.R. 4850 to the House floor and to conference, we believe that the record must reflect our endorsement of retransmission consent as part of any cable legislation approved by this Congress.

ORIGINAL INTENT OF THE 1927 RADIO ACT

We believe, based on the legislative history of section 325 and the equivalent provision in the Radio Act of 1927, that Congress' intent was to allow broadcasters to control the use of their signals by anyone engaged in retransmission by whatever means. Indeed, in discussing what became section 325 during the debates on the Radio Act, Senator Dill made specific reference to the use of broadcast signals by the "wired wireless," which appears to have been a reference to an early form of cable transmission of radio signals.

Nevertheless, the FCC in 1959 ruled that cable systems need not obtain consent from broadcast stations for retransmission of their signals, based on the reference in section 325 to retransmission by broadcasting stations. CATV and TV Repeater Services, 26 FCC 403, 429–30 (1959). At a time when cable systems had few channels and were limited to an antenna function of improving reception of nearby broadcast signals, this interpretation had few practical consequences and did not unreasonably disrupt the rights broadcasters possess in their signals.

That situation, however, has changed dramatically. Cable systems now transmit not only local signals, but also distant broadcast signals and the programming of cable networks and premium services. Cable systems compete with broadcasters for national and local advertising revenues. Broadcast signals, particularly local broadcast signals, remain the most popular programming carried on cable systems, representing roughly two thirds of the viewing time on the average cable system. It follows logically, therefore, that a very substantial portion of the fees which consumers pay to cable systems is attributable to the value they receive from watching broadcast signals. due to the FCC's interpretation of section 325, however, cable systems use these signals without having to seek the permission of the originating broadcaster or having to compensate the broadcaster for the value its product creates for the cable operator.

MARKETPLACE INEQUITIES

We are concerned that this exception to section 325 for cable retransmissions has created a distortion in the video marketplace which threatens the future of over-the-air broadcasting. Using the revenues they obtain from carrying broadcast signals, cable systems have been able to support the creation of cable services which compete with broadcast stations and networks for programming and audiences. Cable systems and cable programming services sell advertising on these channels in competition with broadcasters. While the creation of additional program services advances the public interest, we do not believe that public policy should support a system under which broadcasters in effect subsidize their chief competitors.

Cable television is now an established service and cable operators pay for the cable programming services they offer to their customers. We believe that programming services which originate on a broadcast channel should not be treated differently. It is true that broadcasters also benefit from being carried on cable systems, and many broadcasters may determine that the benefits of carriage are themselves sufficient compensation for the use of their signal by a cable system. Other broadcasters may not seek monetary compensation, but instead may negotiate on other issues with cable systems, such as joint marketing efforts, the opportunity to provide news inserts on cable channels, or the right to program an additional channel on a cable system. The intent of this provision is to establish a marketplace for the disposition of the rights to retransmit broadcast signals, not to dictate the outcome of the ensuing marketplace negotiations.

CONCLUSION

The retransmission consent provision contained in the subcommittee version of H.R. 4850, therefore, merely closes a gap in the interpretation of the existing retransmission consent provision of the Communications Act. It would restore to over-the-air broadcasters control over their signals, which are their only product. In so doing, the provision carefully preserves the existing copyright structure for cable retransmission of programming carried on broadcast stations, leaving the cable compulsory license entirely intact.

We hope that when cable legislation is approved by the House of Representatives, its final form will mirror the strong support of the Telecommunications subcommittee members for retransmission consent, an original component of H.R. 4850.

DENNIS E. ECKART.
BILLY TAUZIN.
ALEX MCMILLIAN.
JACK FIELDS.
CLYDE C. HOLLOWAY.
NORMAN F. LENT.
RICHARD LEHMAN.

ADDITIONAL VIEWS OF MESSRS. RITTER, TAUZIN, SLATTERY, KOSTMAYER, OXLEY, AND FIELDS

Even before television was said to be a "vast wasteland", its commercial side was always considered to be a vice necessary to bring Americans the benefits of free television. The "vice" was never intended to overtake the "benefit". Yet despite this historic antipathy to over commercialization of the air waves. both the full Energy and Commerce Committee and the Telecommunications and Finance Subcommittee were faced during the consideration of this legislation squarely with the issue of whether the proliferating use of local broadcast stations for the continuous transmission of home shopping programming, long-form commercials, infomercials and sales presentations warranted the imposition of must-carry obligations on cable systems. The issue was focused before the committee by the attempts of a particular shopping network to gain the benefits of must carry for its owned and affiliated stations which broadcast program schedules dominated by commercial sale pitches.

The subcommittee addressed the issue by adopting an amendment offered by Mr. Ritter, which would permit a cable system the discretion to carry—or not to carry—any station that predominantly broadcast sales presentations or program-length commercials. The amendment was approved by voice vote after vigorous debate. The subcommittee also rejected by voice vote an amendment that would have delegated the issue to the FCC for resolution. The full committee, by a 28–15 margin, voted against an amendment that would have, in practice, vitiated the language of the Ritter amendment.

The decisions by both the subcommittee and full committee were supported by substantial policy considerations to preserve the status quo and not allow stations predominantly transmitting home shopping and infomercials to enjoy the same benefits of must-carry given to regular over-the-air broadcast stations.

It is the committee's belief that cable operators should be told by their subscribers—and not by the Congress—which stations and services should be carried over their systems, absent a substantial governmental interest. That interest—promoting the distribution and programming that directly address the needs and interests of the local community to which a broadcast station is licensed—justifies the requirement that cable operators carry local stations operating in their community. It did not justify requiring cable systems to carry stations transmitting the home shopping format for the vast majority of the broadcast day. These stations are merely retransmitting a signal received through a national satellite feed with an insubstantial number of public affairs announcements spliced in. There is little or no programming of substance that can even remotely be said to respond to the needs and interests of the community of license.

Cable television, by virtue of its multi-channel capacity, has the capability to transmit numerous niche market and narrowcasting formats. It is the appropriate mode of program delivery for home shopping services and infomercials. Currently, providers of home shopping programming and infomercials must compete in the marketplace for carriage on cable systems. The cable systems, based upon subscriber preference, choose to carry one or more of these services on a full-time or part-time basis. More importantly, the cable system can choose not to carry these services at all—and that decision should continue to rest with the cable operator and not the Congress.

We note as well that cable operators are vested with certain First Amendment rights with which the Congress should not tamper. The must carry provisions of the bill can in our view be justified because the government has an interest in promoting localism in program distribution. Cable systems may therefore be required to carry stations which, again, serve the needs and interests of the local community of license. But this rationale is of no use in justifying forced cable carriage of home shopping stations which is provided through a national satellite feed.

It is true that the stations broadcasting home shopping programming also have First Amendment rights. These stations, however, are engaged predominantly in purely commercial speech and the Supreme Court has repeatedly upheld the ability of the Congress to make reasonable regulations governing this type of speech. We believe that it would do violence to the Constitution were we to subjugate the first amendment rights of the cable system and the consumers they serve to the lower commercial free speech rights of home shopping stations.

Throughout this debate, a particular shopping network—the first and largest home shopping company in the country—claimed that it needed must-carry for its stations to overcome the alleged discrimination by cable operators in favor of a smaller rival network in which certain cable operators had an interest. While vertical integration of cable systems has led to a diversity of program offerings which had previously been unknown, we cannot countenance discriminatory practices by cable systems in favor of program suppliers in which the cable company has an interest.

Section 11 of this legislation adds new Section 616 to the Communications Act of 1934 to prohibit just this type of discrimination by vertically integrated cable systems and provides an appropriate and adequate remedy. The full committee rejected must carry as a remedy to speculative allegations of program discrimination because, in its view, the must carry remedy would not properly address the alleged discrimination—it would provide a back door entrance into the basic tier for home shopping stations. This would not only endanger the constitutionality of the bill's must carry provisions, it would unwisely provide an incentive for home shopping programmers to purchase television stations to force basic tier entry on cable systems. In view of the FCC's recent decision to consider expanding its current station ownership limitations, we believe that providing home shopping programmers with this incentive would be unwise public policy and contrary to the public interest standard under which we have regulated television from its start.

The committee's concern over providing any incentive for the conversion of television stations to home shopping formats is more than justified by the pattern of dealings between a particular shopping network which already controls a full compliment of television stations, and certain minority owned television affiliates.

Generally, this shopping network has either made a large loan to, or taken a substantial equity position in, these minority controlled stations in exchange for an affiliation agreement which, in essence, requires the licensee to convert its station into a relay for the shopping network's programming. Licensees also typically receive a large consulting contract or salary. Should the licensee wish to preempt this shopping network's programming for a prolonged period of time, it risks a breach of the network affiliation agreement. Typically, a breach of the network affiliation agreement is a specifically enumerated event of default under the loan documents. As a result, these minority broadcasters must either be captives to this shopping network's programming or risk bankruptcy.

The FCC's scheme of minority preferences was created to provide ownership, employment and programming opportunities to minorities in the hope that they would address the particular needs and interests of their discrete communities. The conversion of these stations to home shopping formats makes a mockery of that policy. Minority preferences are ultimately of value because they benefit the community, not because they benefit a lone entrepreneur.

For the record, we enclose an insightful letter submitted to the Chairman by Representatives Epsy and Bustamante which provides a thorough discussion of this issue. Similarly, we also attach for the record a letter expressing the view of the majority in support of the Ritter Amendment.

For all of these reasons, we have declined to further promote the over commercialization of the airwaves by making the must carry provisions of this legislation applicable to home shopping stations. We support the language of the original Ritter Amendment.

DON RITTER.
BILLY TAUZIN.
JIM SLATTERY.
PETER KOSTMAYER.
MICHAEL OXLEY.
JACK FIELDS.

HOUSE OF REPRESENTATIVES,
Washington, DC, June 15, 1992.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce,
Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: A highly questionable use of the minority broadcast licensing program at the Federal Communications Commission is occurring, and that very practice is now being used by the Home Shopping Network (HSN), a non-minority corporation, and its team of lobbying firms before Congress in an attempt to carve out special legislative treatment for itself.

The minority licensing program at the FCC exists for the purpose of providing minority opportunity, minority employment, minority-oriented formats and service to the minority population in the community of license. Unfortunately, the Home Shopping Network using this program to capture minority stations and turn them into mere relay stations of HSN's national satellite feed of non-minority home shopping sales presentations and commercials. They achieve this through the use of multi-million dollar loans and payments to applicants and licensees of the minority licensing program. Just last week, the FCC reaffirmed its decision to award a minority license in which HSN, through a $4.5 million loan, can become a 45% owner in a station within 18 months.

HSN is now attempting to use this highly questionable regulatory practice as justification for reversing House Telecommunications and Finance Subcommittee language included in H.R. 4850 which properly states that Congress should neither require nor prohibit cable carriage of home shopping stations or services. HSN seems to want the Congress to believe that a public service is performed when a minority license is lent or paid millions of dollars to walk away from both general and minority broadcasting responsibilities and opportunities, nd instead become a relay for home shopping. These stations have virtually no localism, no diversity, no local public affairs, no local news, no minority programming, and no specific service to the minority community other than helping a single minority licensee to become wealthy.

The attached HSN proxy statement of November 29, 1990 details how one such licensee received a $3.8 million loan and $1.6 million per year under a seven year affiliation agreement to essentially abandon broadcasting and simply retransmit the HSN national satellite feed. With the ability to sell out to HSN so readily available, the motivation for a licensee to struggle to program for and serve the minority community is dampened if not eliminated. Moreover, with the restrictions that may be a part of loan, affiliation, or side agreements, even a well-meaning minority broadcaster might be unable to break loose from an agreement with HSN. For example, if the HSN minority affiliate referenced above chooses to drop HSN and run minority-oriented programming, what happens to the $3.8 million loan and $1.6 million annual payments?

Mr. Chairman, the Home Shopping Network should not be able to use the FCC's minority licensing program as its private stockpile of affiliates. The very existence of the programming along with the future of those who have properly participated is threatened. Quite frankly, the HSN format of 55½ minutes of sales and 4½ minutes of taped programming is contrary to the purpose for which broadcast licenses of any kind are supposed to be granted. It would be unconstitutional to provide such protection to HSN's commercial speech over the non-commercial speech rights of consumers and cable operators.

Most certainly, home shopping broadcast stations should not be given the special Congressional privilege of "Must carry." If minority needs are to be considered for mandatory cable carriage, such cable services as Black Entertainment Television and the many foreign language services are far more deserving than non-minority home shopping. These minority services should not be told by Congress to take a back seat to HSN.

Sincerely,

ALBERT G. BUSTAMANTE.
MIKE ESPY.

HOME SHOPPING NETWORK,
November 29, 1990.

DEAR STOCKHOLDER: You are cordially invited to attend the annual meeting of stockholders of Home Shopping Network, Inc. (the "Company") to be held at The Grand Hotel, 2350 M Street, N.W., Washington, D.C. on Tuesday, January 15, 1991 at 2:00 p.m. Eastern Standard Time.

Matters to be considered and acted upon at the annual meeting include: (1) the election of directors; (ii) the appointment of independent auditors; and (iii) such other matters as may properly come before the meeting.

Information concerning the matters to be considered and voted upon at the annual meeting is set forth in the attached Notice of Annual Meeting of Stockholders and Proxy Statement. We encourage you to review the attached material carefully and sign, date and return the proxy card in the enclosed self-addressed envelope.

Sincerely,

ROY M. SPEER,
Chairman of the Board and Chief Executive Officer.

[EXCERPT FROM PROXY STATEMENT]

On April 21, 1989, the Company loaned Roberts Broadcasting Company, Inc. ("Roberts") approximately $3.8 million for the purchase and construction of television broadcast station WHSL serving the St. Louis metropolitan area. Under the terms of the note, the Company receives payments of 12.8% interest annually from January 1990 through March 1991, and payments of principal and interest annually at 12.8% from April 1991 through March 1998. The Company also provides other types of support through its standard broadcast affiliation agreement with station WHSL, which pays Roberts approximately $1.6 million per year, through the 7-year term of their affiliation agreement. The Company is a nonvoting common stockholder in Roberts. Michael V. Roberts, a Company Director is a significant owner of Roberts.

HOUSE OF REPRESENTATIVES,
Washington, DC, March 23, 1992.

Hon. EDWARD J. MARKEY,
Chairman, Subcommittee on Telecommunications and Finance, Ford House Office Building.

DEAR MR. CHAIRMAN: As you know, there has been a great deal of media and public attention paid to the effort on the part of some engaged in televised home shopping and infomercials to not only use local broadcast licenses to deliver their national statellite sales presentations, but to seek special treatment of these stations from Congress and the Federal Communications Commission.

As you prepare your draft of cable legislation, we urge you to make certain that the concept of broadcasters and cable systems serving their local communities not be denigrated by granting "must carry" status to these home shopping and infomercial stations. Instead, the draft should squarely address this issue by including the following straightforward language already included in H.R. 3380, the Eckart/Fields retransmission consent/"must carry" legislation: "Nothing in this Act shall require a cable operator to carry on any tier, or prohibit a cable operator from carrying on any tier, the signal of any commercial television station or video programming service that is predominantly utilized for the transmission of sales presentations or program-length commercials."

A local broadcast license is a precious public trust which carries with it very significant obligations on the part of each licensee to fully serve the local community's needs in the areas of local news, local public affairs, issues of interest, diversity, etc. Localism and diversity are the backbone of the "must carry" concept, yet these home shopping stations provide virtually nothing but non-stop commercials or sales presentations.

Despite repeated bipartisan concern expressed by Congress, the FCC continues to grant and renew local broadcast licenses for national home shopping, and has functionally exempted these home shopping stations from the commercial limits of the Children's Television Act of 1990, prime time access rules, and adherence to the public interest standard. These stations also sought an exemption from the minimum viewing standards contained in the 1990 cable bill and H.R. 1303, by claiming entitlements to the same treatment afforded to minority and foreign language stations. It would be inconsistent and an embarrassment to this Subcommittee and the full Committee's prior actions to bestow an even higher level of privilege and protection on home shopping stations by mandating that local cable operators carry a national satellite signal of home shopping regardless of whether or not consumers want the service. Such a policy would create Congressionally mandated proliferation of over-commercialization of the local airwaves, along with a barrier to entry and to competition in this field. Those desiring entry would be required to purchase and affiliate with local broadcast stations throughout the country in order to gain access to cable systems.

Mr. Chairman, there are clearly many longstanding policy issues, such as retransmission consent, program access, and rate regulation, which will be debated and resolved as we consider cable legislation. This narrow issue of "must carry" for home shopping cuts across all lines and goes to preserving the integrity of what Congress has done in telecommunications policy since the 1920's.

It would be wrong to abandon longstanding principles of telecommunications policy by creating a special Congressional mandate which gives national home shopping and infomercials a higher level of federal privilege and protection than that afforded C-SPAN, CNN, Black Entertainment Television, truly local low power television stations and cable programming for children, minorities, and senior citizens. We urge you to include the above language in the draft so that we can avoid the high profile problems experienced in 1990 on this issue.

Sincerely,

BILLY TAUZIN.
JOHN BRYANT.
JIM COOPER.
JACK FIELDS.
RALPH M. HALL.
HENRY A. WAXMAN.
TOM MCMILLEN.
RON WYDEN.
PETER H. KOSTMAYER.
DENNIS E. ECKART.
DON RITTER.
JIM SLATTERY.
CLAUDE HARRIS.
JOE BARTON.
MICHAEL G. OXLEY.
DAN SCHAEFER.

ADDITIONAL VIEWS OF MESSRS. NORMAN F. LENT, CARLOS J. MOORHEAD, MATTHEW J. RINALDO, AND MICHAEL BILIRAKIS

We oppose the provision contained in Section 5 of H.R. 4850 as reported which carves out an exception to the must carry requirements of that section by permitting a cable operator to refuse to carry the signal of broadcast shopping stations on its cable system. This provision is contrary to the intent of the Section 5 must carry scheme.

The Section 5 must carry provisions were carefully drafted to be content neutral. This was done specifically to ensure that must carry will provide access to the cable system to all legitimate FCC-licensed stations within their Area of Dominant Influence (ADI). However, during the Subcommittee's consideration of the bill, a provision was adopted which would permit a cable operator to refuse carriage of a commercial television station that is predominantly utilized for the transmission of sales presentations or program length commercials. We believe the singling out of one type of station for denial of must carry status solely on the basis of content attacks the integrity of the entire must carry scheme, is unconstitutional, and amounts to nothing more than economic discrimination.

This provision would permit exclusion from must carry status of local broadcast stations licensed by the FCC solely on the basis of the content of their speech. In so doing, the provision places Congress in the role of evaluating which television format is more legitimate than another. First Amendment considerations clearly preclude Congress from dictating the content of the programs of broadcast licensees. By making a subjective judgment that the must carry requirements of this bill extend to certain kinds of programming content and not to others, this Committee's action is not only questionable, but is also contrary to the First Amendment.

This provision effectively permits economic discrimination. Under the provision, a cable operator could carry cable-owned programming but could refuse carriage to an unaffiliated broadcast station with the same format. In short, this provision permits the cable operator to use the must carry rules (which were intended to rectify a competitive imbalance) to give a competitive advantage to a cable-owned programming service against a broadcast competitor. Such conduct is discriminatory, anti-competitive, and contrary to the intent of must carry.

Finally, the provision is simply unfair. Without must carry, many of these broadcast stations will have no access to cable systems. We believe strongly that the broadcast shopping stations should be treated like other commercial broadcast stations. Like any other commercial broadcast station, they are licensed by the FCC to serve their local communities. Like any other commercial broadcast station, they meet all the FCC criteria with regard to public service. Like any other commercial broadcast station, they are legitimate businesses which provide a programming service that the American consumer wants. By limiting the viewers' choice of programming through the manipulation of the must carry rules, this Committee is defeating the principles of localism and diversity it has pledged to uphold.

NORMAN F. LENT.
CARLOS J. MOORHEAD.
MATTHEW J. RINALDO.
MICHAEL BILIRAKIS.

DISSENTING VIEWS

We cannot support H.R. 4850, the Cable Television Consumer Protection and Competition Act of 1992, as reported. The Heavy-handed regulation proposed by the bill will not only impede further economic growth in the cable industry by reducing incentives for investment in programming and new technology, but will, we believe, result in higher cable rates for consumers and less programming diversity. Clearly, this is not the path this Committee should be taking as we prepare for the technological challenges of the next century. Rather than go back in time and re-regulate a vibrant and dynamic industry, this Committee should be looking for ways to build upon the proven success of the 1984 Cable Act, promote further competition in the video marketplace, encourage the development of new technologies like fiber optics, and expand viewer programming choices. The bill, in its current form, accomplishes none of these important goals.

We will continue to endeavor to work with the leadership of the Committee and our colleagues in the House to ensure that any legislative proposal that is ultimately passed by the House is one that is balanced and reasonably crafted to address the real problems and concerns with the industry. We cannot, however, support this bill which is punitive in nature, creates unnecessary government regulation, fails to promote competition in the marketplace, and which will ultimately hurt the American consumer.

BACKGROUND

In 1984, the Congress adopted a national policy for the cable industry in order to spur growth in the industry and to encourage a wider and more diverse array of programming for the American public. The success of that policy has been amply demonstrated by the fact that the cable industry has not only become a leader in communications and media industries but is a major contributor to the economic and social health of this country. In 1990, cable television contributed approximately $42 billion to the Gross National Product. For the same year, the industry directly or indirectly provided 561,000 jobs, generating income of $18.2 billion. Cable operators directly employ 101,400 people. Cable employee income totals $2.8 billion. Cable industry suppliers employ an additional 69,000 persons in cable-related jobs, with personal income of $2.4 billion.

The cable television industry has fundamentally altered the manner in which most Americans view television. The majority of cable subscribers have access to thirty or more program channels and over one-fifth can reach more than fifty channels. Cable networks provide consumers with a wide range of quality entertainment, informational, educational, and children's programming including CNN, C-Span, Nickelodeon, The Discovery Channel, the

Learning Channel, and Black Entertainment Television. Clearly, cable has established a level of programming and diversity that, as demonstrated by the cable household penetration rate in excess of 60% of American homes, the American consumer is quite eager to purchase.

No one denies that, along with the enormous successes of the cable industry, there have been growing pains. There have been instances of unreasonable increases in cable rates and unacceptable declines in the quality of customer service. Nonetheless, no one would deny either that these instances have been the exception and not the rule. Indeed, as H.R. 4850 recognizes in its findings, a "minority of cable operators have abused their deregulated status and their market power and have unreasonable raised cable subscriber rates."

Two years ago, in response to concerns raised by the consumer with respect to services and rates, this Committee adopted bipartisan legislation to address these cable industry problems. Working together, the Members of this Committee fashioned responsible legislation which regulated where necessary and appropriate, while maintaining the incentives necessary for the video marketplace to flourish. That bill, H.R. 5267, the Cable Television Consumer Protection and Competition Act of 1990, may not have been the perfect bill, but it reflected a balanced and reasonable compromise among Committee Members. That legislation ultimately passed the House of Representatives on a voice vote. It was our hope that the consensus, bipartisan approach adopted at that time could serve as a model for our deliberation and actions this year. That was not to be. Rather than respond to the American consumer's request that Congress fix lingering problems relating to rates and services, the proponents of H.R. 4850 seemed to have sought simply to punish an entire industry.

As a result, the Republican Members of this Committee offered a Substitute Amendment to the Amendment in the Nature of the Substitute during Full Committee consideration. That proposal was modeled very closely on the bipartisan balanced approach adopted by this Committee just two years ago. The Substitute Amendment would regulate only the basic tier of cable programming, which tier could include only the local over-the-air broadcast signals and some government access channels. Regulation of this tier would adequately serve to discipline the pricing of other tiers of programming services. The Substitute Amendment also allowed for some regulation of other programming but only after the Federal Communications Commission (FCC) determined, on a case-by-case basis, that those rates had been raised abusively or unreasonably.

The Substitute Amendment also took a balanced approach to the issue of program access by actual and potential competitors to cable. It would prohibit unreasonable refusals to deal, while recognizing the legitimacy of exclusive contracts. This approach would ensure that cable competitors have a reasonable, and legally protected, opportunity to purchase programming, while preserving the necessary incentives within the cable industry to ensure future investment in programming.

Thus, the approach and ultimate objective of the Republican Substitute was to provide a sensible degree of consumer protection while preserving the industry's ability to raise money for improved technology and programming. This approach was flatly rejected by the proponents of H.R. 4850. Instead, the proponents of H.R. 4850 have adopted a heavily regulatory bill that we believe is ill-suited to accomplishing the objectives identified above. Highlighted below are some of the major items that are of significant concern to us in the bill adopted in Committee.

RATE REGULATION AND THE BASIC TIER

One of the most obtrusive and unjustified provisions in H.R. 4850 is the proposed regulation of an open, basic, rate-regulated tier. This contrasts with the conclusion reached by the Committee last Congress that a closed, basic, rate-regulated tier of cable programming would best protect consumers from unreasonable and abusive rates. While the distinction between the approach in H.R. 4850 to rate regulation and the one adopted by this Committee some twenty-one months ago might appear subtle, it is, in fact, significant and cause for great alarm.

In 1990, the Committee agreed that the FCC should establish a formula for regulating a basic tier consisting of local broadcast signals and public, educational and governmental (PEG) access channels. The congressional findings contained in H.R. 5267, the bill passed by the House that year, state the following: "Television broadcasters and cable television operators compete directly for the television viewing audience, programming material, and advertising revenue. The Federal interest in ensuring that such competition is fair, effective, and operates to the benefit of consumers requires that local broadcast stations be made available on cable systems as a separate and distinct purchase option for subscribers."

The rationale for that argument was irrefutable and remains so today. Making over-the-air broadcast and PEG access channels available on a separate tier promotes the time-honored principle of localism. We agree, and this Committee agreed two years ago, that subjecting such a tier of local and PEG channels to rate regulation promotes an important Federal interest in ensuring each community's access, at a reasonable, clearly cost-related price, to such local programming. As the Committee correctly pointed out in its Report on H.R. 5267:

> There appear to be two principal reasons why consumers subscribe to cable television. One is that consumers wish to purchase programming offered by cable networks. The other reason, however, is that many consumers subscribe to cable television largely for the antenna service it provides; that is, cable television can provide them with superior reception of broadcast television signals. Many cable systems now require this latter group of consumers to purchase additional cable programming networks in order also to obtain the antenna service. The Committee believes that consumers who wish to purchase only an antenna service should be able to do so without the requirement of purchasing additional programming. Accordingly, section 3 amends section 623 of the Communications Act and is designed to ensure that all cable operators offer their cus-

tomers the option of subscribing to cable and receiving, for the lowest possible charge, antenna service—a new basic tier of service that is limited to retransmitted broadcast signals.

In the Substitute offered in both the Subcommittee and Full Committee, we have consistently supported creation of such a tier, as well as the same approach to rate regulation of this basic tier.

Curiously, even the proponents of H.R. 4850 have endorsed the principle, if not the statutory language, to support this approach. As recently as April 9, 1992, the date on which H.R. 4850 was introduced, the proponents of the bill espoused a separate local broadcast tier. H.R. 4850, as introduced, contained the following Congressional findings: "Because television broadcasters and cable television operators compete directly for the television viewing audience for programming material, and for advertising revenue, in order to ensure such competition is fair and operates to the benefit of consumer, the Federal interest requires that local broadcast stations be made available on cable systems as a separate and distinct purchase option for subscribers." Never mind, for the moment, the fact that the actual statutory language of H.R. 4850 stood the principle of localism on its head by mandating the carriage of certain distant signals on a basic rate-regulated tier, and thus encouraging the carriage of cable network programming on that same tier. At least the principle behind a separate tier of local programming, as stated in the bill's findings, remained intact.

And now, just two months later, a funny thing happened on the way to the Full Committee markup. Suddenly, and inexplicably, the proponent of H.R. 4850 embraced a new and radically different public policy, as expressed in the hastily revised Congressional findings accompanying the Amendment in the Nature of a Substitute considered in the Full Committee. The findings state, in pertinent part, that "* * * the Federal interest requires that local broadcast stations be made available on cable systems." Apparently, from the H.R. 4850 proponents' perspective, the need for a separate tier of local broadcast stations dedicated to preserving and promoting localism has vanished in the last two months. We are mystified by this substantial swing in public policy direction, absent any evidence adduced in the Committee hearings or elsewhere that the need for a separate and distinct purchase option of a local broadcast-only tier has somehow been eclipsed.

What is quite obvious is that there is no justification for this policy shift. Like so many of the other changes between the cable legislation adopted two years ago in this Committee and the 1992 bill, the public policy rationale behind the changes is inconsistent and often ephemeral. Opening the basic rate-regulated tier to distant broadcast signals (or so-called "superstations") and cable programming networks is nothing more than a cynical attempt to subject cable networks to a rate regulation scheme. This proposal is aimed simply to satiate a surfeit of regulatory zeal, and it quite possibly leads to an unconstitutional result. Consequently, we fervently reject it.

The rhetoric of the H.R. 4850 proponents suggests that cable rate increases have been so large and onerous as to justify regulating a tier which includes cable network programming. The facts, and the record developed in the Committee, amply suggest otherwise. At the Subcommittee Chairman's request, the General Accounting Office (GAO) prepared three studies of cable rate increases. The final study released in July 1991 provided significant evidence that cable rates, which had risen dramatically in the late 1980's after being artificially repressed by local franchise authorities prior to deregulation in 1984, had, in fact, begun to moderate substantially by 1990. Furthermore, the evidence indicates that in today's entertainment marketplace, where the price of taking a family of four to the movies or to a baseball game once costs $19.00 and $32.00 respectively, cable represents a superior entertainment value.

According to the GAO study, the increase from December 1989 to April 1991 in the basic tier of cable programming (consisting of local broadcast and PEG access channels) was about 9%, while the consumer price index (CPI) rose 7.1% during the same period. The rate increase for expanded basic service (including most cable network programming) was 15%, while the average number of channels available on this tier increased by two. In calibrating rate increases for cable, it is critical to factor in the increase in consumer programming choice: obviously, as the amount of product made available increases, the cost for cable service will naturally rise concomitantly.

It is highly relevant to note that, prior to deregulation, cable companies had to seek permission from their respective local franchising authorities to increase rates. From 1972 (when the FCC first authorized local rate regulation) to 1986 (when deregulation took effect), cable rates increased 72 percentage points behind the rate of inflation. Since deregulation, the most popular tier of cable service, commonly called "expanded basic", has increased in price at a rate below inflation, when factoring in increased consumer choice. In 1986, the average expanded basic tier consisted of 27 channels and cost $11.71; in 1991, the average expanded basic tier consisted of 35 channels and cost $18.84. Thus, the price per channel of the most popular tier rose only nine cents from 1986 to 1991, from 44 cents to 53 cents per channel. During this period, the overall CPI increased 22.5% which, had the cost per channel merely been keeping pace with CPI, would have increased the cost to 54 cents per channel—or one cent more than their actual level. In sum, the argument that cable rates have inflated wildly and unfairly since being deregulated is, on its face, an absurdity.

We believe strongly that the case for regulating the rates of a tier of cable network programming (as opposed to regulating a broadcast only tier) has not been made, and indeed cannot be made. We are equally certain, moreover, that a strong argument can be made against such regulation. In our view, regulation of a basic local broadcast tier, when the cable company is merely a passive conduit retransmitting over-the-air broadcast signals, may be permissible. In that instance, the cable company is functioning like a common carrier, performing an antenna service with no editorial input or other effect on the content of what is being sent over the cable transmission lines.

It is quite another matter, however, when a regulatory agency is empowered to set rates for actual cable programming, as envisioned and encouraged under H.R. 4850. Indeed, it is well established under constitutional law that granting such discretionary authority to any Federal, State, or local entity runs smack into the free speech protection, and must, of course, be scrutinized under a traditional First Amendment analysis. While it is exclusively the province of the judiciary, and not the legislature, to determine a law's constitutionality, and thus our view is merely advisory, we find no support for the contention that, under the appropriate First Amendment analysis, cable network programming may be subject to a rate regulated mandate.

In fact, there is an overpowering argument and plethora of case law to the contrary. The courts have been traditionally and consistently wary of any rate regulation of speech, for feat that it will inevitably affect the vigor, content, quality, or quantity of such speech. In *Riley* v. *National Federation of the Blind of North Carolina*, 487 U.S. 781 (1988), the U.S. Supreme Court struck down a State statute regulating the fees charged to solicit charitable contributions at a fundraiser on the grounds that the regulation impermissible influenced the ability to speak. Such concerns are clearly relevant to H.R. 4850, in which the regulation of cable network programming, under an open tier scheme, will unquestionably affect the quality and quantity of programming available to consumers on such a tier.

Mandating such regulation raises additional constitutional concerns when cable rate regulation is viewed comparatively in the broader context of the alternative media with which it competes. We do not, for self obvious First Amendment-related reasons, regulate the price of newspapers, magazines, video rentals, movie theater tickets, and other popular entertainment sources. Consequently, by subjecting cable programming to such strictures, the rate regulation proposal in H.R. 4850 clearly raises constitutional equal protection concerns.

Finally, vesting local political officials with the leverage incumbent in a grant of such rate regulatory authority will invariably result in the sort of mischief, and chilling effect on all (but most especially editorial) speech, that led, in part, to the 1984 law to deregulate the cable industry. The memory relating to problems encountered in some localities is sufficiently fresh and painful that we respectfully decline to go back down that road again.

In sum, while the courts must ultimately decide the issue, we submit the following: as an impingement on free speech, the rate regulation provisions of H.R. 4850 must be subject to a strict constitutional scrutiny standard. The proponents must ultimately demonstrate a compelling governmental need to regulate speech, and they must show that the need is met precisely without impinging on protected speech. The record compiled by proponents of H.R. 4850 and the constitutional arguments proffered, in our view, fall woefully short on both counts. Thus, it is our conclusion that the rate regulatory provisions in H.R. 4850, if enacted, cannot satisfy constitutional analyses.

NO EXEMPTION FOR SMALL SYSTEMS

In addition to rate regulation, the bill is over-regulatory in several other aspects. For example, in its fervor to rein in all cable companies, the bill ignores certain special needs of small systems which have, on balance, served customers so well. Rather than exempt small systems from the economic and administrative burdens of rate and equipment, the bill merely directs the FCC to take into account the administrative burdens on small systems in adopting such regulations. With respect to customer service requirements, there is no such direction. Not only is the FCC directed to enact national standards, H.R. 4850 would permit local authorities to unilaterally enact even stricter customer service standards than the FCC, thus exposing small systems to standards more onerous than a national norm.

REGULATION OF EQUIPMENT

H.R. 4850 expands its micro-management approach to the regulation of equipment, such as the leasing of remote controls, and mandates that rate caps should be set for such equipment based on actual cost without regard for a reasonable profit. Such heavy-handed price controls are simply not justified. In instances where such equipment may be available from a third party provider, about which the cable operator is required to notify its subscribers, such controls place the cable operator at a competitive disadvantage. Because remote control units are not necessary for subscribers to receive basic service, there is no Federal interest in regulating the prices for the leasing of such services. In short, the only apparent justification for such strict regulation is a punitive one and the provision is anti-competitive.

ANTI-BUY THROUGH

H.R. 4850 mandates that a subscriber need not take a programming tier of service in order to gain access to premium or pay-per-view programming. While such a provision may have consumer appeal, it could also destroy the programming structure of the cable industry, which would have a devastating impact on the investment in programming. Further it is arguably an infringement of protected speech and may also raise equal protection concerns. The cable industry has invested billions of dollars in plants and equipment in order to allow its customers to receive pay-per-view programming services based upon the ability to package programming as operators see fit. Under the current packaging arrangement, premium and pay-per-view services are completely optional to subscribers. There is absolutely no Federal interest in mandating how the operator must market these services, or how such packages should be structured. To do so represents unjustifiable government intrusion and raises the aforementioned constitutional concerns.

TECHNOLOGY MANDATES

H.R. 4850 effectively mandates that within five to seven years all cable systems have addressable converter boxes in order to comply with its anti-buy through requirements. Such government mandated imposition of technology is ill-advised public policy and will likely cost the industry, and ultimately the consumer, several billion dollars. Policymakers should encourage the industry to develop its own technology in a manner consistent with consumer demand and prudent economic considerations.

COSTS OF REGULATION UNDER H.R. 4850

Finally, at a time when our regulatory agencies are struggling to operate under severe budgetary constraints, the cost of regulation imposed by H.R. 4850 on the FCC only adds to this burden. H.R. 4850 will cost the FCC between 17 percent and 44 percent of its entire budget due to the concentration of regulation within the Federal Government. This translates into an estimated $22.5 million to $54.7 million a year for the regulation of cable companies. This follows in a legislative year in which the Congress refused to increase the FCC appropriations budget and restricted or ignored other potential income earning sources.

CONCLUSION

H.R. 4850 will discourage investment in new initiatives and new programming at a time when the American consumer is looking to the industry for greater programming choices, including suitable children's programming, educational programming, and comprehensive news and informational programming. Last year alone, the cable industry spent nearly $3.5 billion on programming, resulting in 8,000 new jobs. As this country struggles to regain a strong economic foothold, the bill reported by this Committee moves in the wrong direction. Further, it will hinder the U.S.'s ability to maintain its comparative advantage globally in cable and other high-tech industries.

H.R. 4850 will also seriously harm the cable industry in the future by severely undermining its incentives to invest in new and improved technology. The industry currently spends millions of dollars annually in upgrades and new plants. Diminution of investment in plant and technology will not only slow the expansion of cable into American homes but will seriously curtail the deployment of the next generation of cable-related technology to the American consumer.

As a result, the effect of H.R. 4850 will be not only disastrous to the industry, which has contributed so much to the advancement of the Information Age, but will also decrease consumer choice. Ironically, we believe in the end the bill could also raise consumer rates—an odd result given the putative objective of the legislation. The Committee, by electing to regulate for the sake of regulating, has chosen the wrong path. We will not follow it.

NORMAN F. LENT.
WILLIAM E. DANNEMEYER.
DON RITTER.
THOMAS J. BLILEY, Jr.
JACK FIELDS.
MICHAEL G. OXLEY.
DAN SCHAEFER.
ALEX MCMILLAN.
J. DENNIS HASTERT.
CLYDE C. HOLLOWAY.
JOE BARTON.
SONNY CALLAHAN.

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