

THE TELECOMMUNICATIONS ACT OF 1996: A GLOBAL ANALYSIS

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On February 8, 1996, President Bill Clinton signed the Telecommunications Act of 1996 into law. This new legislation—the first comprehensive legislation governing the entire telecommunications industry to be enacted since 1934—was passed by Congress with overwhelming bipartisan support. The Act, which amends the Communications Act of 1934 in large part, has been hailed by many as a defining moment in the history of the communications industry. This article summarizes the salient points of the various provisions in the Act.

I. TELECOMMUNICATION SERVICES

A. Interconnection

New section 251 imposes a general duty to interconnect directly or indirectly between all telecommunications carriers and the duty not to install network features and functions that do not comply with the guidelines and standards established under new sections 255 and 256 of the Act.

It imposes several duties on all local exchange carriers, including the new entrants into the local exchange market. These include the duties (1) not to prohibit resale of their service, (2) to provide number portability, (3) to provide dialing parity, (4) to afford access to poles, conduits, and rights-of-way consistent with the pole attachment provisions in section 224 of the Act, and (5) to establish reciprocal compensation arrangements for the transport and termination of traffic.

Moreover, this new section imposes several additional obligations on incumbent LECs. These include the duties to (1) negotiate in good faith, subject to the provisions of section 251, binding agreements to provide all of the obligations imposed in new sections 251(b) and 251(c), (2) to provide interconnection at any technically feasible point of the same type and quality it provides to itself, on just, reasonable, and nondiscriminatory terms and conditions, (4) to offer resale of its telecommunications services at wholesale rates, (5) to provide reasonable public notice of changes to its network, and (6) to provide physical collocation, or virtual collocation if physical collocation is not practical.

Further, this section provides that, on and after the date of enactment, each local exchange carrier, to the extent that it provides wireline services, shall

have a statutory duty to provide equal access and nondiscriminatory interconnection to interexchange carriers and information service providers.

Finally, this section provides for the exemption of rural telephone companies from the LEC obligations until a bona fide request is received that the State Commission then determines is not unduly economically burdensome, is technically feasible, and is consistent with the universal service provisions of new section 254.

B. Procedures for Negotiation, Arbitration, and Approval of Agreements

Section 252 provides that a local exchange carrier may meet its section 251 interconnection obligations by negotiating and entering into a binding agreement that does not reflect the minimum standards provided for under section 251. Each such negotiated interconnection agreement must include a schedule of itemized charges for each service, facility, or function included in the agreement, and must be submitted to a State for approval. The carrier or any other party to the negotiation may petition a State Commission to arbitrate any open issues.

As an alternative, a BOC may file with a State Commission a statement of the terms and conditions that the BOC generally offers to comply with the requirements of section 251.

C. Removal of Barriers to Entry

New section 253 clarifies that no State or local statute or regulation may prohibit the ability of any entity to provide any interstate or intrastate telecommunications service. Without violating the prohibition on barriers to entry, however, a State may require a competitor seeking to provide service in a rural market to meet the requirements for designation as an eligible telecommunications carrier before being permitted to provide such service.

D. Universal Service

New section 254 establishes a Federal-State Joint Board to review existing universal service mechanisms and make recommendations regarding steps necessary to preserve and advance this fundamental

policy goal. The mechanisms and policies shall be based on the following principles: quality and rates, access to advanced services, access in rural and high cost areas, equitable and nondiscriminatory contributions, specific and predictable support mechanisms, access to advanced telecommunications services for schools, health care, and libraries. This section defines "universal service" as "an evolving level of telecommunications services" established periodically by the Commission. The definition is to take into account advances in telecommunications and information technology.

All telecommunications carriers providing interstate telecommunications services shall contribute to the preservation and advancement of universal service. The Commission, however, may exempt a telecommunications carrier or class of telecommunications carriers from this requirement if their contribution would be "de minimis."

This provision also incorporates the policies of geographic rate averaging and rate integration of interexchange services in order to ensure that subscribers in rural and high-cost areas continue to receive both intrastate and interstate interexchange services at rates no higher than those paid by urban subscribers.

Moreover, this section provides that any telecommunications carrier shall, upon a bona fide request, provide telecommunications services necessary for the provision of health care services to any health care provider serving persons who reside in rural areas, as well as provide services for educational purposes.

E. Access by Persons with Disabilities

Section 255 mandates that manufacturers of telecommunications equipment and customer premises equipment should ensure that equipment is designed, developed, and fabricated to be accessible and usable by individuals with disabilities, if readily achievable. Similarly, providers of telecommunications services must ensure that telecommunications services are accessible and usable by individuals with disabilities, if readily achievable. This section does not authorize any private right of action.

F. Coordination of Interconnectivity

New section 256 permits the Commission to participate, in a manner consistent with its authority and practice prior to the date of the enactment of the Act, in the development of voluntary industry standards-setting organizations to promote interoperability. The purpose of the provision is to promote

nondiscriminatory access to telecommunications networks by the broadest number of users and vendors of communications products and services.

G. Market Entry Barriers Proceeding

New section 257 requires the Commission to adopt rules that identify and eliminate market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications and information services. The Commission must review these rules and report to Congress every three years on how it might prescribe or eliminate rules to promote the purposes of this section.

H. Illegal Changes in Subscriber Carrier Selections

New section 258 requires the Commission to adopt rules applicable to long distance and local exchange carriers to prevent "slamming." In addition to requiring that the carrier violating the Commission's procedures must reimburse the original carrier for foregone revenues, the Commission's rules should also provide that consumers are made whole.

I. Infrastructure Sharing

Section 259 requires that within one year of the date of enactment, the Commission shall prescribe rules requiring incumbent local exchange carriers to share network facilities, technology, and information with qualifying carriers. The qualifying carrier may request such sharing for the purpose of providing telecommunications services or access to information services in areas where the carrier is designated as an essential telecommunications carrier under section 214(e). The terms and conditions of the Commission's regulations shall, among other things, permit, but not require, joint ownership of facilities among local exchange carriers and qualifying carriers; ensure that the local exchange carrier not be treated as a common carrier for hire with respect to technology, information or facilities shared with the qualifying carrier; not require a local exchange carrier to take any action that is economically unreasonable or contrary to public interest. Moreover, this section requires that local exchange carriers sharing infrastructure must provide information to sharing parties about deployment of service and equipment, including software/software upgrades.

J. Provision of Telemessaging

Section 260 prohibits local exchange carriers subject to section 251(c) that are engaged in telemessaging from subsidizing their telemessaging services, either directly or indirectly, from telephone exchange service operations or revenues. It also prohibits such carriers from discriminating against nonaffiliated entities with respect to the terms and conditions of any network services they provide to their own telemessaging operations.

K. Effect of Other Requirements

New section 261 makes clear that the Commission may continue to enforce its existing regulations, to the extent such regulations are not inconsistent with the new regulations. Moreover, the section preserves State authority to enforce existing regulations and to prescribe additional requirements so long as they are not inconsistent with the Communications Act.

L. Eligible Telecommunications Carriers

Section 214 of the Communications Act is amended by adding a new subsection (e) regarding the provision of universal service and the designation of carriers which are eligible to receive support through the specific Federal universal support mechanisms established under new section 254 of the Communications Act. New section 214(e)(1) states that a common carrier designated as an "eligible telecommunications carrier" shall offer the services included in the definition of universal service throughout the area specified by the State Commission, and that such services must be advertised generally throughout that area. Upon designation, a carrier is eligible for any specific support provided under new section 254 for the provision of universal service in the area for which that carrier is designated.

If no common carrier will provide universal service to a community or portion of a community that requests such service, this section makes explicit the implicit authority of the Commission, with respect to interstate services, and a State, with respect to intrastate services, to order a common carrier to provide such service. If more than one common carrier provides service in an area and none of those carriers will provide service to a community or portion thereof, this provision gives the Commission or a State the authority to decide which common carrier is best suited to provide service.

M. Exempt Telecommunications Companies

The Public Utility Holding Company Act of 1935 is amended by adding new section 34 to allow registered holding companies to diversify into telecommunications, information and related services and products. The Commission must determine that a registered holding company is providing telecommunications services, information services, and other related services through a single-purpose subsidiary, designated an "exempt telecommunications company" ("ETC"). Prior State approval is required before any utility that is associated with a registered holding company may sell to an ETC any asset in the retail rates of that utility as of December 19, 1995. State approval is also required for a contract when a public utility company seeks to purchase telecommunications products or services from an ETC that is an associate company or affiliate of such public utility unless the State or State commission waives such requirement.

N. Nondiscrimination Principle

Section 104 amends section 1 of the Communications Act to make clear that a purpose of the Communications Act is to make available service to all the people of the United States "without discrimination on the basis of race, color, religion, national origin, or sex." This amendment to section 1 applies to all entities covered by the Communications Act.

II. SPECIAL PROVISIONS CONCERNING BELL OPERATING COMPANIES

A. Bell Operating Company Provisions

Title II of the Communications Act is amended by adding Part III which contains new sections 271-276 of the Communications Act setting forth special provisions applicable to BOCs.

B. Bell Operating Company Entry into InterLATA Services

Section 271 requires a BOC to obtain Commission authorization prior to offering interLATA services within its region unless those services are previously authorized or "incidental" to the provision of another service, in which case, the interLATA service may be offered after the date of enactment. This section permits a BOC to offer out-of-region services immediately after the date of enactment.

Section 271 sets out the requirements for a BOC's provision of interLATA services originating in an in-region State. In addition to complying with specific interconnection requirements, a BOC must satisfy the "in-region" test by virtue of the presence of a facilities-based competitor or competitors, or by the failure of a facilities-based competitor to request access or interconnection as required.

With respect to the facilities-based competitor requirement, the presence of a competitor offering the following services is sufficient to meet the requirement: (1) exchange access; (2) telephone exchange service offered exclusively through the resale of the BOC's telephone exchange service; and (3) cellular service. The competitor must offer telephone exchange service either exclusively over its own facilities or predominantly over its own facilities in combination with the resale of another carrier's service.

The section ensures that a BOC is not effectively prevented from seeking entry into the interLATA services market simply because no facilities-based competitor has sought to enter the market. A BOC may seek entry at any time following 10 months after the date of enactment, provided no qualifying facilities-based competitor has requested access and interconnection under new section 251 by the date that is 3 months prior to the date that the BOC seeks interLATA authorization.

This section also sets out the specific interconnection requirements that comprise the "checklist" that a BOC must satisfy as part of its entry test, including but not limited to, interconnection, nondiscriminatory access, unbundled local loop, local transport, unbundled local switching, etc.

Section 271 also prohibits joint marketing of local services obtained from the BOC and long distance service within a State by telecommunications carriers with more than five percent of the Nation's presubscribed access lines for three years after the date of enactment, or until a BOC is authorized to offer interLATA services within that State, whichever is earlier.

Any BOC authorized to offer interLATA services is required to provide intraLATA toll dialing parity coincident with its exercise of that interLATA authority. States may not order a BOC to implement toll dialing parity prior to its entry into interLATA service. Any single-LATA State or any State that has issued an order by December 19, 1995, requiring a BOC to implement intraLATA toll dialing parity is grandfathered under this Act. The prohibition against "non-grandfathered" States expires three years after the date of enactment.

This section also sets out the "incidental" interLATA activities that the BOCs are permitted to provide upon the date of enactment. Any activity authorized by court order or pending before the court prior to the date of enactment is grandfathered.

C. Separate Affiliate; Safeguards

New Section 273 imposes a separate subsidiary and other safeguards on certain activities of the BOCs. The activities that must be separated from the entity providing telephone exchange service include telecommunications equipment manufacturing and interLATA telecommunications services, except out-of-region and incidental services (not including information services) and interLATA services that have been authorized by the MFJ court. A BOC also would have to provide alarm monitoring services and certain information services through a separate subsidiary. Section 273 provides a three-year "sunset" of the separate affiliate requirement for interLATA services and manufacturing activities. The three-year period commences on the date on which the BOC is authorized to offer interLATA services. In addition, this section provides that the separate affiliate requirement for interLATA information services "sunset" four years after the date of enactment of the Act. The Commission, however, is given the authority to extend the separate affiliate requirement by rule or order.

The separate affiliate required by this section is permitted to jointly market any of its services in conjunction with the telephone exchange services and other services of the BOC so long as the BOC permits other entities offering the same or similar services to sell and market the BOC's telephone exchange services.

A BOC, once it has been authorized to provide interLATA service, is permitted to jointly market its telephone exchange services in conjunction with the interLATA service being offered by the separate affiliate in that State.

D. Manufacturing by Bell Operating Companies

Section 273 permits a BOC to engage in manufacturing after the Commission authorizes the company to provide interLATA services in any in-region State. A BOC and its affiliates may not engage in manufacturing in conjunction with another unaffiliated BOC or any of its affiliates. BOCs may engage in research and enter into royalty agreements.

A BOC may not discriminate in favor of equip-

ment produced or supplied by an affiliate for the duration of a requirement for a manufacturing separate subsidiary under this Act. Each BOC shall make procurement decisions on the basis of an objective assessment of price, quality, delivery, and other commercial factors.

E. Electronic Publishing by Bell Operating Companies

Section 274 sets forth regulatory requirements for BOC participation in electronic publishing. Subsection (a) of this section states generally that a BOC or any affiliate may only engage in electronic publishing through a separate affiliate or an electronic publishing joint venture.

A BOC is prohibited from engaging in joint marketing of any promotion, marketing, sales or advertising with its affiliate, with certain exceptions.

A BOC that enters the electronic publishing business through a separated affiliate or joint venture must provide network access and interconnection to electronic publishers at just and reasonable rates that are not higher on a per-unit basis than those charged to any other electronic publisher or any separated affiliate engaged in electronic publishing.

This requirement "sunset" four years after the date of enactment.

F. Alarm Monitoring Services

Section 275 prohibits a BOC from offering alarm service until five (5) years after the date of enactment, unless a BOC was already providing such service as of November 30, 1995.

This section prohibits discrimination by a telephone company in the provision of alarm services, either by refusing to provide its competitors with the same network services it provides itself, or by cross-subsidizing from its local telephone service.

G. Provision of Payphone Services

Section 276 directs the Commission to adopt rules that eliminate all discrimination between BOC and independent payphones and all subsidies or cost recovery for BOC payphones from regulated interstate or intrastate exchange or exchange access revenue. The Commission's implementing safeguards must be at least equal to those adopted in the Commission's Computer III proceedings. In place of the existing regulatory structure, the Commission is directed to establish a new system whereby all payphone service

providers are fairly compensated for every interstate and intrastate call made using their payphones.

This section also makes it possible for independent payphone service providers, as well as BOCs, in all jurisdictions, to select the intraLATA carriers serving their payphones. However, existing contracts and agreements between location providers and payphone service providers, or interLATA or intraLATA carriers, are grandfathered. Location providers prospectively also have control over the ultimate choice of interLATA and intraLATA carriers in connection with their choice of payphone service providers. Inconsistent State requirements are preempted.

III. BROADCAST SERVICES

A. Broadcast Spectrum Flexibility

Title II of the Act is amended to include a new section 336, which directs the Commission, if the Commission issues licenses for advanced television services, to limit the initial eligibility for such licenses to incumbent broadcast licensees and permittees, and authorizes the Commission to adopt regulations that would permit broadcasters to use such spectrum for ancillary or supplementary services.

If the Commission issues licenses for advanced television services, it shall precondition such issuance on the requirement that one or the other of the licenses be surrendered to the Commission pursuant to its regulations.

The Commission is required to establish a fee program for any ancillary or supplementary services if subscription fees or any other compensation fees apart from commercial advertisements are required in order to receive such services.

B. Broadcast Ownership

Section 202 directs the Commission to modify its multiple ownership rules to eliminate its limitations on the number of radio stations which may be owned or controlled nationally. The Commission is further directed to modify its rules with respect to the radio stations a party may own, operate or control in a local market.

The Commission is directed to modify its multiple ownership rules to eliminate the number of television stations which may be owned or controlled nationally and to increase the national audience reach limitation for television stations to 35 percent. The Commission is further directed to conduct a rulemaking proceeding to determine whether its rules restricting

ownership of more than one television station in a local market should be retained, modified, or eliminated.

Section 202 directs the Commission to extend its waiver policy with respect to its one to a market ownership rules to any of the top fifty market. Moreover, the Commission is directed to revise its rules at 47 CFR § 73.658(g) to permit a television station to affiliate with a person or entity that maintains two or more networks unless such dual or multiple networks are composed of (1) two or more of the four existing networks (ABC, CBS, NBC, FOX) or, (2) any of the four existing networks and one of the two emerging networks.

Section 202 directs the Commission to revise its rules to permit crossownership interests between a broadcast network and a cable system. If necessary, the Commission is directed to revise its rules to ensure carriage, channel positioning and nondiscriminatory treatment of non-affiliated broadcast stations by cable systems affiliated with a broadcast network.

Restriction on broadcast-cable crossownership is repealed.

C. Terms of Licenses

Section 203 amends section 307(c) of the Communications Act to extend the license term for broadcast licensees to eight years for both television and radio.

D. Broadcast License Renewal Procedures

Section 204 amends section 309 of the Communications Act by adding a new subsection (k) mandating a change in the manner in which broadcast license renewal applications are processed. Subsection (k) allows for Commission consideration of the renewal application of the incumbent broadcast licensee without the contemporaneous consideration of competing applications. Under this subsection, the Commission would grant a renewal application if it finds that the station, during its term, had served the public interest, convenience, and necessity; there had been no serious violations by the licensee of the Communications Act or Commission rules; and there had been no other violations of the Communications Act or Commission rules which, taken together, indicate a pattern of abuse. If the Commission determines that the licensee has failed to meet these requirements, it could deny the renewal application or grant a conditional approval, including renewal for a lesser term. Only after denying a renewal application could the Commission accept and consider com-

peting applications for the license.

The effective date for this section is May 1, 1995.

E. Direct Broadcast Satellite Service

Section 205(a) amends section 705(e)(4) of the Communications Act to extend the current legal protection against signal piracy to direct-to-home services.

Section 205(b) amends section 303 of the Communications Act to clarify that the Commission has exclusive jurisdiction over the regulation of direct-to-home satellite services.

F. Automated Ship Distress and Safety Systems

Section 206 amends Part II of Title II of the Act to include a new section 365, which provides that notwithstanding any other provision of the Communications Act, any ship documented under the laws of the United States operating in accordance with the Global Maritime Distress and Safety System provisions of the Safety of Life at Sea Convention is not required to be equipped with a radio telegraphy station operated by one or more radio officers or operators. This exemption shall only take upon the United States Coast Guard's determination that the system is fully installed, maintained, and is operating properly on each vessel.

G. Restriction on Over-the-Air Reception Devices

Section 207 directs the Commission to promulgate rules prohibiting restrictions which inhibit a viewer's ability to receive video programming from over-the-air broadcast stations, multichannel multipoint distribution services, or direct broadcast satellite services.

IV. CABLE SERVICES

A. Cable Act Reform

The definition of cable service is amended to reflect the evolution of cable to include interactive services. This amendment is not intended to affect Federal or State regulation of telecommunications service offered through cable system facilities, or to cause dial-up access to information services over telephone lines to be classified as a cable service. The term does not include a facility that serves subscribers without using any public rights-of-way.

This provision provides that regulation of the

cable programming services tier sunsets on March 31, 1999. The Commission is directed to review a rate increase for an operator's cable programming services tier within 90 days of a complaint.

The new section amends the Communications Act's requirements for a uniform rate structure to clarify that such requirements do not apply to (1) a cable operator with respect to the provision of cable service over its cable system in any geographic area in which the video programming services offered by the operator in that area are subject to effective competition, or (2) any video programming offered on a per channel or per program basis. Bulk discounts to multiple dwelling units are not subject to the uniform rate requirement except that a cable operator may not charge predatory prices to a multiple dwelling unit. Upon a prima facie showing by a complainant that there are reasonable grounds to believe that the discounted price is predatory, the cable system has the burden of showing that its discounted price is not predatory.

Section 623(l)(1) of the Communications Act is amended to expand the effective competition test for deregulating both basic and cable programming service tiers. The test provides that effective competition exists when a telephone company or any multichannel video programming distributor is offering video programming services directly to subscribers by any means in the franchise area of an unaffiliated cable operator. "By any means" includes any medium (other than direct-to-home satellite service) for the delivery of comparable programming, including MMDS, LMDS, an open video system, or a cable system.

Section 628 of the Communications Act is amended to extend the program access requirements to satellite cable programming vendors in which a common carrier providing video programming by any means has an attributable interest. This provision clarifies that such common carrier shall not be deemed to have an attributable interest in such programming vendor (or its parent company) solely as a result of the common carrier's holding, or having the right to appoint or elect, two or fewer common officers or directors. Section 617 of the Communications Act is amended to repeal the anti-trafficking restrictions.

Cable rate regulation is eliminated for small cable systems serving franchise areas of 50,000 or fewer subscribers.

B. Cable Services Provided by Telephone Companies

Section 302 amends Title VI of the Communications Act to include new sections 651-653.

C. Regulatory Treatment of Video Programming Services

New section 651 of the Communications Act specifically addresses the regulatory treatment of video programming services provided by telephone companies.

Common carriers, or other persons, that use radio communication to provide video programming will be regulated under title III of the Communications Act, and are subject to the requirements of new section 652 of the Communications Act but are not otherwise subject to the requirements of title VI.

When common carriers provide only video transmission on a common carrier basis, they are subject only to title II and to new section 652, and are not otherwise subject to the requirements of title VI merely by engaging in common carrier transport of video programming.

Common carriers providing video programming to subscribers by any means other than through radio communications or through transmission of video programming on a common carrier basis, are subject to the requirements of title VI, unless such programming is provided by means of an open video system that has been certified by the Commission. Open video systems are not subject to the requirements of title II for the provision of video programming or cable services.

Common carriers that provide video programming using radio communication or using common carriage transmission, or a combination of those services, also may choose to provide an open video system. Such systems are subject to the same requirements as other open video systems.

A local exchange carrier that provides cable service by means of an open video system, or by means of an integrated cable system utilizing its own telephone exchange facilities, is not required by title II to also make transmission capacity and related services available on a nondiscriminatory basis to any other person for the provision of cable service or video programming directly to subscribers. Similarly, a local exchange carrier that utilizes its own telephone exchange facilities and services to provide cable services other than through an open video system is required by such use only to make cable and

video programming capacity and facilities available to others for the provision of cable service regardless of whether those facilities also are used to provide telephone exchange service under title II. Similarly, common carriers that establish video delivery systems, including cable and open video systems, are not required to obtain section 214 authority prior to establishing or operating such systems.

D. Prohibition on Buyouts

New section 652 of the Communications Act limits acquisitions and prohibits joint ventures between local exchange companies and cable operators that operate in the same market to provide video programming to subscribers or to provide telecommunications services in such market. Such carriers or cable operators may enter into a joint venture or partnership for other purposes, including the construction of facilities for the provision of such programming or services.

A local exchange carrier is allowed to obtain a controlling interest in, management interest in, or a joint venture or partnership with a cable system operator for the use of such system located within its telephone service area to the extent that such system or facilities only serve places or territories that have fewer than 35,000 inhabitants and are outside urbanized areas. Such systems in the aggregate with any other system should serve less than 10 percent of the households in the telephone service area of such local exchange carrier. A cable operator is allowed to obtain a controlling interest in, management interest in, or a joint venture or partnership with a local exchange carrier for the use of such carrier's facilities if such facilities serve places or territories that have fewer than 35,000 inhabitants and are outside of urbanized areas.

Limited joint use of certain cable system facilities is allowed. A local exchange carrier is allowed to obtain, with the concurrence of the cable operator on the rates, terms and conditions, the use of that part of the transmission facilities of a cable system extending from the last multi-user terminal to the premises of the end user. Such joint use is permitted if such use is reasonably limited in scope and duration as determined by the Commission.

E. Establishment of Open Video Systems

New section 653 of the Communications Act focuses on the establishment of open video systems by local exchange carriers and provides for reduced reg-

ulatory burdens. This provision also gives the Commission authority to resolve disputes (and award damages), but requires such resolution to occur within 180 days after notice of such dispute is submitted to the Commission.

New section 653(b) gives the Commission six months from the date of enactment to complete all actions necessary, including any reconsideration, to prescribe regulations to accomplish, among other things, the following: (1) to prohibit open video system operators from discriminating among video programmers with regard to carriage, and ensure that the rates, terms and conditions for carriage are just and reasonable and are not unjustly or unreasonably discriminatory; (2) if demand exceeds channel capacity, to prohibit an open video system operator and its affiliates from selecting the video programming services that occupy more than one-third of the activated channel capacity of the system; (3) to permit an open video system operator to require channel sharing, i.e., to carry only one channel of any video programming service that is offered by more than one video programming provider (including the local exchange carrier's video programming affiliate), provided that subscribers have ready and immediate access to any such video programming service.

Open video system operators may be subject to fees imposed by local franchising authorities. A State governmental authority could also impose taxes, fees or other assessments in lieu of franchise or franchise-like fees imposed by municipalities.

This section repeals the Commission's video dialtone regulations adopted in CC Docket No. 87-266. The repeal is not intended to alter the status of any video dialtone service offered before the regulations required by this section become effective.

F. Preemption of Franchising Authority Regulation of Telecommunications Services

Section 621(b) of the Communications Act is amended to include a new section 621(b)(3)(A), which provides that, to the extent a cable operator is engaged in providing a telecommunications service other than cable service, it shall not be required to obtain a franchise, and the provisions of title VI of the Communications Act shall not apply. Subparagraph (B) provides that a franchising authority may not impose any requirement that has the effect of prohibiting or limiting the provision of telecommunications service by a cable operator.

A franchising authority may not terminate an operator's offering of a telecommunications service or

cable service because of the failure of the operator to obtain a franchise for the provision of telecommunications services. Similarly, franchising authorities may not require a cable operator to provide any telecommunications service or facilities, other than intergovernmental services, as a condition of the initial grant of a franchise or renewal.

G. Competitive Availability of Navigation Devices

New section 629 of the Communications Act directs the Commission to adopt regulations to assure the competitive availability to consumers of multichannel video programming of converter boxes, interactive communications devices, and other customer equipment from manufacturers, retailers, and other vendors not affiliated with a multichannel video programming distributor. The provision does not prohibit multichannel video programming operators from also offering navigation devices and other customer premise equipment to customers, provided that the system operators' charges for navigation devices and equipment are separately stated and are not subsidized by the charges for the network service.

This provision also specifically recognizes that multichannel video programming operators have a valid interest, which the Commission should continue to protect, in system or signal security and in preventing theft of service and, therefore, the Commission may not prescribe regulations which would jeopardize signal security or impede the legal rights of a provider to prevent theft of service.

H. Video Programming Accessibility

New section 713 of the Communications Act ensures that video services are accessible to hearing impaired and visually impaired individuals. Subsection (a) requires the Commission to complete an inquiry within 180 days of enactment of this section to ascertain the level at which video programming is closed captioned. Consistent with the results of its inquiry, the Commission is instructed to establish an appropriate schedule of deadlines and technical requirements regarding closed captioning of programming.

The Commission is also instructed to initiate an inquiry within six months of the date of enactment, regarding the use of video descriptions on video programming in order to ensure the accessibility of video programming to persons with visual impairments.

V. REGULATORY REFORM

A. Regulatory Forbearance

A new section 10 in Title I of the Communications Act is created which requires the Commission to forbear from applying any provision of the Communications Act or from applying any of its regulations to a telecommunications carrier or telecommunications service, if the Commission determines that enforcement is not necessary to, among other things, (1) ensure that charges, practices, classifications or regulations for such carrier or service are just and reasonable, and not unjustly or unreasonably discriminatory; (2) protect consumers; and (3) protect the public interest. In making its public interest determinations, the Commission shall consider whether or not forbearance will promote competition. Carriers are permitted to petition for forbearance and these petitions shall be deemed granted if the Commission does not deny such petition within one year of the Commission's receipt of the petition.

B. Biennial Review of Regulations; Regulatory Relief

A new section 11 in Title I of the Communications Act is created which requires the Commission, beginning in 1998 and in every even numbered year thereafter, to review all of its regulations that apply to the operations and activities of providers of telecommunications services and determine whether any of these regulations are no longer in the public interest because competition between providers renders the regulation no longer meaningful. Regulations that the Commission determines are no longer in the public interest are required to be eliminated.

C. Elimination of Unnecessary Commission Regulations and Functions

Certain existing regulations have been eliminated or streamlined. For example, Section 312 of the Communications Act has been amended to allow automatic cancellation of a broadcaster's license if the stations does not transmit for 12 consecutive months. Section 220(b) of the Act has been amended to repeal the current requirement that the Commission set depreciation rates for common carriers, thus allowing the Commission flexibility to assess whether doing so would serve the public interest. Section 310(b) of the Act has been amended to remove the restriction on corporations having foreign officers or

directors.

VI. OBSCENITY AND VIOLENCE

A. Obscene or Harassing Use of Telecommunications Facilities Under the Communications Act of 1934

Section 223 of the Act has been amended to, among other things, prohibit the use of a telecommunications device to make or make available an indecent communications to minors, prohibit the use of a telecommunications device to make or make available an obscene communication, etc.

New defenses are provided to assure that the mere provision of access to an interactive computer service does not create liability. The access providers provision is not available to one who provides access to a system with which they conspire or own or control. Employers are provided a defense for actions by employees unless the employee's conduct is within the scope of employment and is known, authorized, or ratified by the employer. A good faith defense is provided for "reasonable, effective, and appropriate" measures to restrict access to prohibited communications. The word "effective" is given its common meaning and does not require an absolute 100 percent restriction of access to be judged "effective."

The Commission is permitted to describe its view of what constitute "reasonable, effective and appropriate" measures and provides that use of such measures shall be admissible as evidence that the defendant qualifies for the good faith defense. This new subsection grants no further authority to the Commission over interactive computer services and should be narrowly construed.

Inconsistent State and local regulations are preempted.

B. Obscene Programming on Cable Television

Section 639 of the Communications Act is amended to increase the maximum fine for transmitting obscene programming on cable television.

C. Scrambling of Cable Channels for Nonsubscribers

New section 640 is added to the Communications Act requiring cable television to fully scramble or otherwise block, upon subscriber request and at no charge to the subscriber, the audio and video portions of programming not specifically subscribed to

by a household.

D. Scrambling of Sexually Explicit Adult Video Service Programming

New section 641 of the requires that multichannel video programming distributors offering sexually explicit adult programming or other programming that is indecent on any channel of their services primarily dedicated to sexually-oriented programming fully scramble or block the video and audio portions of such channel or channels so that one not a subscriber does not receive it. Pending compliance, programming distributors are required to limit distribution during certain hours only.

E. Cable Operator Refusal to Carry Certain Programs

Section 612(c)(2) of the Act has been amended to allow cable operators to refuse to transmit any public access or leased access program or portion of a program which contains obscenity, indecency, or nudity.

F. Protection of Minors and Clarification of Current Laws Regarding Communication of Obscene Materials through the Use of Computers

Certain provisions of Title 18 of the United States Code have been amended to more fully clarify the prohibition on the interstate transportation and importation of obscenity for the purpose of distribution, whether commercial or noncommercial in nature.

G. Coercion and Enticement of Minors

Section 2422 of Title 18 of the United States Code is amended to prohibit the use of a facility of interstate commerce, which includes telecommunications devices and other forms of communication for the purpose of luring, enticing, or coercing a minor into prostitution or a sexual crime for which a person could be held criminally liable, or attempt to do so.

H. Online Family Empowerment

New section 230 is added which provides "Good Samaritan" protections from civil liability for providers or users of an interactive computer service for actions to restrict or to enable restriction of access to objectionable online material. One of the specific

purposes of this section is to overrule *Stratton-Oakmont v. Prodigy*, 23 Media L. Rep. 1794 (N.Y.Sup. 1995), and any other similar decisions which have treated such providers and users as publishers or speakers of content that is not their own because they have restricted access to objectionable material. These protections apply to all interactive computer services, including non-subscriber systems such as those operated by many businesses for employee use. They also apply to all access software providers.

I. Violence - Parental Choice in Television Programming

Section 303 of the Act is amended to, among other things, provide the Commission the authority to set up an advisory committee to recommend a system for rating video programming that contains sexual, violent or other indecent material about which parents should be informed before it is displayed to children. It also provides the Commission with authority to prescribe rules requiring a distributor to transmit a rating if the distributor has decided to rate a video program. However, the Commission's exercise of this authority is delayed to no sooner than one year after the date of enactment, and only if the Commission determines that distributors of video programming have not established an acceptable voluntary system for rating programming nor agreed voluntarily to broadcast signals that contain ratings of such programming.

The Commission is authorized to prescribe guidelines and recommended procedures for a rating system based on the recommendations from the advisory committee. Nothing in this language is intended to preclude publishing the rating in print advertisements or on the air, but under this provision the distributor must include the electronic transmission of the rating as an additional method of empowering parents to block programming carrying the rating.

The rules prescribed for transmitting a rating are requirements. In contrast, the guidelines and recommended procedures for a rating system are not rules and do not include requirements. They are intended to provide industry with a carefully considered and practical system for rating programs if industry does not develop such a system itself.

The effective date for requiring the manufacture of television sets capable of blocking is no less than two years after the date of enactment.

J. Technology Fund

New section 552 encourages broadcast, cable, satellite, syndication, and other video programming distributors to establish a technology fund to encourage TV and electronics equipment manufacturers to facilitate the development of blocking technology that would empower parents to block TV programming they deem inappropriate for their children.

K. Judicial Review - Expedited Review

Section 561 adds new language to provide for expedited judicial review of the indecency, obscenity and violence provisions of the Act. In any civil action in which a party makes a facial challenge to these provisions, the challenge shall be heard by a three-judge district court convened under 28 U.S.C. section 2284. Any decision of the three-judge district court holding a provision unconstitutional shall be directly appealable to the Supreme Court as a matter of right.

VII. EFFECT ON OTHER LAWS

A. Applicability of Consent Decrees and Other Law

New section 601 adopts a new approach to the supersession of the Modification of Final Judgment (the AT&T Consent Decree) and the GTE consent decree, and it adds language superseding the AT&T-McCaw Consent Decree ("McCaw Consent Decree"). Rather than "superseding" all or part of these continuing injunctions, the new provision simply provides that all conduct or activities that are currently subject to these consent decrees shall, on and after the date of enactment, become subject to the requirements and obligations of the Communications Act and shall no longer be subject to the restrictions and obligations of the respective consent decrees.

It is intended that the court shall retain jurisdiction over the three consent decrees for the limited purpose of dealing with any conduct or activity occurring before the date of enactment. Nothing in the language eliminating the prospective effect of the three consent decrees should be construed as eliminating the jurisdiction of the Court to deal with pre-enactment conduct or activities under the consent decrees.

At the time of the divestiture of AT&T under the AT&T Consent Decree, AT&T and the BOCs en-

tered into a number of long-term contracts that dealt with pensions, contingent liabilities, and the like. These contracts are not incorporated by reference in the AT&T Consent Decree, and nothing in the language eliminating the prospective effect of the AT&T Consent Decree should be construed as affecting these contracts.

By eliminating the prospective effect of the GTE Consent Decree, this language removes entirely the GTE Consent Decree's prohibition on GTE's and the GTE Operating Companies' entry into the interexchange market. No provision in the Communications Act should be construed as creating or continuing in any way the GTE Consent Decree's prohibition on GTE or its operating companies' entry into the interexchange market.

B. Preemption of Local Taxation with Respect to Direct-to-Home Services

Section 602 preempts local taxation on the provision of direct-to-home ("DTH") satellite services. This provision exempts DTH satellite service providers and their sales and distribution agents and representatives from collecting and remitting local taxes on satellite-delivered programming services.

VIII. MISCELLANEOUS PROVISIONS

A. Prevention of Unfair Billing Practices for Information or Services Provided Over Toll-Free Telephone Calls

Section 228(c) of the Act is amended to add protection against the use of toll free telephone numbers to connect an individual to a "pay-per-call" service.

Section 228(c) is amended further to clarify that subscribers who call an 800 number or other toll-free numbers shall not be charged for the calls unless the calling party agrees to be charged under a written subscription agreement or other appropriate means.

Section 204 of the Communications Act is amended further to close a loophole in current law, which permits information providers to evade the restrictions of section 228 by filing tariffs for the provision of information services. Many information providers have taken advantage of this exemption by filing tariffs—especially for 1-500, 1-700 and 10XXX numbers—and charging customers high prices for the services.

B. Privacy of Customer

Title II of the Act is amended to add new section 222. In general, the new section 222 strives to balance both competitive and consumer privacy interests with respect to CPNI. New subsection 222(a) stipulates that it is the duty of every telecommunications carrier to protect the confidentiality of proprietary information of and relating to other carriers, equipment manufacturers and customers, including carriers reselling telecommunications services provided by a telecommunications carrier.

New subsection 222(b) provides that a telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose and shall not use such information for its own marketing efforts.

Use of CPNI by telecommunications carriers is limited, except as provided by law or with the approval of the customer. New subsection (c) specifies that telecommunications carriers shall only use, disclose, or permit access to individually identifiable CPNI in its provision of the telecommunications service for which such information is derived or in its provision of services necessary to or used in the provision of such telecommunications service, including directory services. Disclosure of CPNI by a telecommunications carrier upon affirmative written request by the customer, to any person designated by the customer, is permitted.

Carriers have a right under this provision to use CPNI to initiate, render, bill, and collect for telecommunications service. New subsection (d) also allows use of CPNI to protect the rights or property of the carrier.

New subsection 222(e) stipulates that subscriber list information shall be made available by telecommunications carriers that provide telephone exchange service on a timely and unbundled basis to any person upon request for the purpose of publishing directories in any format. The subscriber list information provision guarantees independent publishers access to subscriber list information at reasonable and nondiscriminatory rates, terms and conditions from any provider of local telephone service.

C. Pole Attachments

Section 224 of the Act is amended by adding new subsection (e)(1) to allow parties to negotiate the rates, terms, and conditions for attaching to poles, ducts, conduits, and rights-of-way owned or con-

trolled by utilities. New subsection 224(e)(2) establishes a new rate formula charged to telecommunications carriers for the non-useable space of each pole. Such rate shall be based upon the number of attaching entities. The new subsection also requires utilities that engage in the provision of telecommunications services or cable services to impute to its costs of providing such service an equal amount to the pole attachment rate for which such company would be liable under section 224. New subsection 224(h) requires utilities to provide written notification to attaching entities of any plans to modify or alter its poles, ducts, conduit, or rights-of-way. New subsection 224(h) also requires any attaching entity that takes advantage of such opportunity to modify its own attachments shall bear a proportionate share of the costs of such alterations.

D. Facilities Siting; Radio Frequency Emission Standards

New section 704 is created which prevents Commission preemption of local and State land use decisions and preserves the authority of State and local governments over zoning and land use matters except in limited circumstances. A mechanism is created for judicial relief from zoning decisions that fail to comply with the provisions of this section. Any pending Commission rulemaking concerning the preemption of local zoning authority over the placement, construction or modification of CMS facilities should be terminated.

Actions taken by State or local governments shall not prohibit or have the effect of prohibiting the placement, construction or modification of personal wireless services

A State or local government or its instrumentalities are prevented from basing the regulation of the placement, construction or modification of CMS facilities directly or indirectly on the environmental effects of radio frequency emissions if those facilities comply with the Commission's regulations adopted pursuant to section 704(b) concerning such emissions.

With respect to the availability of Federal property for the use of wireless telecommunications infrastructure sites under section 704(c), statute requires the President or his designee to prescribe procedures to make available the use of Federal property, rights-of-way, easements, and other physical instruments in the siting of wireless telecommunications facilities.

E. Mobile Service Direct Access to Long Distance Carriers

Section 332(c) of the Act is amended to provide that no CMS provider is required to provide equal access to common carriers providing telephone toll services. However, the Commission may impose rules to require unblocked access through the use of mechanisms such as carrier identification codes or toll-free numbers, if it determines that customers are being denied access to the telephone toll service provider of their choice, and such denial is contrary to the public interest, convenience, and necessity. The requirements for unblocked access to providers of telephone toll service does not apply to mobile satellite services unless the Commission finds it to be in the public interest.

F. Advanced Telecommunications Incentives

New section 706 ensures that advanced telecommunications capability is promptly deployed by requiring the Commission to initiate and complete regular inquiries to determine whether advanced telecommunications capability, particularly to schools and classrooms, is being deployed in a "reasonable and timely fashion." Such determinations shall include an assessment by the Commission of the availability, at reasonable cost, of equipment needed to deliver advanced broadband capability. If the Commission makes a negative determination, it is required to take immediate action to accelerate deployment. Measures to be used include: price cap regulation, regulatory forbearance, and other methods that remove barriers and provide the proper incentives for infrastructure investment. The Commission may preempt State commissions if they fail to act to ensure reasonable and timely access.

G. Telecommunications Development Fund

New section 714 creates the Telecommunications Development Fund ("TDF"). The TDF is an organization to provide funds for small businesses involved in telecommunications application. The TDF is formulated to serve as a quasi-governmental entity that will provide low interest loans as well as financial guarantees. The capital for the Fund will be derived from the deposit of up-front payments for spectrum auctions into an interest bearing account.

Businesses with gross assets of less than \$ 50 million will be eligible to receive loans, based upon an assessment of their loan application. The fund will

be administered as a not-for-profit organization, and funds will be disbursed on a race and gender neutral basis.

The fund will provide for reinvestment, create jobs, and promote technological innovation in the telecommunications industry. A unique aspect of the Fund is that it will promote public/private sector partnerships to enhance fund assets, and promote technology development and transfer.

H. National Education Technology Funding Corporation

New section 708 creates the National Education Technology Funding Corporation Act of 1995. The provisions authorize a corporation, established in the District of Columbia as a private, nonprofit corporation which is not an agency or independent establishment of the Federal Government, to receive financial assistance from Federal departments and agencies. The Corporation will receive such assistance to leverage resources and stimulate private investment in education technology infrastructure, to encourage States to create and upgrade interactive high capacity

networks for elementary schools, secondary schools, and public libraries, etc.

I. Report on the Use of Advanced Telecommunications Services for Telemedicine Grant Programs Conducted by the Government

New section 709 directs the Assistant Secretary of Commerce for Communications and Information, in consultation with the Secretary of Health and Human Services, to submit a report on telemedicine grant programs conducted by the government.

J. Authorization of Appropriations

New section 710 authorizes appropriations for the Commission of such sums as may be necessary to carry out this Act, and provides that additional amounts appropriated to carry out this Act shall be construed to be changes in the amounts appropriated for the performance of the activities described in section 9(a) of the Communications Act.