

HEINONLINE

Citation: 5 Bernard D. Reams Jr. & William H. Manz Federal
Law A Legislative History of the Telecommunications
of 1996 Pub. L. No. 104-104 110 Stat. 56 1996
the Communications Decency Act 1 1997

Content downloaded/printed from
HeinOnline (<http://heinonline.org>)
Wed Mar 20 17:57:34 2013

- Your use of this HeinOnline PDF indicates your acceptance
of HeinOnline's Terms and Conditions of the license
agreement available at <http://heinonline.org/HOL/License>
- The search text of this PDF is generated from
uncorrected OCR text.

103^D CONGRESS
1ST SESSION

H. R. 3636

To promote a national communications infrastructure to encourage deployment of advanced communications services through competition, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 22, 1993

Mr. MARKEY (for himself, Mr. FIELDS of Texas, Mr. BOUCHER, Mr. ONLEY, Mr. HALL of Texas, Mr. MOORHEAD, Mr. BRYANT, Mr. BARTON of Texas, Mr. LEHMAN, Mr. HASTERT, Mr. RICHARDSON, Mr. GILLMOR, and Ms. SCHENK) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To promote a national communications infrastructure to encourage deployment of advanced communications services through competition, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "National Communica-
5 tions Competition and Information Infrastructure Act of
6 1993".

1 **TITLE I—TELECOMMUNI-**
2 **CATIONS INFRASTRUCTURE**
3 **AND COMPETITION**

4 **SEC. 101. POLICY; DEFINITIONS.**

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

7 (1) by inserting “(a)” after “SECTION 1.”; and
8 (2) by adding at the end thereof the following
9 new subsection:

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

12 “(1) to preserve and enhance universal tele-
13 communications service at affordable rates;

14 “(2) to encourage the continued development
15 and deployment of advanced and reliable capabilities
16 and services in telecommunications networks;

17 “(3) to ensure that the costs of such networks
18 and services are allocated equitably among users and
19 are constrained by competition whenever possible;

20 “(4) to ensure a seamless and open nationwide
21 telecommunications network through joint planning,
22 coordination, and service arrangements between and
23 among carriers; and

1 “(5) to ensure that common carriers’ networks
2 function at a high standard of quality in delivering
3 advances in network capabilities and services.”

4 (b) DEFINITIONS.—Section 3 of such Act (47 U.S.C.
5 153) is amended by adding at the end thereof the follow-
6 ing new subsections:

7 “(hh) ‘Information service’ means the offering of a
8 capability for generating, acquiring, storing, transforming,
9 processing, retrieving, utilizing, or making available infor-
10 mation via telecommunications, and includes electronic
11 publishing, but does not include any use of any such capa-
12 bility for the management, control, or operation of a tele-
13 communications system or the management of a tele-
14 communications service.

15 “(ii) ‘Equal access’ means to afford, to any person
16 seeking to provide an information service or a competing
17 telecommunications service, reasonable and nondiscrim-
18 inatory access—

19 “(1) to databases, signaling systems, poles,
20 ducts, conduits, and rights-of-way owned or con-
21 trolled by a local exchange carrier, or other facilities
22 or information (including customer numbers) inte-
23 gral to the transmission, routing, or other provision
24 of telephone exchange services;

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

4 “(3) that is sufficient to ensure the full inter-
5 operability of the equipment and facilities of the car-
6 rier and of the person seeking such access.

7 “(jj) ‘Open platform service’ means a switched, end-
8 to-end digital telecommunications service, subject to title
9 II of this Act, which (1) provides subscribers with suffi-
10 cient network capability to access multimedia information
11 services, (2) is widely available throughout each State, (3)
12 is provided based on accepted standards, and (4) is avail-
13 able to all customers on a single line basis upon reasonable
14 request.

15 “(kk) ‘Local exchange carrier’ means any person that
16 is engaged in the provision of telephone exchange service
17 or telephone exchange access service.

18 “(ll) ‘Telephone exchange access service’ means the
19 offering of telephone exchange services or facilities for the
20 purpose of the origination or termination of interexchange
21 telecommunications services to or from an exchange area.

22 “(mm) ‘Telecommunications’ means the trans-
23 mission, between or among points specified by the cus-
24 tomer, of information of the customer’s choosing, without
25 change in the form or content of the information as sent

1 and received, by means of an electromagnetic transmission
2 medium, including all instrumentalities, facilities, appara-
3 tus, and services (including the collection, storage, for-
4 warding, switching, and delivery of such information) es-
5 sential to such transmission.

6 “(nn) ‘Telecommunications service’ means the offer-
7 ing, on a common carrier or other basis, of telecommuni-
8 cations facilities, or of telecommunications by means of
9 such facilities. Such term does not include an information
10 service.”.

11 **SEC. 102. EQUAL ACCESS AND NETWORK FUNCTIONALITY**
12 **AND QUALITY.**

13 (a) **AMENDMENT.**—Section 201 of the Communica-
14 tions Act of 1934 (47 U.S.C. 201) is amended by adding
15 at the end thereof the following new subsections:

16 “(c) **EQUAL ACCESS.**—

17 “(1) **OPENNESS AND ACCESSIBILITY OBLIGA-**
18 **TIONS.**—

19 “(A) **COMMON CARRIER OBLIGATIONS.**—

20 The duty of a common carrier under subsection
21 (a) to furnish communications service includes
22 the duty to furnish that service in accordance
23 with such regulations with respect to the open-
24 ness and accessibility of common carrier net-
25 works as the Commission may prescribe as nec-

1 essary or desirable in the public interest pursu-
2 ant to this subsection.

3 “(B) ADDITIONAL OBLIGATIONS OF LOCAL
4 EXCHANGE CARRIERS.—The duty under such
5 subsection of a local exchange carrier includes
6 the duty—

7 “(i) to provide, in accordance with the
8 regulations prescribed under paragraph
9 (2), equal access to and interconnection
10 with the facilities of the carrier’s networks
11 to any other carrier or person providing
12 telecommunications services reasonably re-
13 questing such equal access and inter-
14 connection, so that the networks are fully
15 interoperable; and

16 “(ii) to offer unbundled features,
17 functions, and capabilities in accordance
18 with requirements prescribed by the Com-
19 mission pursuant to this subsection and
20 other laws.

21 “(2) EQUAL ACCESS AND INTERCONNECTION
22 REGULATIONS.—

23 “(A) REGULATIONS REQUIRED.—The
24 Commission shall, within 1 year after the date
25 of enactment of this subsection, establish regu-

1 lations that provide reasonable and nondiscriminatory equal access to and interconnection with
2 the facilities of a local exchange carrier's network at any technically feasible and economically reasonable point within the carrier's network on reasonable terms and conditions, to
3 any other carrier or person providing telecommunications services requesting such access.
4 The Commission shall establish such regulations after consultation with the Joint Board established pursuant to subparagraph (D).
5 Such regulations shall provide for actual collocation of equipment necessary for interconnection at the premises of a local exchange carrier, except that the regulations shall provide for virtual collocation where the local exchange carrier demonstrates that actual collocation is not practical for technical reasons or because of space limitations.

6 “(B) COMPENSATION.—The Commission shall establish rules, within 1 year after the date of enactment of this subsection, for the just and reasonable compensation to the exchange carrier providing such interconnection and equal access pursuant to subparagraph (A).

1 “(C) EXEMPTIONS AND MODIFICATIONS.—

2 Notwithstanding any other provision of this
3 subsection, a local exchange carrier in a rural
4 area shall not be required to provide equal ac-
5 cess and interconnection to another local ex-
6 change carrier. The Commission may modify
7 the requirements of this paragraph for any local
8 exchange carrier that has, in the aggregate na-
9 tionwide, fewer than 500,000 subscriber lines
10 installed, to the extent that the Commission de-
11 termines that compliance with such require-
12 ments would be unduly economically burden-
13 some, technologically infeasible, or otherwise
14 not in the public interest.

15 “(D) JOINT BOARD ON EQUAL ACCESS AND
16 INTERCONNECTION STANDARDS.—Within 30
17 days after the date of enactment of this sub-
18 section, the Commission shall convene a Fed-
19 eral-State Joint Board under section 410(c) for
20 the purpose of preparing a recommended deci-
21 sion for the Commission with respect to the
22 equal access and interconnection regulations re-
23 quired by this paragraph.

24 “(E) ENFORCEMENT OF EXISTING REGU-
25 LATIONS.—Nothing in this section shall be con-

1 strued to prohibit the Commission from enforce-
2 ing regulations prescribed prior to the date of
3 enactment of this section in fulfilling the re-
4 quirements of this subsection to the extent that
5 such regulations are consistent with the provi-
6 sions of this subsection.

7 “(3) STATE PREEMPTION.—Notwithstanding
8 section 2(b), no State or local government may, after
9 one year after the date of enactment of this
10 subsection—

11 “(A) effectively prohibit any provider of
12 any telecommunication services from providing
13 that or any other such service, or impose any
14 restrictions on entry into the business of provid-
15 ing any such service that is inconsistent with
16 this subsection or any other provision of this
17 Act, or any regulation thereunder;

18 “(B) prohibit any carrier or other person
19 providing telecommunications services from ex-
20 ercising the access and interconnection rights
21 provided under this subsection; or

22 “(C) impose any limitation on the exercise
23 of such rights that is inconsistent with this sub-
24 section or the regulations prescribed under this
25 subsection.

1 “(4) TARIFFS.—

2 “(A) GENERALLY.—A local exchange car-
3 rier shall, within 18 months after the date of
4 enactment of this subsection, prepare and file
5 tariffs in accordance with this Act with respect
6 to the services or elements offered to comply
7 with the equal access and interconnection regu-
8 lations required under this subsection. The
9 costs that a carrier incurs in providing such
10 services or elements of exchange services shall
11 be borne solely by the users of the features and
12 functions comprising such services or which
13 uses or includes such service element. The Com-
14 mission shall review such tariffs to ensure
15 that—

16 “(i) the charges for such services or
17 elements of exchange services are cost-
18 based; and

19 “(ii) the terms and conditions con-
20 tained in such tariffs do not bundle to-
21 gether any separable elements, features, or
22 functions.

23 “(B) SUPPORTING INFORMATION.—A local
24 exchange carrier shall submit supporting infor-
25 mation with its tariffs for equal access and

1 interconnection that is sufficient to enable the
2 Commission and the public to determine the re-
3 lationship between the proposed charges and
4 the costs of providing such services or elements
5 of exchange services. The submission of such
6 information shall be pursuant to rules adopted
7 by the Commission to ensure that similarly sit-
8 uated carriers provide such information in a
9 uniform fashion.

10 “(5) PRICING FLEXIBILITY.—(A) Within 270
11 days after the date of enactment of this subsection,
12 the Commission, by regulation, shall establish cri-
13 teria for determining—

14 “(i) whether a telecommunications service
15 or provider of such service has become, or is
16 reasonably certain imminently to become, sub-
17 ject to competition, either within a geographic
18 area or within a class or category of service;

19 “(ii) whether such competition will effec-
20 tively prevent rates for such service that are un-
21 just or unreasonable or that are unjustly or un-
22 reasonably discriminatory; and

23 “(iii) appropriate flexible pricing proce-
24 dures that can be used in lieu of the filing of
25 tariff schedules, or in lieu of other pricing pro-

1 cedures established by the Commission, and
2 that are consistent with the public interest, con-
3 venience, and necessity.

4 “(B) The Commission, with respect to rates for
5 interstate or foreign communications, and State
6 commissions, with respect to rates for intrastate
7 communications, shall, upon application—

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

13 “(ii) upon a proper showing, establish an
14 appropriate flexible pricing procedure consistent
15 with the criteria established under clause (iii) of
16 such subparagraph.

17 The Commission shall approve or reject any such ap-
18 plication within 180 days after its submission.

19 “(6) JOINT BOARD TO PRESERVE UNIVERSAL
20 SERVICE.—

21 “(A) ESTABLISHMENT; FUNCTIONS.—
22 Within 30 days after the date of enactment of
23 this subsection, the Commission shall convene a
24 Federal-State Joint Board under section 410(c)
25 for the purpose of recommending actions to the

1 Commission and State commissions for the
2 preservation of universal service. As a part of
3 preparing such recommendations, the Joint
4 Board shall survey providers of telephone ex-
5 change service and consult with State commis-
6 sions in order to determine the pecuniary dif-
7 ference between the cost of providing universal
8 service and the prices determined to be appro-
9 priate for such service. In making such rec-
10 ommendations, the Joint Board shall base poli-
11 cies for the preservation of universal service on
12 the following principles:

13 “(i) A plan adopted by the Commis-
14 sion and the States should ensure the con-
15 tinued viability of universal service by
16 maintaining quality services at affordable
17 prices.

18 “(ii) Such plan should define the na-
19 ture and extent of the services encom-
20 passed within carriers’ universal service ob-
21 ligations and should seek to promote ac-
22 cess to advanced telecommunications serv-
23 ices for all Americans by including ad-
24 vanced telecommunications services in the

1 definition of universal service, while main-
2 taining affordable rates.

3 “(iii) Such plan should establish spe-
4 cific and predictable mechanisms to pro-
5 vide adequate and sustainable support for
6 universal service.

7 “(iv) All providers of telecommuni-
8 cations services should make an equitable
9 and nondiscriminatory contribution to
10 preservation of universal service.

11 “(B) REPORT; COMMISSION RESPONSE.—
12 The Joint Board convened pursuant to sub-
13 paragraph (A) shall report its recommendations
14 within 270 days after the date of enactment of
15 this subsection. The Commission shall complete
16 any proceeding to implement such recommenda-
17 tions within one year after such date of enact-
18 ment. A State may adopt regulations to imple-
19 ment the Joint Board’s recommendations, ex-
20 cept that such regulations shall not, after 18
21 months after such date of enactment, be incon-
22 sistent with regulations prescribed by the Com-
23 mission to implement such recommendations.

24 “(7) RESALE.—The resale or sharing of tele-
25 phone exchange service (or unbundled elements of

1 such service) in conjunction with the furnishing of a
2 telecommunications service or any information serv-
3 ice shall not be prohibited nor subject to unreason-
4 able conditions by the carrier, the Commission, or
5 any State.

6 “(8) REVIEW OF STANDARDS AND REQUIRE-
7 MENTS.—At least once every three years, the Com-
8 mission shall—

9 “(A) conduct a proceeding in which inter-
10 ested parties shall have an opportunity to com-
11 ment on whether the standards and require-
12 ments established by or under this subsection
13 have opened the networks of carriers to reason-
14 able and nondiscriminatory access by providers
15 of telecommunications services and information
16 services;

17 “(B) review the definition of universal
18 service and evaluate the extent to which univer-
19 sal service has been protected and access to ad-
20 vanced services has been facilitated pursuant to
21 this subsection and the plans and regulations
22 thereunder; and

23 “(C) submit to the Congress a report con-
24 taining a statement of the Commission’s find-
25 ings pursuant to such proceeding, and including

1 an identification of any defects or delays ob-
2 served in attaining the objectives of this sub-
3 section and a plan for correcting such defects
4 and delays.

5 “(9) STUDY OF RURAL PHONE SERVICE.—No
6 later than 1 year after the date of enactment of this
7 subsection, the Commission shall initiate an inquiry
8 to examine the effects of competition in the provision
9 of telephone exchange access and telephone exchange
10 service on the availability and rates for telephone ex-
11 change access and telephone exchange service fur-
12 nished by rural exchange carriers.

13 “(d) NETWORK FUNCTIONALITY AND QUALITY.—

14 “(1) FUNCTIONALITY AND RELIABILITY OBLI-
15 GATIONS.—The duty of a common carrier under
16 subsection (a) to furnish communications service in-
17 cludes the duty to furnish that service in accordance
18 with such regulations of functionality and reliability
19 as the Commission may prescribe as necessary or de-
20 sirable in the public interest pursuant to this sub-
21 section.

22 “(2) COORDINATED PLANNING FOR INTEROPER-
23 ABILITY AND OTHER PURPOSES.—The Commission
24 shall establish—

1 “(A) procedures for the conduct of coordi-
2 nated network planning by common carriers
3 and other providers of telecommunications or
4 information services, subject to Commission su-
5 pervision, for the effective and efficient inter-
6 connection and interoperability of public and
7 private networks; and

8 “(B) procedures for the development, sub-
9 ject to Commission supervision, of—

10 “(i) standards for the interconnection
11 and interoperability of such networks;

12 “(ii) standards for the design of such
13 networks that promote access to network
14 capabilities and services by individuals with
15 disabilities; and

16 “(iii) standards to ensure that the de-
17 sign of such networks does not impede ac-
18 cess to information services by subscribers
19 to telephone exchange service furnished by
20 a rural exchange carrier.

21 “(3) OPEN PLATFORM SERVICE.—

22 “(A) STUDY.—No later than 90 days after
23 the enactment of this subsection, the Commis-
24 sion shall initiate an inquiry to consider the
25 rules and policies necessary to make open plat-

1 form service available to all subscribers at rea-
2 sonable rates based on the reasonably identifi-
3 able costs of providing such services, utilizing
4 existing facilities to the maximum extent fea-
5 sible and economically practicable. The inquiry
6 required under this paragraph shall be com-
7 pleted within 120 days after initiation.

8 “(B) REGULATIONS.—On the basis of the
9 results of the inquiry required under subpara-
10 graph (A), the Commission shall prescribe and
11 make effective such regulations as are necessary
12 to implement the inquiry’s conclusions. Such
13 regulations may require a local exchange carrier
14 to file, in the appropriate jurisdiction, tariffs
15 for the origination and termination of open
16 platform service as soon as such service is eco-
17 nomically and technically feasible. In establish-
18 ing any such regulations, the Commission shall
19 take into account the proximate and long-term
20 deployment plans of local exchange carriers,
21 and may establish a procedure to delay for a
22 reasonable period of time any requirement of
23 open platform service if a petition from a local
24 exchange carrier demonstrates that compliance
25 with such requirement would significantly delay

1 the deployment of a more advanced technology.
2 Any such regulations shall provide for the allo-
3 cation of all costs of facilities jointly used to
4 provide open platform service and telephone ex-
5 change service. Nothing in this subsection shall
6 be construed to limit a State's authority to con-
7 tinue to regulate any services subject to State
8 jurisdiction under this Act.

9 “(C) CONTINUING OVERSIGHT.—Com-
10 mencing not later than 2 years after the date
11 of enactment of this subsection, the Commis-
12 sion shall conduct an inquiry on the progress of
13 open platform service deployment. The Commis-
14 sion shall submit a report to the Congress on
15 the results of such inquiry within 90 days after
16 the commencement of such inquiry and annu-
17 ally thereafter for the succeeding 5 years.

18 “(4) ACCESSIBILITY REGULATIONS.—

19 “(A) REGULATIONS.—The Commission
20 shall, within 1 year after enactment of this sec-
21 tion, prescribe such regulations as are necessary
22 to ensure that advances in network services de-
23 ployed by local exchange carriers shall be acces-
24 sible and usable by individuals with disabilities,
25 including individuals with functional limitations

1 of hearing, vision, movement, manipulation,
2 speech and interpretation of information, unless
3 the cost of making the services accessible and
4 usable would result in an undue burden or ad-
5 verse competitive impact. Such regulations shall
6 seek to permit the use of both standard and
7 special equipment, and seek to minimize the
8 need of individuals to acquire additional devices
9 beyond those used by the general public to ob-
10 tain such access.

11 “(B) COMPATIBILITY.—Such regulations
12 shall require that whenever an undue burden or
13 adverse competitive impact would result from
14 the requirements in subparagraph (A), the local
15 exchange carrier that deploys the network serv-
16 ice shall ensure that the network service in
17 question is compatible with existing peripheral
18 devices or specialized customer premises equip-
19 ment commonly used by persons with disabil-
20 ities to achieve access, unless doing so would re-
21 sult in an undue burden or adverse competitive
22 impact.

23 “(C) UNDUE BURDEN.—The term ‘undue
24 burden’ means significant difficulty or expense.
25 In determining whether the activity necessary

1 to comply with the requirements of this para-
2 graph would result in an undue burden, the fac-
3 tors to be considered include:

4 “(i) The nature and cost of the activ-
5 ity.

6 “(ii) The impact on the operation of
7 the facility involved in the deployment of
8 the network service.

9 “(iii) The financial resources of the
10 local exchange carrier.

11 “(iv) The type of operations of the
12 local exchange carrier.

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

18 “(i) whether such activity would raise
19 the cost of the network service in question
20 beyond the level at which there would be
21 sufficient consumer demand by the general
22 population to make the network service
23 profitable; and

24 “(ii) whether such activity would, with
25 respect to the network service in question,

1 put the local exchange carrier at a com-
2 petitive disadvantage. This factor may be
3 considered so long as competing network
4 service providers are not held to the same
5 obligation with respect to access by per-
6 sons with disabilities.

7 “(E) EFFECTIVE DATE.—The regulations
8 required by this paragraph shall become effec-
9 tive 18 months after the date of enactment of
10 this subsection.

11 “(5) QUALITY RULES.—(A) The Commission
12 shall designate or otherwise establish network reli-
13 ability and quality performance measures or bench-
14 marks for common carriers for the purpose of ensur-
15 ing the continued maintenance and evolution of com-
16 mon carrier facilities and service. Not later than 180
17 days after the date of enactment of this subsection,
18 the Commission shall initiate a rulemaking proceed-
19 ing to establish performance measures or bench-
20 marks for maintaining common carrier network
21 quality.

22 “(B) Such rules and regulations shall include—

23 “(i) quantitative network reliability and
24 service quality performance measures or bench-
25 marks;

1 “(ii) procedures to monitor and evaluate
2 common carrier efforts to increase network reli-
3 ability and service quality; and

4 “(iii) procedures to resolve network reli-
5 ability and service quality complaints.

6 “(C) Throughout the process of developing net-
7 work reliability and service quality performance
8 measures or benchmarks, as required by subpara-
9 graph (A), the Commission shall coordinate and con-
10 sult with service and equipment providers and users
11 and State regulatory bodies to ensure their concerns
12 and interests are given full consideration in such
13 process.

14 “(6) RURAL EXEMPTION.—The Commission
15 may modify, or grant exemptions from, the require-
16 ments of this subsection in the case of a common
17 carrier providing telecommunications services in a
18 rural area.”.

19 (b) CONFORMING AMENDMENT.—Section 2(b) of the
20 Communications Act of 1934 (47 U.S.C.152(b)) is amend-
21 ed by inserting “201(e) and (d)” after “Except as pre-
22 vided in sections”.

1 **SEC. 103. DISCRIMINATORY INTERCONNECTION.**

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

5 “(c) **EXPEDITED REVIEW OF CERTAIN COM-**
6 **PLAINTS.**—The Commission shall issue a final order with
7 respect to any complaint arising from alleged violations
8 of the rules and orders prescribed pursuant to section
9 201(c) within 180 days after such complaint is filed.”.

10 **SEC. 104. EXPEDITED LICENSING OF NEW TECHNOLOGIES**
11 **AND SERVICES.**

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

15 “(e) **LICENSING OF NEW TECHNOLOGIES.**—

16 “(1) **EXPEDITED RULEMAKING.**—Within 24
17 months after making a determination under sub-
18 section (b) that a technology or service related to the
19 furnishing of telecommunications services is in the
20 public interest, the Commission shall, with respect to
21 any such service requiring a license or other author-
22 ization from the Commission, adopt and make effec-
23 tive rules for—

24 “(A) the provision of such technology or
25 service; and

1 “(B) the filing of applications for the li-
2 censes or authorizations necessary to offer such
3 technology or service to the public, and shall act
4 on any such application within 24 months after
5 it is filed.

6 “(2) REVIEW OF APPLICATIONS.—Any applica-
7 tion filed by a carrier under this subsection for the
8 construction or extension of a line shall also be sub-
9 ject to section 214 and to any necessary approval by
10 the appropriate State commissions.”.

11 **SEC. 105. NEW OR EXTENDED LINES.**

12 Section 214 of the Communications Act of 1934 is
13 amended by adding at the end the following new sub-
14 section:

15 “(e) Any application filed under this section by a pro-
16 vider of telephone exchange service for authority to con-
17 struct or extend a line shall address the means by which
18 such construction or extension will meet the network ac-
19 cess needs of individuals with disabilities.”.

20 **TITLE II—COMMUNICATIONS**
21 **COMPETITIVENESS**

22 **SEC. 201. CABLE SERVICE PROVIDED BY TELEPHONE COM-**
23 **PANIES.**

24 (a) GENERAL REQUIREMENT.—

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

4 “(b)(1) Subject to the requirements of part V and
5 the other provisions of this title, any common carrier sub-
6 ject in whole or in part to title II of this Act may, either
7 through its own facilities or through an affiliate owned
8 by, operated by, controlled by, or under common control
9 with the common carrier, provide video programming di-
10 rectly to subscribers in its telephone service area.

11 “(2) Subject to the requirements of part V and the
12 other provisions of this title, any common carrier subject
13 in whole or in part to title II of this Act may provide chan-
14 nels of communications or pole, line, or conduit space, or
15 other rental arrangements, to any entity which is directly
16 or indirectly owned by, operated by, controlled by, or
17 under common control with such common carrier, if such
18 facilities or arrangements are to be used for, or in connec-
19 tion with, the provision of video programming directly to
20 subscribers in its telephone service area.”.

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

1 (A) by redesignating paragraphs (18) and
2 (19) as paragraphs (19 and (20) respectively;
3 and

4 (B) by inserting after paragraph (17) the
5 following new paragraph:

6 “(18) the term ‘telephone service area’ when
7 used in connection with a common carrier subject in
8 whole or in part to title II of this Act means the
9 area within which such carrier provides telephone ex-
10 change service as of November 20, 1993, but if any
11 common carrier after such date transfers its ex-
12 change service facilities to another common carrier,
13 the area to which such facilities provide telephone
14 exchange service shall be treated as part of the tele-
15 phone service area of the acquiring common carrier
16 and not of the selling common carrier.

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

21 **“PART V—CABLE SERVICE PROVIDED BY**

22 **TELEPHONE COMPANIES**

23 **“SEC. 651. DEFINITIONS.**

24 **“For purposes of this part—**

1 “(1) the term ‘affiliated video programming’
2 means any video programming which is (A) owned
3 or controlled by, or under common control with, a
4 common carrier, and (B) provided by the common
5 carrier or an affiliate directly to subscribers in its
6 telephone service area;

7 “(2) the term ‘control’ means—

8 “(A) an ownership interest in which an en-
9 tity has the right to vote more than 50 percent
10 of the outstanding common stock or other own-
11 ership interest; or

12 “(B) actual working control, as defined in
13 the order of the Commission entitled “Imple-
14 mentation of Sections 11 and 13 of the Cable
15 Television Consumer Protection and Competi-
16 tive Act of 1992—Horizontal and Vertical Own-
17 ership Limits, Cross-Ownership Limitations,
18 and Anti-Trafficking Provisions”, MM Docket
19 92-264, adopted September 23, 1993, if no sin-
20 gle entity directly or indirectly has the right to
21 vote more than 50 percent of the outstanding
22 common stock or other ownership interest;

23 “(3) the term ‘video platform’ has the same
24 meaning as the term ‘basic platform’ in the order of
25 the Commission entitled ‘Telephone Company-Cable

1 Television Cross-Ownership Rules, Sections 63.54–
2 63.58', CC Docket No. 87–266, adopted July 16,
3 1992; and

4 “(4) the term ‘rural area’ means a geographic
5 area that does not include either—

6 “(A) any incorporated or unincorporated
7 place of 10,000 inhabitants or more, or any
8 part thereof; or

9 “(B) any territory, incorporated or unin-
10 corporated, included in an urbanized area.

11 **“SEC. 652. SEPARATE VIDEO PROGRAMMING AFFILIATE.**

12 “(a) **IN GENERAL.**—Except as provided in subsection
13 (d) of this section, a common carrier subject to title II
14 of this Act shall not provide video programming directly
15 to subscribers in its telephone service area unless such
16 video programming is provided through a video program-
17 ming affiliate that is separate from such carrier.

18 “(b) **BOOKS AND MARKETING.**—

19 “(1) **IN GENERAL.**—A video programming affli-
20 ate of a common carrier shall—

21 “(A) maintain books, records, and ac-
22 counts separate from such carrier which iden-
23 tify all transactions with such carrier;

24 “(B) carry out directly (or through any
25 nonaffiliate) its own promotion, except that in-

1 stitutional advertising carried out by such car-
2 rier shall be permitted so long as each party
3 bears its pro rata share of the costs; and

4 “(C) not own real or personal property in
5 common with such carrier.

6 “(2) INBOUND TELEMARKETING.—Notwith-
7 standing paragraph (1)(B), a common carrier may
8 provide inbound telemarketing or referral services
9 related to the provision of video programming by a
10 video programming affiliate of such carrier. If such
11 services are provided to a video programming affili-
12 ate, such services shall be made available to any
13 video programmer or cable operator on request, on
14 nondiscriminatory terms, at compensatory prices,
15 and subject to regulations of the Commission to en-
16 sure that the carrier’s method of providing
17 telemarketing or referral and its price structure do
18 not competitively disadvantage any video program-
19 mer or cable operator, regardless of size, including
20 those which do not use the carrier’s telemarketing
21 services.

22 “(3) JOINT TELEMARKETING.—Notwithstand-
23 ing paragraph (1)(B), a common carrier may peti-
24 tion the Commission for permission to market video
25 programming directly, upon showing that a cable op-

1 erator or other entity directly or indirectly provides
2 telecommunications services and markets such serv-
3 ices jointly with video programming services. The
4 common carrier shall specify the geographic region
5 covered by the petition. Any such petition shall be
6 granted or denied within 180 days.

7 “(c) BUSINESS TRANSACTIONS WITH CARRIER SUB-
8 JECT TO REGULATION.—Any contract, agreement, ar-
9 rangement, or other manner of conducting business, be-
10 tween a common carrier and its video programming affili-
11 ate, providing for—

12 “(1) the sale, exchange, or leasing of property
13 between such affiliate and such carrier;

14 “(2) the furnishing of goods or services between
15 such affiliate and such carrier; or

16 “(3) the transfer to or use by such affiliate for
17 its benefit of any asset or resource of such carrier,
18 shall be pursuant to regulation prescribed by the Commis-
19 sion, shall be on a fully compensatory and auditable basis,
20 shall be without cost to the telephone service ratepayers
21 of the carrier, shall be filed with the Commission, and
22 shall be in compliance with rules established by the Com-
23 mission which will be sufficient to enable the Commission
24 to assess the compliance of any transaction.

25 “(d) WAIVER.—

1 “(1) **CRITERIA FOR WAIVER.**—The Commission
2 may waive any of the requirements of this section
3 for small or rural telephone companies, and may, be-
4 ginning 5 years after the date of enactment of this
5 section, waive such requirements for any common
6 carrier, if the Commission determines, after notice
7 and comment, that—

8 “(A) such waiver will not affect the ability
9 of the Commission to ensure that all video pro-
10 gramming activity is carried out without any
11 support from telephone ratepayers;

12 “(B) the interests of telephone ratepayers
13 or cable subscribers will not be harmed if such
14 waiver is granted; and

15 “(C) such waiver otherwise is in the public
16 interest.

17 “(2) **DEADLINE FOR ACTION.**—The Commission
18 shall act to approve or disapprove a waiver applica-
19 tion within 180 days after the date it is filed.

20 **“SEC. 653. ESTABLISHMENT OF VIDEO PLATFORM.**

21 “(a) **COMMON CARRIER OBLIGATIONS.**—Any com-
22 mon carrier subject to title II of this Act and that pro-
23 vides, through a video programming affiliate, video pro-
24 gramming directly to subscribers in its telephone service
25 area, shall establish a video platform. The Commission,

1 together with the States, shall establish regulations to pro-
2 hibit a carrier from discriminating in favor of its video
3 programming affiliate in providing access to such platform
4 or with regard to rates, terms, and conditions for access
5 to such platform. The Commission shall take final action
6 on any application under section 214 seeking authority to
7 establish a video platform within one year after the date
8 such application is filed.

9 “(b) COMMISSION STUDY.—The Commission shall
10 conduct a study of whether it is in the public interest to
11 extend the requirements of subsection (a) to cable opera-
12 tors in lieu of the requirements of section 612. The Com-
13 mission shall submit to the Congress a report on the re-
14 sults of such study not later than 2 years after the date
15 of enactment of this section.

16 **“SEC. 654. PROVISION OF AFFILIATED VIDEO PROGRAM-**
17 **MING.**

18 “(a) LIMITATION.—A common carrier which pro-
19 vides, through its video programming affiliate, affiliated
20 video programming directly to subscribers in its telephone
21 service area, shall make available such capacity as is re-
22 quested by unaffiliated video program providers upon rea-
23 sonable notice. A common carrier shall not be required
24 under this subsection to provide more than 75 percent of

1 the equipped capacity of its video platform to unaffiliated
2 video program providers.

3 “(b) **EVALUATION BY COMMISSION.**—The Commis-
4 sion shall, not later than 2 years after the date of enact-
5 ment of this part, evaluate the effect of subsection (a) on
6 the video programming marketplace and, on the basis of
7 that evaluation, make recommendations to Congress con-
8 cerning appropriate modifications, if any, to subsection
9 (a).

10 “(c) **BROADCAST SIGNAL CARRIAGE EXCLUDED.**—
11 The carriage of local broadcast signals pursuant to section
12 614 shall not constitute the provision of affiliated video
13 programming for purposes of subsection (a).

14 “(d) **TERMINATION.**—Subsection (a) shall cease to be
15 effective five years after the date of enactment of this part.

16 **“SEC. 655. PROHIBITION OF CROSS-SUBSIDIZATION.**

17 “(a) **COMMON CARRIER PROHIBITIONS.**—The Com-
18 mission shall prescribe regulations to prohibit a common
19 carrier from engaging in any practice that results in the
20 inclusion in rates for telephone exchange service of any
21 operating expenses, costs, depreciation charges, capital in-
22 vestments, or other expenses associated with the provision
23 of video programming by the common carrier or its video
24 programming affiliate.

1 “(b) **CABLE OPERATOR PROHIBITIONS.**—The Com-
2 mission shall prescribe regulations to prohibit a cable op-
3 erator from engaging in any practice that results in the
4 inclusion in rates for cable service of any operating ex-
5 penses, costs, depreciation charges, capital investments, or
6 other expenses associated with the provision of tele-
7 communications service by the cable operator or its tele-
8 communications service affiliate.

9 **“SEC. 656. PROHIBITION ON BUYOUTS.**

10 “(a) **GENERAL PROHIBITION.**—No common carrier
11 that provides telephone exchange service, nor any entity
12 owned by or under common ownership or control with such
13 carrier, may purchase or otherwise obtain control over any
14 cable system that is located within its telephone service
15 area and is owned by an unaffiliated person.

16 “(b) **EXCEPTIONS.**—Notwithstanding subsection (a),
17 a common carrier may—

18 “(1) obtain a controlling interest in, or form a
19 joint venture or other partnership with, a cable sys-
20 tem that serves a rural area;

21 “(2) obtain a controlling interest in, or form a
22 joint venture or other partnership with, a cable sys-
23 tem or systems, if such systems in the aggregate
24 serve less than 10 percent of the households in the

1 telephone service area of such carrier and its affli-
2 ated common carriers; or

3 “(3) acquire the use of that part of the trans-
4 mission facilities of such a cable system extending
5 from the last multi-user terminal to the premises of
6 the end user if such use is reasonably limited in
7 scope and duration.

8 “(c) WAIVER.—

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

12 “(A) because of the nature of the market
13 served by the cable system concerned—

14 “(i) the incumbent cable operator
15 would be subjected to undue economic dis-
16 tress by the enforcement of such sub-
17 section; or

18 “(ii) the cable system would not be
19 economically viable if such subsection were
20 enforced; and

21 “(B) the local franchising authority ap-
22 proves of such waiver.

23 “(2) DEADLINE FOR ACTION.—The Commission
24 shall act to approve or disapprove a waiver applica-
25 tion within 180 days after the date it is filed.

1 ***SEC. 657. PENALTIES.**

2 “If the Commission finds that any common carrier
3 has knowingly violated any provision of this part, the
4 Commission shall assess such fines and penalties as it
5 deems appropriate pursuant to title V of this Act.

6 ***SEC. 658. CONSUMER PROTECTION.**

7 “(a) **JOINT BOARD REQUIRED.**—The Commission
8 shall, within 30 days after the date of enactment of this
9 part, convene a Federal-State Joint Board under the pro-
10 visions of section 410(c) for the purpose of establishing
11 the practices, classifications, and regulations as may be
12 necessary to ensure proper jurisdictional separation and
13 allocation of the costs of establishing and providing a video
14 platform and allocations of those costs between regulated
15 and unregulated services, including affiliated video pro-
16 gramming. The Board shall issue its recommendations to
17 the Commission within 270 days after the date of enact-
18 ment of this part.

19 “(b) **COMMISSION REGULATIONS REQUIRED.**—The
20 Commission, with respect to interstate switched access
21 service, and the States, with respect to telephone exchange
22 service and intrastate interexchange service, shall, within
23 one year after the date of the enactment of this part, es-
24 tablish such rules and regulations as may be necessary to
25 implement section 655.

1 east television stations, and (D) an opportunity for
2 commercial broadcast stations to choose between
3 mandatory carriage and reimbursement for
4 retransmission of the signal of such station. In pre-
5 scribing such regulations, the Commission shall im-
6 pose obligations that are no greater or lesser than
7 the obligations contained in the provisions described
8 in subsection (a)(1) of this section.

9 “(2) FEES.—A video programming affiliate of
10 any common carrier that establishes a video plat-
11 form under this part shall be subject to the payment
12 of fees imposed by a local franchising authority, in
13 lieu of the fees required under section 622. The rate
14 at which such fees are imposed shall not exceed the
15 rate at which franchise fees are imposed on any
16 cable operator transmitting video programming in
17 the same service area.

18 **“SEC. 660. RURAL AREA EXEMPTION.**

19 “The provisions of sections 652, 653, 654, and 656
20 shall not apply to video programming provided in a rural
21 area by a common carrier that provides telephone ex-
22 change service in the same area.”.

○

Document No. 114

