

1 tion, and dissemination of broadband telecommunica-
2 tions services;

3 “(2) the provision of broadband telecommunica-
4 tions is of concern to governmental entities;

5 “(3) a uniform national policy for broadband tele-
6 communications can serve to eliminate and prevent
7 conflicting and counterproductive regulations in order
8 to allow unhampered growth and development of cable
9 as a competitive medium which will be responsive to
10 and serve the needs and interests of the public;

11 “(4) competition is a more efficient regulator than
12 government of the provision of diverse telecommunica-
13 tions services and as competition continues to develop,
14 the deregulation of telecommunications services should
15 occur; and

16 “(5) recognizing the longstanding tradition of the
17 Congress of promoting universal telephone service at
18 reasonable rates, and recognizing the rapid technologi-
19 cal changes of the types and delivery of services of-
20 fered by the telecommunications industry, it is in the
21 public interest to ensure that all providers of telecom-
22 munications services share in the obligation of provid-
23 ing universal service.

24 “PURPOSES

25 “SEC. 602. The purposes of this title are to—

1 is distributed by coaxial cable or any other closed
2 transmission medium;

3 “(2) ‘basic telephone service’ means two-way
4 voice grade communications that is held out to the
5 public and that would be subject to regulation by the
6 Commission or any State if offered by a common carri-
7 er subject, in whole or in part, to title II of this Act;

8 “(3) ‘broadband telecommunications’ means any
9 receipt or transmission of electromagnetic signals, in-
10 cluding basic service, cable service, and telecommuni-
11 cations service, over coaxial cable or any other closed
12 transmission medium;

13 “(4) ‘broadcasting’ means telecommunications by
14 radio intended to be received by the public, directly or
15 by the intermediary of relay stations;

16 “(5) ‘cable channel’ or ‘channel’ means that por-
17 tion of the electromagnetic frequency spectrum used in
18 a cable system for the propagation of an electromag-
19 netic signal;

20 “(6) ‘cable operator’ or ‘cable system operator’
21 means any person or persons, or an agent or employee
22 thereof, that provides basic service, cable service, or
23 telecommunications service over a cable system, or
24 that directly or indirectly owns a significant interest in
25 any cable system, or that otherwise controls or is re-

1 responsible for, through any arrangement, the manage-
2 ment and operation of such a cable system;

3 “(7) ‘cable service’ means the provision by a
4 channel programmer of one-way programming on a per
5 channel, per program, or other basis which is distribut-
6 ed by coaxial cable or any other closed transmission
7 medium, but such term shall not include basic service;

8 “(8) ‘cable subscriber’ means any person who re-
9 ceives or transmits electromagnetic signals distributed
10 over a cable system;

11 “(9) ‘cable system’ means a facility or combina-
12 tion of facilities under the ownership or control of any
13 person or persons, which consist of a primary control
14 center used to receive and retransmit, or to originate
15 broadband telecommunications service over one or
16 more coaxial cables, or other closed transmission
17 media, from the primary control center to a point of
18 reception at the premises of a cable subscriber, but
19 such term does not include: (A) a facility or combina-
20 tion of facilities that serves only to retransmit the tele-
21 vision signals of television broadcast stations; (B) a fa-
22 cility or combination of facilities that serves only sub-
23 scribers in one or more multiple unit dwellings under
24 common ownership, control, or management; or (C) a
25 common carrier subject to the provisions of title II of

1 this Act whenever such carrier transmits broadband
2 telecommunications services other than basic service or
3 cable service;

4 “(10) ‘channel programmer’ or ‘programmer’ means
5 any person having an agreement to provide basic serv-
6 ice or cable service to a cable system operator, or any
7 person who leases, rents, or is otherwise authorized to
8 use the facilities of a cable system for the provision of
9 basic service or cable service, and such term shall in-
10 clude a cable system operator to the extent that such
11 operator, or person or persons under common owner-
12 ship or control with such operator, is engaged in the
13 provision of such service;

14 “(11) ‘closed transmission medium’ or ‘closed
15 transmission media’ means media having the capacity
16 to transmit electromagnetic signals over a common
17 transmission path such as coaxial cable, optical fiber,
18 wire, waveguide, or other such signal conductor or
19 device;

20 “(12) ‘franchise’ means a permit, license, ordi-
21 nance, resolution, right-of-way, contract, certificate,
22 agreement, or similar authorization issued by a fran-
23 chising authority which authorizes the provision of
24 basic service, cable service, or telecommunications
25 service by a cable operator;

1 “(13) ‘franchising authority’ means any State, po-
2 litical subdivision, or agency thereof, or any other gov-
3 ernmental entity empowered to grant a franchise;

4 “(14) ‘grade B contour’ means the field strength
5 of a television broadcast station computed in accord-
6 ance with regulations promulgated by the Commission;

7 “(15) ‘information’ means knowledge or intelli-
8 gence represented by any form of writing, signs, sig-
9 nals, pictures, sounds, or other symbols;

10 “(16) ‘law’ includes any regulation, rule, order,
11 standard, policy, requirement, procedure, or restriction;

12 “(17) ‘person’ means an individual, partnership,
13 association, joint stock company, trust, corporation or
14 any governmental authority;

15 “(18) ‘telecommunications’ means the transmis-
16 sion of information by electromagnetic means, with or
17 without benefit of any closed transmission medium, in-
18 cluding all instrumentalities, facilities, apparatus, and
19 services (including the collection, storage, forwarding,
20 switching, and delivery of such information) essential to
21 such transmission;

22 “(19) ‘telecommunications service’ means the of-
23 fering of telecommunications facilities, or of telecom-
24 munications but such term shall not include basic serv-
25 ice or cable service; and

1 “(20) ‘United States’ means the several States
2 and territories, the District of Columbia, and the pos-
3 sessions of the United States.

4 “STATEMENT OF AUTHORITY

5 “SEC. 604. The provisions of this title shall apply as
6 follows:

7 “(1) The Commission shall have jurisdiction and
8 exercise authority with respect to broadband telecom-
9 munications in accordance with the provisions of this
10 title and other applicable provisions of law.

11 “(2) Nothing in this title shall be construed as
12 prohibiting any State or political subdivision or agency
13 thereof, or franchising authority, from awarding, in ac-
14 cordance with the provisions of this title, one or more
15 cable franchises within its jurisdiction.

16 “(3)(A) Except to the extent provided in para-
17 graph (B), no cable system shall provide basic service
18 or cable service without a cable franchise in compli-
19 ance with this title.

20 “(B) The provision of paragraph (A) shall not be
21 applicable in the case of any cable system in operation
22 on April 21, 1983.

23 “OWNERSHIP OR CONTROL OF CABLE SYSTEMS .

24 “SEC. 605. (a) No State or political subdivision or
25 agency thereof, or franchising authority, shall have the au-

1 thority to prohibit, directly or indirectly, the ownership of
2 cable systems by any person by reason of that person's own-
3 ership of any other media or other interests, including broad-
4 cast, cable, newspaper, programing service, or other printed
5 or electronic information service.

6 “(b)(1) Notwithstanding the provisions of subsection (a)
7 of this section, for the purpose of ensuring fair and equitable
8 treatment of United States cable enterprises seeking access
9 to markets in a foreign country, the Commission shall have
10 authority to conduct inquiries applicable to foreign persons
11 from that country seeking access to domestic markets in the
12 United States in connection with the construction, ownership
13 and operation of cable enterprises as to whether such United
14 States cable enterprises are permitted fair and equitable
15 access to such foreign markets.

16 “(2) The Commission shall submit any information ob-
17 tained through such inquiries to the United States Trade
18 Representative to assist the Trade Representative in his
19 identification and analysis of acts, policies or practices which
20 constitute significant barriers to, or distortions of, United
21 States exports of services.

22 “(3) For purposes of this subsection, the term ‘foreign
23 persons’ includes any individual who is not a citizen of the
24 United States, any subsidiary (although established under the
25 laws of the United States or any State thereof) of a corpora-

1 tion or other business entity which was established under the
2 laws of a foreign country, any corporation or other business
3 entity established under the laws of a foreign country, or any
4 corporation or other business entity established under the
5 laws of the United States or any State thereof, if 25 percent
6 or more of the capital stock or equivalent ownership is owned
7 or controlled by an individual who is not a citizen of the
8 United States or by a corporation or other business entity
9 established under the laws of a foreign country, or any sub-
10 sidiary of a corporation or other business entity established
11 under the laws of a foreign country.

12 “(c)(1) Notwithstanding the provisions of subsection (a)
13 of this section, a State or political subdivision or agency
14 thereof, or franchising authority, may not acquire an owner-
15 ship interest in any cable system pursuant to a buy-back pro-
16 vision of a franchise or require a sale of a cable system to any
17 other person pursuant to a franchise, upon the expiration of
18 the franchise, unless such State, subdivision, agency, authori-
19 ty, or person acquires such ownership or interest at not less
20 than fair market value based upon the ongoing business value
21 of the system. In the event that the cable operator and a
22 State or political subdivision or agency thereof, or franchising
23 authority, are unable to agree upon any such fair market
24 value, then the matter of determining fair market value shall
25 be submitted to binding arbitration. For purposes of arbitra-

1 cate or set aside channels for public, educational, or govern-
 2 mental users, and the cable system operator may offer in a
 3 franchise to dedicate or set aside channels for other channel
 4 users.

5 “(b) The franchising authority and the cable operator
 6 may establish rules and procedures for the use of the chan-
 7 nels set aside or dedicated pursuant to this section.

8 “(c) Until such time as there is demand for each channel
 9 full time for its designated use, public, educational, govern-
 10 mental, or other channel programming may be combined by the
 11 cable system operator on one or more channels, and to the
 12 extent time is available on such channels, they may be used
 13 by the cable system operator for the provision of other
 14 services.

15 “REGULATION OF RATES AND SERVICES

16 “SEC. 607. (a) Nothing in this title shall be construed as
 17 prohibiting any State or political subdivision or agency there-
 18 of, or franchising authority, from establishing, fixing, or oth-
 19 erwise restricting the rates charged by cable operators—

20 “(1) to subscribers for the receipt of basic service,

21 “(2) to subscribers for equipment necessary for the
 22 receipt of basic service, and

23 “(3) to subscribers for equipment which facilitates
 24 the reception of basic service by hearing impaired indi-
 25 viduals.

1 “(b)(1) Any rate regulated pursuant to this section may
2 be increased annually at the discretion of the cable operator
3 by an amount not to exceed the regional consumer price
4 index for the preceding 12 months, upon 30 days prior notice.
5 The ability to affect such increases shall be cumulative for
6 not more than 3 successive years.

7 “(2) Notwithstanding the provisions of paragraph (1) of
8 this subsection, nothing in this title shall be construed as pro-
9 hibiting any State or political subdivision or agency thereof,
10 or franchising authority, from providing that such automatic
11 increases shall not apply to a franchise which is in existence
12 on the date of the enactment of the Cable Telecommunica-
13 tions Act of 1983 and which provides for a fixed rate for
14 basic service over a specified period.

15 “(c) Notwithstanding the provisions of subsections (a)
16 and (b) of this section, a cable system operator may automati-
17 cally increase basic service rates which exceed the basic rates
18 allowed pursuant to subsection (a) or (b) of this section if—

19 “(1) such operator has requested the increase in
20 rates; and

21 “(2) the request is not acted on within 90 days
22 following the date of its receipt.

23 “(d)(1) Notwithstanding the provisions of subsection (a)
24 of this section, the authority to establish, fix, or otherwise
25 restrict the rates charged to subscribers for the provision of

1 basic services set forth in subsection (a) of this section, except
2 to the extent otherwise provided in paragraph (2) of this sub-
3 section, shall not be applicable in any case where the cable
4 system is located within the grade B contour of not less than
5 four television signals of which there shall be one affiliate of
6 each of the three major television networks.

7 “(2) The provisions of paragraph (1) of this subsection
8 shall not be applicable in the case of any franchise in exist-
9 ence prior to the date of the enactment of the Cable Tele-
10 communications Act of 1983, if the rates charged to subscrib-
11 ers for the provision of basic services are subject to regulation
12 or are restricted by any State or political subdivision or
13 agency thereof, or any franchising authority. The provisions
14 of this paragraph relating to existing rate regulation of basic
15 service shall be applicable for a period of 5 years following
16 the date of the enactment of such Act, or for a period equal
17 to one-half of the period of the remaining term of such fran-
18 chise, as of the date of the enactment of such Act, whichever
19 is greater. The provisions of paragraph (1) shall be applicable
20 to any renewal or other extension of any such franchise.

21 “(3) The provisions of paragraph (1) of this subsection
22 shall not be applicable where the cable system is subscribed
23 to by at least 80 percent of the residences to which cable
24 service is available, unless the cable operator demonstrates
25 that 90 percent of the time, adequate on-site reception of the

1 four television signals is available to more than 50 percent of
2 the households to which cable service is available. Such a
3 determination shall be made by the Commission. Failure by
4 the Commission to make a determination within 180 days
5 after the filing of an application by the cable operator shall be
6 deemed to be a determination that such satisfactory reception
7 is available.

8 “(e) No executive agency of the United States, including
9 the Commission, and no State or political subdivision or
10 agency thereof, or franchising authority, shall have authority
11 to regulate or restrict the rates for reconnection, additional
12 sets to the same subscriber, or sales of equipment.

13 “(f) No executive agency of the United States, including
14 the Commission, and no State or political subdivision or
15 agency thereof, or franchising authority, shall have authority
16 to regulate or restrict the provision of or nature of cable serv-
17 ices offered over a cable system except as provided in section
18 613 of this Act.

19 “(g)(1) No executive agency of the United States, in-
20 cluding the Commission, and no State or political subdivision
21 or agency thereof, or franchising authority, shall have author-
22 ity to regulate or restrict the provision of or nature of tele-
23 communications services offered over a cable system, except
24 with respect to the provision of basic telephone service, intra-

1 state telecommunications services, and except as provided in
2 section 613 of this Act.

3 “(2)(A) Subject to the provisions of subparagraph (B), a
4 State may require only the filing of informational tariffs for
5 intrastate telecommunications services that would be subject
6 to regulation by the Commission or any State if offered by a
7 common carrier subject, in whole or in part, to title II of this
8 Act, which are offered over a cable system. Such informa-
9 tional tariffs shall specify only the rates, terms, and condi-
10 tions for the provision of service and shall take effect on the
11 date specified therein.

12 “(B) Subparagraph (A) shall not apply to any private
13 telecommunications service which is a discrete service dedi-
14 cated to a single customer and operated by such customer.

15 “(3) A State shall deregulate the provision of intrastate
16 telecommunications services if it finds that such services are
17 subject to effective competition.

18 “(4) For purposes of this subsection, an intrastate tele-
19 communications service shall be considered to be subject to
20 effective competition in a particular geographic area or
21 market if there are reasonably available alternatives. In de-
22 termining whether there are reasonably available alterna-
23 tives, the State shall consider—

24 “(A) the number and size of providers of services;

1 “(B) the extent to which services are available
2 from providers in the relevant geographic area or
3 market;

4 “(C) the ability of such providers to make services
5 readily available at comparable rates, terms, and condi-
6 tions; and

7 “(D) other indicators of the extent of competition,
8 including affiliation of providers of services.

9 “(5) Nothing in paragraphs (2), (3), and (4) of this sub-
10 section shall be construed as being applicable to basic tele-
11 phone service.

12 “(h) Nothing in this Act shall be construed as prohibit-
13 ing a franchising authority and a cable operator from specify-
14 ing, in a franchise agreement or renewal thereof, that certain
15 cable services shall not be provided or shall be provided sub-
16 ject to conditions, if such cable services are obscene or are
17 otherwise unprotected by the United States Constitution.

18 “(i) The provisions of subsections (b), (c), and (d) shall
19 not apply to a franchise agreement in existence on the date of
20 enactment of this Act for a period of 5 years following the
21 date of enactment of this Act, or for the remaining term of
22 such franchise agreement, whichever is greater, in any State
23 which has in effect, and has had in effect since January 1,
24 1983, a statutory scheme deregulating rates which contains a
25 requirement regarding minimal channel capacity.

1 "FRANCHISE FEES

2 "SEC. 608. (a) Cable operators may be required in a
3 franchise to pay to a State or political subdivision or agency
4 thereof, or franchising authority, a franchise fee.

5 "(b)(1) No franchise fee paid by a cable system operator
6 for the privilege of holding a franchise, shall exceed an
7 annual aggregate of 5 percent of such cable operator's gross
8 revenues derived from the operation of the cable system
9 which is the subject of the franchise.

10 "(2) Nothing in this section shall be construed as limit-
11 ing fees required by a franchise in effect on the date of enact-
12 ment of the Cable Telecommunications Act of 1983 to be
13 paid directly or indirectly to entities established for the pur-
14 pose of facilitating the use of channels set aside for public,
15 educational, or governmental use.

16 "(c) Any cable system operator may pass the cost of any
17 increase in a franchise fee through to subscribers, and may
18 designate the total franchise fee as a separate item on the
19 subscribers' bills.

20 "(d) For the purposes of this section—

21 "(1) 'franchise fee' shall include any tax, fee or
22 assessment of any kind imposed by a franchising au-
23 thority or governmental authority on a cable system
24 operator or cable subscriber because of their status as
25 such; and

1 “(2) ‘assessment’ shall not include bonds, security
2 funds, letters of credit, insurance, indemnification, pen-
3 alties, liquidated damages or similar requirements
4 which are incidental to the enforcement of the franchis-
5 ing agreement.

6 “(e) Nothing in this section shall be deemed to require a
7 cable operator to renegotiate the provisions of an existing
8 franchise.

9 “RENEWALS AND EXTENSIONS

10 “SEC. 609. (a) In any case in which a cable system
11 operator submits an application to the franchising authority
12 for the renewal or other extension of such operator’s fran-
13 chise authorization, the franchising authority shall grant such
14 renewal or other extension unless it finds that—

15 “(1) the cable system operator has not substan-
16 tially complied with the material terms of such fran-
17 chise and with applicable law, or has been convicted of
18 a felony;

19 “(2) there has been a material change in the
20 legal, technical, or financial qualifications of the cable
21 system operator that would substantially impair the
22 continued provision of service by such operator;

23 “(3) the facilities to be provided by such operator,
24 including facilities for governmental access, are unrea-

1 sonable in light of the community need for and cost of
2 such facilities;

3 “(4) the signal delivered by the cable system
4 within the control of the cable system operator, has not
5 generally met technical standards as established by the
6 Commission; or

7 “(5) the proposals contained in the renewal appli-
8 cation are otherwise unreasonable.

9 “(b) A cable system operator must file for renewal at
10 least 24 months, but not more than 36 months, before the
11 expiration of the franchise. The franchising authority must
12 consider the renewal within 120 days of submission of the
13 application and conduct any proceedings necessary to ade-
14 quately consider the application.

15 “(c) A cable system operator with a franchise which
16 shall expire within 24 months after the date of enactment of
17 the Cable Telecommunications Act of 1983, shall be in com-
18 pliance with subsection (b) if he files an application for re-
19 newal within 60 days after such date of enactment.

20 “(d) The franchising authority shall—

21 “(1) negotiate in good faith with any cable system
22 operator regarding franchise renewal within 30 days
23 after the completion of proceedings pursuant to subsec-
24 tion (b); and

1 “(2) make a final decision on granting or denying
2 renewal within 12 months after receipt of an applica-
3 tion;

4 “(3) in the case of denial of an application—

5 “(A) not make the final decision for at least
6 7 months from the date of receipt of the applica-
7 tion; and

8 “(B) notify the applicant by written state-
9 ment, within 7 days after the final decision, of the
10 reasons for the denial.

11 “(e) Any renewal applicant adversely affected or ag-
12 grieved by a final decision of a franchising authority made
13 pursuant to subsection (d), or by a failure of the franchising
14 authority to act in accordance with subsection (d), may obtain
15 judicial review of such final decision in any court of compe-
16 tent jurisdiction. The existing franchise shall remain in effect
17 pending the completion of such judicial review. Such judicial
18 review shall be de novo, unless the renewal applicant has
19 been afforded a hearing on record before an independent
20 hearing examiner or administrative law judge consistent with
21 State law that requires—

22 “(1) adequate notice;

23 “(2) fair opportunity for participation by the re-
24 newal applicant, which includes—

25 “(A) discovery;

1 “(B) the filing of pleadings, motions, or ob-
2 jections;

3 “(C) the introduction of written or oral testi-
4 mony; and

5 “(D) cross-examination of opposing parties;
6 and

7 “(3) a written decision by the examiner or judge
8 based exclusively on the full record of the hearings and
9 stating the specific findings of fact and conclusions of
10 law on which the decision is based.

11 “UNAUTHORIZED INTERCEPTION OR RECEPTION

12 “SEC. 610. (a) No person or government authority shall
13 intercept or receive broadband telecommunications unless
14 specifically authorized to do so by a cable system operator,
15 channel programmer, or originator of broadband telecommuni-
16 cations or as may otherwise be specifically authorized by
17 Federal law.

18 “(b) In order to safeguard the right to privacy and secu-
19 rity of broadband telecommunications, such broadband tele-
20 communications shall be deemed to be a ‘wire communica-
21 tion’ within the meaning of section 2510(1) of title 18 of the
22 United States Code.

23 “(c) In the event that there may be any difference be-
24 tween the provisions of this section and chapter 119 of title
25 18 of the United States Code, or any regulations promulgat-

1 ed thereunder, it is the intent of the Congress that such chap-
2 ter 119 shall be controlling.

3 "PROTECTION OF SUBSCRIBER PRIVACY

4 "SEC. 611. (a)(1) Except as provided in paragraph (2) of
5 this subsection, no cable operator, channel programer, or
6 originator of broadband telecommunications may use the
7 cable system to collect personally identifiable information
8 with respect to a cable subscriber, except upon the prior writ-
9 ten or electronic consent of that subscriber.

10 "(2) The provisions of paragraph (1) of this subsection
11 shall not apply to the collection of information solely for bill-
12 ing purposes or to monitor whether there is unauthorized re-
13 ception of cable telecommunications.

14 "(3) A cable operator, channel programer, or originator
15 of broadband telecommunications shall ensure that any such
16 information is destroyed when the information is no longer
17 used or to be used for the purposes for which it was collected.

18 "(b) No cable operator, channel programer, or originator
19 of broadband telecommunications shall disclose personally
20 identifiable information obtained pursuant to subsection (a) of
21 this section with respect to a cable subscriber, or personally
22 identifiable information with respect to the services provided
23 to or received by a particular cable subscriber by way of a
24 cable system, except upon the prior written or electronic con-

1 sent of the subscriber, or pursuant to a lawful court order
2 authorizing such disclosure.

3 “(c) If a court shall authorize or order disclosure, the
4 cable subscriber shall be notified of such order by the person
5 to whom such order may be directed, within a reasonable
6 period of time before the disclosure is made, but in no event
7 less than 14 calendar days.

8 “(d) Each cable operator shall, at the time of entering
9 into an agreement to provide cable telecommunications, and
10 regularly thereafter, inform every subscriber of the rights of
11 the subscriber under this section. Such information shall in-
12 clude a description of the nature of the information to be
13 maintained by the cable operator, channel programer, or
14 originator of broadband telecommunications, and the location
15 and availability of such information.

16 “(e) A cable subscriber shall have access to all personal-
17 ly identifiable information regarding that subscriber which is
18 collected and maintained by a cable operator, channel pro-
19 gramer, or originator of broadband telecommunications. Such
20 information shall be available to the subscriber at reasonable
21 times and at a place designated by the cable operator, chan-
22 nel programer, or originator of broadband telecommunica-
23 tions.

24 “(f) Any cable subscriber whose privacy is violated in
25 contravention of this section, shall be entitled to recover civil

1 damages as authorized and in the manner set forth in section
2 2520 of title 18 of the United States Code. This remedy shall
3 be in addition to any other remedy available to such
4 subscriber.

5 "CRIMINAL AND CIVIL LIABILITY

6 "SEC. 612. Nothing in this title shall be deemed to
7 affect the criminal or civil liability of channel programers or
8 cable operators pursuant to the law of libel, slander, obscen-
9 ity, incitement, invasions of privacy, false or misleading ad-
10 vertising, or other similar laws, except that cable operators
11 shall not incur such liability for any program carried on any
12 public, educational, governmental, or other channel referred
13 to in subsection (a) of section 606, or for any program re-
14 quired by law to be carried on any other channel.

15 "PROGRAMING, SERVICES, AND FACILITIES

16 "SEC. 613. (a) No State or political subdivision or
17 agency thereof, or franchising authority, may require the pro-
18 vision of particular programing or other broadband services,
19 or facilities, equipment, services, or other items of value
20 which are not related to the provision of broadband telecom-
21 munications service.

22 "(b) A franchising authority may require, as part of the
23 franchise request for proposals—

24 "(1) channel capacity for public, educational or
25 governmental access purposes; and

1 “(2) the construction of cable system facilities or
2 provision of other cable-related equipment.

3 “(c) A cable operator may offer, but may not be required
4 to provide, as part of basic service or any other tier of serv-
5 ice—

6 “(1) channel capacity for other access uses; and

7 “(2) particular services.

8 “(d)(1) The cable operator may replace or remove a par-
9 ticular service specified in the cable franchise as part of the
10 basic service or any other tier of cable service or telecommu-
11 nications service in any case in which there has been a sig-
12 nificant change in circumstances since the cable operator’s
13 offer to provide such service. The cable operator may not be
14 required to retain a specified service in any particular catego-
15 ry of service other than basic service.

16 “(2) In any case in which a cable operator submits a
17 showing that, as a result of a significant change in circum-
18 stances, particular facilities and equipment required by the
19 franchise are economically, technically, or otherwise imprac-
20 ticable, the franchising authority shall enter into negotiations
21 with the cable operator for the termination, modification, or
22 deferral of such requirement. If such terms and conditions
23 cannot be agreed upon within 45 days, the matter shall be
24 submitted to binding arbitration. For purposes of arbitration,
25 each of the affected parties shall select one arbitrator and the

1 two arbitrators so selected shall choose a third arbitrator.
2 The existing franchise provisions, except for those which are
3 the subject of arbitration, shall not be affected by the arbitra-
4 tors' final decision.

5 “(e) Except as provided in subsection (c) of this section,
6 a franchising authority may, in accordance with the provi-
7 sions of this section, enforce any offer to provide particular
8 basic service set forth in subsection (c) or particular cable
9 services or telecommunications services or cable system facil-
10 ities or cable-related equipment offered by a cable operator:
11 *Provided* That the provision of such services, facilities, or
12 equipment is specifically required by the franchise agreement.

13 “(f) Notwithstanding the preceding provisions of this
14 section, in any case in which a franchise agreement in effect
15 on the date of the enactment of the Cable Telecommunica-
16 tions Act of 1983 requires the cable operator to provide par-
17 ticular programing, services, facilities, cable related equip-
18 ment, or channel capacity for access uses, such requirements,
19 subject to subsections (d) and (e), shall remain in effect for the
20 term of the franchise and in accordance with the provisions
21 thereof. For purposes of this subsection, a franchise agree-
22 ment containing such requirements shall be considered to
23 have been in effect on such date of enactment if such agree-
24 ment was the result of a franchise proceeding for which a
25 request for proposals was originally issued, however subse-

1 quently modified or replaced, on or prior to September 30,
2 1982.

3 "NO REGULATION AS COMMON CARRIER

4 "SEC. 614. No executive agency of the United States,
5 including the Commission, and no State or political subdivi-
6 sion or agency thereof, or franchising authority, shall have
7 authority to impose on a cable system regulation as a
8 common carrier or a utility to the extent that such cable
9 system provides broadband telecommunications service other
10 than basic telephone service."

11 EXCLUSIVE JURISDICTION

12 SEC. 2. (a) Except to the extent otherwise specifically
13 provided in title VI of the Communications Act of 1934, as
14 added by the first section of this Act and as provided in sec-
15 tion 607 of such title, the Federal Government shall have
16 exclusive jurisdiction over broadband telecommunications re-
17 garding matters covered by such title.

18 (b) Any law of any State or political subdivision or
19 agency thereof, or franchising authority, in effect on the ef-
20 fective date of title VI of the Communications Act of 1934,
21 as added by the first section of this Act, which is in conflict
22 with the provision of subsection (a) of this section relating to
23 the exclusive jurisdiction of the Federal Government, shall be
24 deemed superseded, as of the expiration of the 6-month

1 period following the date of the enactment of this Act, and
2 shall thereafter be null and void and of no effect.

3 (c) Except to the extent otherwise provided by this Act
4 and the amendments made thereby, any State or political
5 subdivision or agency thereof, or franchising authority, may
6 exercise jurisdiction over matters which are of strictly local
7 concern and which are necessary for reasons of public health,
8 safety, and welfare, including the terms and conditions for
9 the granting of a franchise, the construction and operation of
10 a cable system, and the enforcement and administration of a
11 franchise.

12 **NEW AND ADDITIONAL SERVICES**

13 **SEC. 3.** Title I of the Communications Act of 1934 is
14 amended by inserting after section 6 the following new sec-
15 tions:

16 **“NEW AND ADDITIONAL SERVICES**

17 **“SEC. 7. (a)** Consistent with sound spectrum manage-
18 ment, the Commission shall, to the maximum feasible extent,
19 encourage the introduction of new and additional services by
20 new applicants, existing licensees, or other persons. In any
21 proceeding in which new or additional services are proposed,
22 such services shall be presumed to be in the public interest
23 whenever the Commission finds that such services are techni-
24 cally feasible without causing significant technical degrada-

1 tion to or interference with radio transmissions by other
2 licensees.

3 “(b) Any person may file with the Commission a petition
4 to establish or an application to offer a new or additional
5 service.

6 “(c) The Commission must determine whether the new
7 or additional service proposed in a petition or application is in
8 the public interest within 1 year after such petition or appli-
9 cation is filed. If the Commission initiates its own proceeding
10 for a new or additional service, such proceeding must be
11 completed within 12 months after it is initiated.

12 “DECLARATION

13 “SEC. 8. The Congress declares that competition is a
14 more efficient regulator than government of the provision of
15 diverse communications services and as competition contin-
16 ues to develop, the deregulation of communications services
17 should occur.”.

18 EFFECTIVE DATE

19 SEC. 4. The provisions of this Act and the amendments
20 made thereby shall take effect upon the date of enactment of
21 this Act.

22 REDESIGNATION

23 SEC. 5. The existing title VI of the Communications
24 Act of 1934 is redesignated as title VII, and sections 601

1 through 609 are redesignated as sections 701 through 709,
2 respectively.

Passed the Senate June 14 (legislative day, June 13),
1983.

Attest: **WILLIAM F. HILDENBRAND,**
Secretary.

98TH CONGRESS
1ST SESSION

S. 66

IN THE HOUSE OF REPRESENTATIVES

JUNE 16, 1983

Referred to the Committee on Energy and Commerce

AN ACT

To amend the Communications Act of 1934.

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

3 That (a) this Act may be cited as the “Cable Telecommunica-
4 tions Act of 1983”.

5 (b) The Communications Act of 1934 is amended by in-
6 serting immediately after title V the following new title:

7 “TITLE VI—CABLE TELECOMMUNICATIONS ACT

8 “FINDINGS

9 “SEC. 601. The Congress hereby finds that—

10 “(1) cable systems are engaged in interstate com-
11 merce through the origination, transmission, distribu-

1 is distributed by coaxial cable or any other closed
2 transmission medium;

3 “(2) ‘basic telephone service’ means two-way
4 voice grade communications that is held out to the
5 public and that would be subject to regulation by the
6 Commission or any State if offered by a common carrier subject, in whole or in part, to title II of this Act;

7
8 “(3) ‘broadband telecommunications’ means any
9 receipt or transmission of electromagnetic signals, including basic service, cable service, and telecommunications service, over coaxial cable or any other closed
10 transmission medium;
11

12
13 “(4) ‘broadcasting’ means telecommunications by
14 radio intended to be received by the public, directly or
15 by the intermediary of relay stations;

16 “(5) ‘cable channel’ or ‘channel’ means that portion of the electromagnetic frequency spectrum used in
17 a cable system for the propagation of an electromagnetic signal;
18

19
20 “(6) ‘cable operator’ or ‘cable system operator’
21 means any person or persons, or an agent or employee
22 thereof, that provides basic service, cable service, or
23 telecommunications service over a cable system, or
24 that directly or indirectly owns a significant interest in
25 any cable system, or that otherwise controls or is re-

1 sponsible for, through any arrangement, the manage-
2 ment and operation of such a cable system;

3 “(7) ‘cable service’ means the provision by a
4 channel programmer of one-way programming on a per
5 channel, per program, or other basis which is distribut-
6 ed by coaxial cable or any other closed transmission
7 medium, but such term shall not include basic service;

8 “(8) ‘cable subscriber’ means any person who re-
9 ceives or transmits electromagnetic signals distributed
10 over a cable system;

11 “(9) ‘cable system’ means a facility or combina-
12 tion of facilities under the ownership or control of any
13 person or persons, which consist of a primary control
14 center used to receive and retransmit, or to originate
15 broadband telecommunications service over one or
16 more coaxial cables, or other closed transmission
17 media, from the primary control center to a point of
18 reception at the premises of a cable subscriber, but
19 such term does not include: (A) a facility or combina-
20 tion of facilities that serves only to retransmit the tele-
21 vision signals of television broadcast stations; (B) a fa-
22 cility or combination of facilities that serves only sub-
23 scribers in one or more multiple unit dwellings under
24 common ownership, control, or management; or (C) a
25 common carrier subject to the provisions of title II of

1 this Act whenever such carrier transmits broadband
2 telecommunications services other than basic service or
3 cable service;

4 “(10) ‘channel programer’ or ‘programer’ means
5 any person having an agreement to provide basic serv-
6 ice or cable service to a cable system operator, or any
7 person who leases, rents, or is otherwise authorized to
8 use the facilities of a cable system for the provision of
9 basic service or cable service, and such term shall in-
10 clude a cable system operator to the extent that such
11 operator, or person or persons under common owner-
12 ship or control with such operator, is engaged in the
13 provision of such service;

14 “(11) ‘closed transmission medium’ or ‘closed
15 transmission media’ means media having the capacity
16 to transmit electromagnetic signals over a common
17 transmission path such as coaxial cable, optical fiber,
18 wire, waveguide, or other such signal conductor or
19 device;

20 “(12) ‘franchise’ means a permit, license, ordi-
21 nance, resolution, right-of-way, contract, certificate,
22 agreement, or similar authorization issued by a fran-
23 chising authority which authorizes the provision of
24 basic service, cable service, or telecommunications
25 service by a cable operator;

1 “(13) ‘franchising authority’ means any State, po-
2 litical subdivision, or agency thereof, or any other gov-
3 ernmental entity empowered to grant a franchise;

4 “(14) ‘grade B contour’ means the field strength
5 of a television broadcast station computed in accord-
6 ance with regulations promulgated by the Commission;

7 “(15) ‘information’ means knowledge or intelli-
8 gence represented by any form of writing, signs, sig-
9 nals, pictures, sounds, or other symbols;

10 “(16) ‘law’ includes any regulation, rule, order,
11 standard, policy, requirement, procedure, or restriction;

12 “(17) ‘person’ means an individual, partnership,
13 association, joint stock company, trust, corporation or
14 any governmental authority;

15 “(18) ‘telecommunications’ means the transmis-
16 sion of information by electromagnetic means, with or
17 without benefit of any closed transmission medium, in-
18 cluding all instrumentalities, facilities, apparatus, and
19 services (including the collection, storage, forwarding,
20 switching, and delivery of such information) essential to
21 such transmission;

22 “(19) ‘telecommunications service’ means the of-
23 fering of telecommunications facilities, or of telecom-
24 munications but such term shall not include basic serv-
25 ice or cable service; and

1 “(20) ‘United States’ means the several States
2 and territories, the District of Columbia, and the pos-
3 sessions of the United States.

4 “STATEMENT OF AUTHORITY

5 “SEC. 604. The provisions of this title shall apply as
6 follows:

7 “(1) The Commission shall have jurisdiction and
8 exercise authority with respect to broadband telecom-
9 munications in accordance with the provisions of this
10 title and other applicable provisions of law.

11 “(2) Nothing in this title shall be construed as
12 prohibiting any State or political subdivision or agency
13 thereof, or franchising authority, from awarding, in ac-
14 cordance with the provisions of this title, one or more
15 cable franchises within its jurisdiction.

16 “(3)(A) Except to the extent provided in para-
17 graph (B), no cable system shall provide basic service
18 or cable service without a cable franchise in compli-
19 ance with this title.

20 “(B) The provision of paragraph (A) shall not be
21 applicable in the case of any cable system in operation
22 on April 21, 1983.

23 “OWNERSHIP OR CONTROL OF CABLE SYSTEMS

24 “SEC. 605. (a) No State or political subdivision or
25 agency thereof, or franchising authority, shall have the au-

1 thority to prohibit, directly or indirectly, the ownership of
2 cable systems by any person by reason of that person's own-
3 ership of any other media or other interests, including broad-
4 cast, cable, newspaper, programing service, or other printed
5 or electronic information service.

6 “(b)(1) Notwithstanding the provisions of subsection (a)
7 of this section, for the purpose of ensuring fair and equitable
8 treatment of United States cable enterprises seeking access
9 to markets in a foreign country, the Commission shall have
10 authority to conduct inquiries applicable to foreign persons
11 from that country seeking access to domestic markets in the
12 United States in connection with the construction, ownership
13 and operation of cable enterprises as to whether such United
14 States cable enterprises are permitted fair and equitable
15 access to such foreign markets.

16 “(2) The Commission shall submit any information ob-
17 tained through such inquiries to the United States Trade
18 Representative to assist the Trade Representative in his
19 identification and analysis of acts, policies or practices which
20 constitute significant barriers to, or distortions of, United
21 States exports of services.

22 “(3) For purposes of this subsection, the term ‘foreign
23 persons’ includes any individual who is not a citizen of the
24 United States, any subsidiary (although established under the
25 laws of the United States or any State thereof) of a corpora-

1 tion or other business entity which was established under the
2 laws of a foreign country, any corporation or other business
3 entity established under the laws of a foreign country, or any
4 corporation or other business entity established under the
5 laws of the United States or any State thereof, if 25 percent
6 or more of the capital stock or equivalent ownership is owned
7 or controlled by an individual who is not a citizen of the
8 United States or by a corporation or other business entity
9 established under the laws of a foreign country, or any sub-
10 sidiary of a corporation or other business entity established
11 under the laws of a foreign country.

12 “(c)(1) Notwithstanding the provisions of subsection (a)
13 of this section, a State or political subdivision or agency
14 thereof, or franchising authority, may not acquire an owner-
15 ship interest in any cable system pursuant to a buy-back pro-
16 vision of a franchise or require a sale of a cable system to any
17 other person pursuant to a franchise, upon the expiration of
18 the franchise, unless such State, subdivision, agency, authori-
19 ty, or person acquires such ownership or interest at not less
20 than fair market value based upon the ongoing business value
21 of the system. In the event that the cable operator and a
22 State or political subdivision or agency thereof, or franchising
23 authority, are unable to agree upon any such fair market
24 value, then the matter of determining fair market value shall
25 be submitted to binding arbitration. For purposes of arbitra-

1 cate or set aside channels for public, educational, or govern-
 2 mental users, and the cable system operator may offer in a
 3 franchise to dedicate or set aside channels for other channel
 4 users.

5 “(b) The franchising authority and the cable operator
 6 may establish rules and procedures for the use of the chan-
 7 nels set aside or dedicated pursuant to this section.

8 “(c) Until such time as there is demand for each channel
 9 full time for its designated use, public, educational, govern-
 10 mental, or other channel programing may be combined by the
 11 cable system operator on one or more channels, and to the
 12 extent time is available on such channels, they may be used
 13 by the cable system operator for the provision of other
 14 services.

15 “REGULATION OF RATES AND SERVICES

16 “SEC. 607. (a) Nothing in this title shall be construed as
 17 prohibiting any State or political subdivision or agency there-
 18 of, or franchising authority, from establishing, fixing, or oth-
 19 erwise restricting the rates charged by cable operators—

20 “(1) to subscribers for the receipt of basic service,

21 “(2) to subscribers for equipment necessary for the
 22 receipt of basic service, and

23 “(3) to subscribers for equipment which facilitates
 24 the reception of basic service by hearing impaired indi-
 25 viduals.

1 “(b)(1) Any rate regulated pursuant to this section may
2 be increased annually at the discretion of the cable operator
3 by an amount not to exceed the regional consumer price
4 index for the preceding 12 months, upon 30 days prior notice.
5 The ability to affect such increases shall be cumulative for
6 not more than 3 successive years.

7 “(2) Notwithstanding the provisions of paragraph (1) of
8 this subsection, nothing in this title shall be construed as pro-
9 hibiting any State or political subdivision or agency thereof,
10 or franchising authority, from providing that such automatic
11 increases shall not apply to a franchise which is in existence
12 on the date of the enactment of the Cable Telecommunica-
13 tions Act of 1983 and which provides for a fixed rate for
14 basic service over a specified period.

15 “(c) Notwithstanding the provisions of subsections (a)
16 and (b) of this section, a cable system operator may automati-
17 cally increase basic service rates which exceed the basic rates
18 allowed pursuant to subsection (a) or (b) of this section if—

19 “(1) such operator has requested the increase in
20 rates; and

21 “(2) the request is not acted on within 90 days
22 following the date of its receipt.

23 “(d)(1) Notwithstanding the provisions of subsection (a)
24 of this section, the authority to establish, fix, or otherwise
25 restrict the rates charged to subscribers for the provision of

1 basic services set forth in subsection (a) of this section, except
2 to the extent otherwise provided in paragraph (2) of this sub-
3 section, shall not be applicable in any case where the cable
4 system is located within the grade B contour of not less than
5 four television signals of which there shall be one affiliate of
6 each of the three major television networks.

7 “(2) The provisions of paragraph (1) of this subsection
8 shall not be applicable in the case of any franchise in exist-
9 ence prior to the date of the enactment of the Cable Tele-
10 communications Act of 1983, if the rates charged to subscrib-
11 ers for the provision of basic services are subject to regulation
12 or are restricted by any State or political subdivision or
13 agency thereof, or any franchising authority. The provisions
14 of this paragraph relating to existing rate regulation of basic
15 service shall be applicable for a period of 5 years following
16 the date of the enactment of such Act, or for a period equal
17 to one-half of the period of the remaining term of such fran-
18 chise, as of the date of the enactment of such Act, whichever
19 is greater. The provisions of paragraph (1) shall be applicable
20 to any renewal or other extension of any such franchise.

21 “(3) The provisions of paragraph (1) of this subsection
22 shall not be applicable where the cable system is subscribed
23 to by at least 80 percent of the residences to which cable
24 service is available, unless the cable operator demonstrates
25 that 90 percent of the time, adequate on-site reception of the

1 four television signals is available to more than 50 percent of
2 the households to which cable service is available. Such a
3 determination shall be made by the Commission. Failure by
4 the Commission to make a determination within 180 days
5 after the filing of an application by the cable operator shall be
6 deemed to be a determination that such satisfactory reception
7 is available.

8 “(e) No executive agency of the United States, including
9 the Commission, and no State or political subdivision or
10 agency thereof, or franchising authority, shall have authority
11 to regulate or restrict the rates for reconnection, additional
12 sets to the same subscriber, or sales of equipment.

13 “(f) No executive agency of the United States, including
14 the Commission, and no State or political subdivision or
15 agency thereof, or franchising authority, shall have authority
16 to regulate or restrict the provision of or nature of cable serv-
17 ices offered over a cable system except as provided in section
18 613 of this Act.

19 “(g)(1) No executive agency of the United States, in-
20 cluding the Commission, and no State or political subdivision
21 or agency thereof, or franchising authority, shall have author-
22 ity to regulate or restrict the provision of or nature of tele-
23 communications services offered over a cable system, except
24 with respect to the provision of basic telephone service, intra-

1 state telecommunications services, and except as provided in
2 section 613 of this Act.

3 “(2)(A) Subject to the provisions of subparagraph (B), a
4 State may require only the filing of informational tariffs for
5 intrastate telecommunications services that would be subject
6 to regulation by the Commission or any State if offered by a
7 common carrier subject, in whole or in part, to title II of this
8 Act, which are offered over a cable system. Such informa-
9 tional tariffs shall specify only the rates, terms, and condi-
10 tions for the provision of service and shall take effect on the
11 date specified therein.

12 “(B) Subparagraph (A) shall not apply to any private
13 telecommunications service which is a discrete service dedi-
14 cated to a single customer and operated by such customer.

15 “(3) A State shall deregulate the provision of intrastate
16 telecommunications services if it finds that such services are
17 subject to effective competition.

18 “(4) For purposes of this subsection, an intrastate tele-
19 communications service shall be considered to be subject to
20 effective competition in a particular geographic area or
21 market if there are reasonably available alternatives. In de-
22 termining whether there are reasonably available alterna-
23 tives, the State shall consider—

24 “(A) the number and size of providers of services;

1 “(B) the extent to which services are available
2 from providers in the relevant geographic area or
3 market;

4 “(C) the ability of such providers to make services
5 readily available at comparable rates, terms, and condi-
6 tions; and

7 “(D) other indicators of the extent of competition,
8 including affiliation of providers of services.

9 “(5) Nothing in paragraphs (2), (3), and (4) of this sub-
10 section shall be construed as being applicable to basic tele-
11 phone service.

12 “(h) Nothing in this Act shall be construed as prohibit-
13 ing a franchising authority and a cable operator from specify-
14 ing, in a franchise agreement or renewal thereof, that certain
15 cable services shall not be provided or shall be provided sub-
16 ject to conditions, if such cable services are obscene or are
17 otherwise unprotected by the United States Constitution.

18 “(i) The provisions of subsections (b), (c), and (d) shall
19 not apply to a franchise agreement in existence on the date of
20 enactment of this Act for a period of 5 years following the
21 date of enactment of this Act, or for the remaining term of
22 such franchise agreement, whichever is greater, in any State
23 which has in effect, and has had in effect since January 1,
24 1983, a statutory scheme deregulating rates which contains a
25 requirement regarding minimal channel capacity.

1 "FRANCHISE FEES

2 "SEC. 608. (a) Cable operators may be required in a
3 franchise to pay to a State or political subdivision or agency
4 thereof, or franchising authority, a franchise fee.

5 "(b)(1) No franchise fee paid by a cable system operator
6 for the privilege of holding a franchise, shall exceed an
7 annual aggregate of 5 percent of such cable operator's gross
8 revenues derived from the operation of the cable system
9 which is the subject of the franchise.

10 "(2) Nothing in this section shall be construed as limit-
11 ing fees required by a franchise in effect on the date of enact-
12 ment of the Cable Telecommunications Act of 1983 to be
13 paid directly or indirectly to entities established for the pur-
14 pose of facilitating the use of channels set aside for public,
15 educational, or governmental use.

16 "(c) Any cable system operator may pass the cost of any
17 increase in a franchise fee through to subscribers, and may
18 designate the total franchise fee as a separate item on the
19 subscribers' bills.

20 "(d) For the purposes of this section—

21 "(1) 'franchise fee' shall include any tax, fee or
22 assessment of any kind imposed by a franchising au-
23 thority or governmental authority on a cable system
24 operator or cable subscriber because of their status as
25 such; and

1 “(2) ‘assessment’ shall not include bonds, security
2 funds, letters of credit, insurance, indemnification, pen-
3 alties, liquidated damages or similar requirements
4 which are incidental to the enforcement of the franchis-
5 ing agreement.

6 “(e) Nothing in this section shall be deemed to require a
7 cable operator to renegotiate the provisions of an existing
8 franchise.

9 “RENEWALS AND EXTENSIONS

10 “SEC. 609. (a) In any case in which a cable system
11 operator submits an application to the franchising authority
12 for the renewal or other extension of such operator’s fran-
13 chise authorization, the franchising authority shall grant such
14 renewal or other extension unless it finds that—

15 “(1) the cable system operator has not substan-
16 tially complied with the material terms of such fran-
17 chise and with applicable law, or has been convicted of
18 a felony;

19 “(2) there has been a material change in the
20 legal, technical, or financial qualifications of the cable
21 system operator that would substantially impair the
22 continued provision of service by such operator;

23 “(3) the facilities to be provided by such operator,
24 including facilities for governmental access, are unrea-

1 sonable in light of the community need for and cost of
2 such facilities;

3 “(4) the signal delivered by the cable system
4 within the control of the cable system operator, has not
5 generally met technical standards as established by the
6 Commission; or

7 “(5) the proposals contained in the renewal appli-
8 cation are otherwise unreasonable.

9 “(b) A cable system operator must file for renewal at
10 least 24 months, but not more than 36 months, before the
11 expiration of the franchise. The franchising authority must
12 consider the renewal within 120 days of submission of the
13 application and conduct any proceedings necessary to ade-
14 quately consider the application.

15 “(c) A cable system operator with a franchise which
16 shall expire within 24 months after the date of enactment of
17 the Cable Telecommunications Act of 1983, shall be in com-
18 pliance with subsection (b) if he files an application for re-
19 newal within 60 days after such date of enactment.

20 “(d) The franchising authority shall—

21 “(1) negotiate in good faith with any cable system
22 operator regarding franchise renewal within 30 days
23 after the completion of proceedings pursuant to subsec-
24 tion (b); and

1 “(2) make a final decision on granting or denying
2 renewal within 12 months after receipt of an applica-
3 tion;

4 “(3) in the case of denial of an application—

5 “(A) not make the final decision for at least
6 7 months from the date of receipt of the applica-
7 tion; and

8 “(B) notify the applicant by written state-
9 ment, within 7 days after the final decision, of the
10 reasons for the denial.

11 “(e) Any renewal applicant adversely affected or ag-
12 grieved by a final decision of a franchising authority made
13 pursuant to subsection (d), or by a failure of the franchising
14 authority to act in accordance with subsection (d), may obtain
15 judicial review of such final decision in any court of compe-
16 tent jurisdiction. The existing franchise shall remain in effect
17 pending the completion of such judicial review. Such judicial
18 review shall be de novo, unless the renewal applicant has
19 been afforded a hearing on record before an independent
20 hearing examiner or administrative law judge consistent with
21 State law that requires—

22 “(1) adequate notice;

23 “(2) fair opportunity for participation by the re-
24 newal applicant, which includes—

25 “(A) discovery;

1 “(B) the filing of pleadings, motions, or ob-
2 jections;

3 “(C) the introduction of written or oral testi-
4 mony; and

5 “(D) cross-examination of opposing parties;
6 and

7 “(3) a written decision by the examiner or judge
8 based exclusively on the full record of the hearings and
9 stating the specific findings of fact and conclusions of
10 law on which the decision is based.

11 “UNAUTHORIZED INTERCEPTION OR RECEPTION

12 “SEC. 610. (a) No person or government authority shall
13 intercept or receive broadband telecommunications unless
14 specifically authorized to do so by a cable system operator,
15 channel programmer, or originator of broadband telecommuni-
16 cations or as may otherwise be specifically authorized by
17 Federal law.

18 “(b) In order to safeguard the right to privacy and secu-
19 rity of broadband telecommunications, such broadband tele-
20 communications shall be deemed to be a ‘wire communica-
21 tion’ within the meaning of section 2510(1) of title 18 of the
22 United States Code.

23 “(c) In the event that there may be any difference be-
24 tween the provisions of this section and chapter 119 of title
25 18 of the United States Code, or any regulations promulgat-

1 ed thereunder, it is the intent of the Congress that such chap-
2 ter 119 shall be controlling.

3 "PROTECTION OF SUBSCRIBER PRIVACY

4 "SEC. 611. (a)(1) Except as provided in paragraph (2) of
5 this subsection, no cable operator, channel programer, or
6 originator of broadband telecommunications may use the
7 cable system to collect personally identifiable information
8 with respect to a cable subscriber, except upon the prior writ-
9 ten or electronic consent of that subscriber.

10 "(2) The provisions of paragraph (1) of this subsection
11 shall not apply to the collection of information solely for bill-
12 ing purposes or to monitor whether there is unauthorized re-
13 ception of cable telecommunications.

14 "(3) A cable operator, channel programer, or originator
15 of broadband telecommunications shall ensure that any such
16 information is destroyed when the information is no longer
17 used or to be used for the purposes for which it was collected.

18 "(b) No cable operator, channel programer, or originator
19 of broadband telecommunications shall disclose personally
20 identifiable information obtained pursuant to subsection (a) of
21 this section with respect to a cable subscriber, or personally
22 identifiable information with respect to the services provided
23 to or received by a particular cable subscriber by way of a
24 cable system, except upon the prior written or electronic con-

1 sent of the subscriber, or pursuant to a lawful court order
2 authorizing such disclosure.

3 “(c) If a court shall authorize or order disclosure, the
4 cable subscriber shall be notified of such order by the person
5 to whom such order may be directed, within a reasonable
6 period of time before the disclosure is made, but in no event
7 less than 14 calendar days.

8 “(d) Each cable operator shall, at the time of entering
9 into an agreement to provide cable telecommunications, and
10 regularly thereafter, inform every subscriber of the rights of
11 the subscriber under this section. Such information shall in-
12 clude a description of the nature of the information to be
13 maintained by the cable operator, channel programer, or
14 originator of broadband telecommunications, and the location
15 and availability of such information.

16 “(e) A cable subscriber shall have access to all personal-
17 ly identifiable information regarding that subscriber which is
18 collected and maintained by a cable operator, channel pro-
19 gramer, or originator of broadband telecommunications. Such
20 information shall be available to the subscriber at reasonable
21 times and at a place designated by the cable operator, chan-
22 nel programer, or originator of broadband telecommunica-
23 tions.

24 “(f) Any cable subscriber whose privacy is violated in
25 contravention of this section, shall be entitled to recover civil

1 damages as authorized and in the manner set forth in section
2 2520 of title 18 of the United States Code. This remedy shall
3 be in addition to any other remedy available to such
4 subscriber.

5 “CRIMINAL AND CIVIL LIABILITY

6 “SEC. 612. Nothing in this title shall be deemed to
7 affect the criminal or civil liability of channel programers or
8 cable operators pursuant to the law of libel, slander, obscen-
9 ity, incitement, invasions of privacy, false or misleading ad-
10 vertising, or other similar laws, except that cable operators
11 shall not incur such liability for any program carried on any
12 public, educational, governmental, or other channel referred
13 to in subsection (a) of section 606, or for any program re-
14 quired by law to be carried on any other channel.

15 “PROGRAMING, SERVICES, AND FACILITIES

16 “SEC. 613. (a) No State or political subdivision or
17 agency thereof, or franchising authority, may require the pro-
18 vision of particular programing or other broadband services,
19 or facilities, equipment, services, or other items of value
20 which are not related to the provision of broadband telecom-
21 munications service.

22 “(b) A franchising authority may require, as part of the
23 franchise request for proposals—

24 “(1) channel capacity for public, educational or
25 governmental access purposes; and

1 “(2) the construction of cable system facilities or
2 provision of other cable-related equipment.

3 “(c) A cable operator may offer, but may not be required
4 to provide, as part of basic service or any other tier of serv-
5 ice—

6 “(1) channel capacity for other access uses; and

7 “(2) particular services.

8 “(d)(1) The cable operator may replace or remove a par-
9 ticular service specified in the cable franchise as part of the
10 basic service or any other tier of cable service or telecommu-
11 nications service in any case in which there has been a sig-
12 nificant change in circumstances since the cable operator’s
13 offer to provide such service. The cable operator may not be
14 required to retain a specified service in any particular catego-
15 ry of service other than basic service.

16 “(2) In any case in which a cable operator submits a
17 showing that, as a result of a significant change in circum-
18 stances, particular facilities and equipment required by the
19 franchise are economically, technically, or otherwise imprac-
20 ticable, the franchising authority shall enter into negotiations
21 with the cable operator for the termination, modification, or
22 deferral of such requirement. If such terms and conditions
23 cannot be agreed upon within 45 days, the matter shall be
24 submitted to binding arbitration. For purposes of arbitration,
25 each of the affected parties shall select one arbitrator and the

1 two arbitrators so selected shall choose a third arbitrator.
2 The existing franchise provisions, except for those which are
3 the subject of arbitration, shall not be affected by the arbitra-
4 tors' final decision.

5 “(e) Except as provided in subsection (c) of this section,
6 a franchising authority may, in accordance with the provi-
7 sions of this section, enforce any offer to provide particular
8 basic service set forth in subsection (c) or particular cable
9 services or telecommunications services or cable system facil-
10 ities or cable-related equipment offered by a cable operator:
11 *Provided* That the provision of such services, facilities, or
12 equipment is specifically required by the franchise agreement.

13 “(f) Notwithstanding the preceding provisions of this
14 section, in any case in which a franchise agreement in effect
15 on the date of the enactment of the Cable Telecommunica-
16 tions Act of 1983 requires the cable operator to provide par-
17 ticular programing, services, facilities, cable related equip-
18 ment, or channel capacity for access uses, such requirements,
19 subject to subsections (d) and (e), shall remain in effect for the
20 term of the franchise and in accordance with the provisions
21 thereof. For purposes of this subsection, a franchise agree-
22 ment containing such requirements shall be considered to
23 have been in effect on such date of enactment if such agree-
24 ment was the result of a franchise proceeding for which a
25 request for proposals was originally issued, however subse-

1 quently modified or replaced, on or prior to September 30,
2 1982.

3 "NO REGULATION AS COMMON CARRIER

4 "SEC. 614. No executive agency of the United States,
5 including the Commission, and no State or political subdivi-
6 sion or agency thereof, or franchising authority, shall have
7 authority to impose on a cable system regulation as a
8 common carrier or a utility to the extent that such cable
9 system provides broadband telecommunications service other
10 than basic telephone service."

11 EXCLUSIVE JURISDICTION

12 SEC. 2. (a) Except to the extent otherwise specifically
13 provided in title VI of the Communications Act of 1934, as
14 added by the first section of this Act and as provided in sec-
15 tion 607 of such title, the Federal Government shall have
16 exclusive jurisdiction over broadband telecommunications re-
17 garding matters covered by such title.

18 (b) Any law of any State or political subdivision or
19 agency thereof, or franchising authority, in effect on the ef-
20 fective date of title VI of the Communications Act of 1934,
21 as added by the first section of this Act, which is in conflict
22 with the provision of subsection (a) of this section relating to
23 the exclusive jurisdiction of the Federal Government, shall be
24 deemed superseded, as of the expiration of the 6-month

1 period following the date of the enactment of this Act, and
2 shall thereafter be null and void and of no effect.

3 (c) Except to the extent otherwise provided by this Act
4 and the amendments made thereby, any State or political
5 subdivision or agency thereof, or franchising authority, may
6 exercise jurisdiction over matters which are of strictly local
7 concern and which are necessary for reasons of public health,
8 safety, and welfare, including the terms and conditions for
9 the granting of a franchise, the construction and operation of
10 a cable system, and the enforcement and administration of a
11 franchise.

12 **NEW AND ADDITIONAL SERVICES**

13 **SEC. 3.** Title I of the Communications Act of 1934 is
14 amended by inserting after section 6 the following new sec-
15 tions:

16 **“NEW AND ADDITIONAL SERVICES**

17 **“SEC. 7. (a)** Consistent with sound spectrum manage-
18 ment, the Commission shall, to the maximum feasible extent,
19 encourage the introduction of new and additional services by
20 new applicants, existing licensees, or other persons. In any
21 proceeding in which new or additional services are proposed,
22 such services shall be presumed to be in the public interest
23 whenever the Commission finds that such services are techni-
24 cally feasible without causing significant technical degrada-

1 through 609 are redesignated as sections 701 through 709,
2 respectively.

Passed the Senate June 14 (legislative day, June 13),
1983.

Attest: WILLIAM F. HILDENBRAND,
Secretary.

1 is distributed by coaxial cable or any other closed
2 transmission medium;

3 “(2) ‘basic telephone service’ means two-way
4 voice grade communications that is held out to the
5 public and that would be subject to regulation by the
6 Commission or any State if offered by a common carrier
7 subject, in whole or in part, to title II of this Act;

8 “(3) ‘broadband telecommunications’ means any
9 receipt or transmission of electromagnetic signals, including
10 basic service, cable service, and telecommunications
11 service, over coaxial cable or any other closed
12 transmission medium;

13 “(4) ‘broadcasting’ means telecommunications by
14 radio intended to be received by the public, directly or
15 by the intermediary of relay stations;

16 “(5) ‘cable channel’ or ‘channel’ means that portion
17 of the electromagnetic frequency spectrum used in
18 a cable system for the propagation of an electromagnetic
19 signal;

20 “(6) ‘cable operator’ or ‘cable system operator’
21 means any person or persons, or an agent or employee
22 thereof, that provides basic service, cable service, or
23 telecommunications service over a cable system, or
24 that directly or indirectly owns a significant interest in
25 any cable system, or that otherwise controls or is re-

1 sponsible for, through any arrangement, the manage-
2 ment and operation of such a cable system;

3 “(7) ‘cable service’ means the provision by a
4 channel programmer of one-way programing on a per
5 channel, per program, or other basis which is distribut-
6 ed by coaxial cable or any other closed transmission
7 medium, but such term shall not include basic service;

8 “(8) ‘cable subscriber’ means any person who re-
9 ceives or transmits electromagnetic signals distributed
10 over a cable system;

11 “(9) ‘cable system’ means a facility or combina-
12 tion of facilities under the ownership or control of any
13 person or persons, which consist of a primary control
14 center used to receive and retransmit, or to originate
15 broadband telecommunications service over one or
16 more coaxial cables, or other closed transmission
17 media, from the primary control center to a point of
18 reception at the premises of a cable subscriber, but
19 such term does not include: (A) a facility or combina-
20 tion of facilities that serves only to retransmit the tele-
21 vision signals of television broadcast stations; (B) a fa-
22 cility or combination of facilities that serves only sub-
23 scribers in one or more multiple unit dwellings under
24 common ownership, control, or management; or (C) a
25 common carrier subject to the provisions of title II of

1 this Act whenever such carrier transmits broadband
2 telecommunications services other than basic service or
3 cable service;

4 “(10) ‘channel programer’ or ‘programer’ means
5 any person having an agreement to provide basic serv-
6 ice or cable service to a cable system operator, or any
7 person who leases, rents, or is otherwise authorized to
8 use the facilities of a cable system for the provision of
9 basic service or cable service, and such term shall in-
10 clude a cable system operator to the extent that such
11 operator, or person or persons under common owner-
12 ship or control with such operator, is engaged in the
13 provision of such service;

14 “(11) ‘closed transmission medium’ or ‘closed
15 transmission media’ means media having the capacity
16 to transmit electromagnetic signals over a common
17 transmission path such as coaxial cable, optical fiber,
18 wire, waveguide, or other such signal conductor or
19 device;

20 “(12) ‘franchise’ means a permit, license, ordi-
21 nance, resolution, right-of-way, contract, certificate,
22 agreement, or similar authorization issued by a fran-
23 chising authority which authorizes the provision of
24 basic service, cable service, or telecommunications
25 service by a cable operator;

1 “(13) ‘franchising authority’ means any State, po-
2 litical subdivision, or agency thereof, or any other gov-
3 ernmental entity empowered to grant a franchise;

4 “(14) ‘grade B contour’ means the field strength
5 of a television broadcast station computed in accord-
6 ance with regulations promulgated by the Commission;

7 “(15) ‘information’ means knowledge or intelli-
8 gence represented by any form of writing, signs, sig-
9 nals, pictures, sounds, or other symbols;

10 “(16) ‘law’ includes any regulation, rule, order,
11 standard, policy, requirement, procedure, or restriction;

12 “(17) ‘person’ means an individual, partnership,
13 association, joint stock company, trust, corporation or
14 any governmental authority;

15 “(18) ‘telecommunications’ means the transmis-
16 sion of information by electromagnetic means, with or
17 without benefit of any closed transmission medium, in-
18 cluding all instrumentalities, facilities, apparatus, and
19 services (including the collection, storage, forwarding,
20 switching, and delivery of such information) essential to
21 such transmission;

22 “(19) ‘telecommunications service’ means the of-
23 fering of telecommunications facilities, or of telecom-
24 munications but such term shall not include basic serv-
25 ice or cable service; and

1 “(20) ‘United States’ means the several States
2 and territories, the District of Columbia, and the pos-
3 sessions of the United States.

4 “STATEMENT OF AUTHORITY

5 “SEC. 604. The provisions of this title shall apply as
6 follows:

7 “(1) The Commission shall have jurisdiction and
8 exercise authority with respect to broadband telecom-
9 munications in accordance with the provisions of this
10 title and other applicable provisions of law.

11 “(2) Nothing in this title shall be construed as
12 prohibiting any State or political subdivision or agency
13 thereof, or franchising authority, from awarding, in ac-
14 cordance with the provisions of this title, one or more
15 cable franchises within its jurisdiction.

16 “(3)(A) Except to the extent provided in para-
17 graph (B), no cable system shall provide basic service
18 or cable service without a cable franchise in compli-
19 ance with this title.

20 “(B) The provision of paragraph (A) shall not be
21 applicable in the case of any cable system in operation
22 on April 21, 1983.

23 “OWNERSHIP OR CONTROL OF CABLE SYSTEMS

24 “SEC. 605. (a) No State or political subdivision or
25 agency thereof, or franchising authority, shall have the au-

1 thority to prohibit, directly or indirectly, the ownership of
2 cable systems by any person by reason of that person's own-
3 ership of any other media or other interests, including broad-
4 cast, cable, newspaper, programing service, or other printed
5 or electronic information service.

6 “(b)(1) Notwithstanding the provisions of subsection (a)
7 of this section, for the purpose of ensuring fair and equitable
8 treatment of United States cable enterprises seeking access
9 to markets in a foreign country, the Commission shall have
10 authority to conduct inquiries applicable to foreign persons
11 from that country seeking access to domestic markets in the
12 United States in connection with the construction, ownership
13 and operation of cable enterprises as to whether such United
14 States cable enterprises are permitted fair and equitable
15 access to such foreign markets.

16 “(2) The Commission shall submit any information ob-
17 tained through such inquiries to the United States Trade
18 Representative to assist the Trade Representative in his
19 identification and analysis of acts, policies or practices which
20 constitute significant barriers to, or distortions of, United
21 States exports of services.

22 “(3) For purposes of this subsection, the term ‘foreign
23 persons’ includes any individual who is not a citizen of the
24 United States, any subsidiary (although established under the
25 laws of the United States or any State thereof) of a corpora-

1 tion or other business entity which was established under the
2 laws of a foreign country, any corporation or other business
3 entity established under the laws of a foreign country, or any
4 corporation or other business entity established under the
5 laws of the United States or any State thereof, if 25 percent
6 or more of the capital stock or equivalent ownership is owned
7 or controlled by an individual who is not a citizen of the
8 United States or by a corporation or other business entity
9 established under the laws of a foreign country, or any sub-
10 sidiary of a corporation or other business entity established
11 under the laws of a foreign country.

12 “(c)(1) Notwithstanding the provisions of subsection (a)
13 of this section, a State or political subdivision or agency
14 thereof, or franchising authority, may not acquire an owner-
15 ship interest in any cable system pursuant to a buy-back pro-
16 vision of a franchise or require a sale of a cable system to any
17 other person pursuant to a franchise, upon the expiration of
18 the franchise, unless such State, subdivision, agency, authori-
19 ty, or person acquires such ownership or interest at not less
20 than fair market value based upon the ongoing business value
21 of the system. In the event that the cable operator and a
22 State or political subdivision or agency thereof, or franchising
23 authority, are unable to agree upon any such fair market
24 value, then the matter of determining fair market value shall
25 be submitted to binding arbitration. For purposes of arbitra-

1 cate or set aside channels for public, educational, or govern-
 2 mental users, and the cable system operator may offer in a
 3 franchise to dedicate or set aside channels for other channel
 4 users.

5 “(b) The franchising authority and the cable operator
 6 may establish rules and procedures for the use of the chan-
 7 nels set aside or dedicated pursuant to this section.

8 “(c) Until such time as there is demand for each channel
 9 full time for its designated use, public, educational, govern-
 10 mental, or other channel programing may be combined by the
 11 cable system operator on one or more channels, and to the
 12 extent time is available on such channels, they may be used
 13 by the cable system operator for the provision of other
 14 services.

15 “REGULATION OF RATES AND SERVICES

16 “SEC. 607. (a) Nothing in this title shall be construed as
 17 prohibiting any State or political subdivision or agency there-
 18 of, or franchising authority, from establishing, fixing, or oth-
 19 erwise restricting the rates charged by cable operators—

20 “(1) to subscribers for the receipt of basic service,

21 “(2) to subscribers for equipment necessary for the
 22 receipt of basic service, and

23 “(3) to subscribers for equipment which facilitates
 24 the reception of basic service by hearing impaired indi-
 25 viduals.

1 “(b)(1) Any rate regulated pursuant to this section may
2 be increased annually at the discretion of the cable operator
3 by an amount not to exceed the regional consumer price
4 index for the preceding 12 months, upon 30 days prior notice.
5 The ability to affect such increases shall be cumulative for
6 not more than 3 successive years.

7 “(2) Notwithstanding the provisions of paragraph (1) of
8 this subsection, nothing in this title shall be construed as pro-
9 hibiting any State or political subdivision or agency thereof,
10 or franchising authority, from providing that such automatic
11 increases shall not apply to a franchise which is in existence
12 on the date of the enactment of the Cable Telecommunica-
13 tions Act of 1983 and which provides for a fixed rate for
14 basic service over a specified period.

15 “(c) Notwithstanding the provisions of subsections (a)
16 and (b) of this section, a cable system operator may automati-
17 cally increase basic service rates which exceed the basic rates
18 allowed pursuant to subsection (a) or (b) of this section if—

19 “(1) such operator has requested the increase in
20 rates; and

21 “(2) the request is not acted on within 90 days
22 following the date of its receipt.

23 “(d)(1) Notwithstanding the provisions of subsection (a)
24 of this section, the authority to establish, fix, or otherwise
25 restrict the rates charged to subscribers for the provision of

1 basic services set forth in subsection (a) of this section, except
2 to the extent otherwise provided in paragraph (2) of this sub-
3 section, shall not be applicable in any case where the cable
4 system is located within the grade B contour of not less than
5 four television signals of which there shall be one affiliate of
6 each of the three major television networks.

7 “(2) The provisions of paragraph (1) of this subsection
8 shall not be applicable in the case of any franchise in exist-
9 ence prior to the date of the enactment of the Cable Tele-
10 communications Act of 1983, if the rates charged to subscrib-
11 ers for the provision of basic services are subject to regulation
12 or are restricted by any State or political subdivision or
13 agency thereof, or any franchising authority. The provisions
14 of this paragraph relating to existing rate regulation of basic
15 service shall be applicable for a period of 5 years following
16 the date of the enactment of such Act, or for a period equal
17 to one-half of the period of the remaining term of such fran-
18 chise, as of the date of the enactment of such Act, whichever
19 is greater. The provisions of paragraph (1) shall be applicable
20 to any renewal or other extension of any such franchise.

21 “(3) The provisions of paragraph (1) of this subsection
22 shall not be applicable where the cable system is subscribed
23 to by at least 80 percent of the residences to which cable
24 service is available, unless the cable operator demonstrates
25 that 90 percent of the time, adequate on-site reception of the

1 four television signals is available to more than 50 percent of
2 the households to which cable service is available. Such a
3 determination shall be made by the Commission. Failure by
4 the Commission to make a determination within 180 days
5 after the filing of an application by the cable operator shall be
6 deemed to be a determination that such satisfactory reception
7 is available.

8 “(e) No executive agency of the United States, including
9 the Commission, and no State or political subdivision or
10 agency thereof, or franchising authority, shall have authority
11 to regulate or restrict the rates for reconnection, additional
12 sets to the same subscriber, or sales of equipment.

13 “(f) No executive agency of the United States, including
14 the Commission, and no State or political subdivision or
15 agency thereof, or franchising authority, shall have authority
16 to regulate or restrict the provision of or nature of cable serv-
17 ices offered over a cable system except as provided in section
18 613 of this Act.

19 “(g)(1) No executive agency of the United States, in-
20 cluding the Commission, and no State or political subdivision
21 or agency thereof, or franchising authority, shall have author-
22 ity to regulate or restrict the provision of or nature of tele-
23 communications services offered over a cable system, except
24 with respect to the provision of basic telephone service, intra-

1 state telecommunications services, and except as provided in
2 section 613 of this Act.

3 “(2)(A) Subject to the provisions of subparagraph (B), a
4 State may require only the filing of informational tariffs for
5 intrastate telecommunications services that would be subject
6 to regulation by the Commission or any State if offered by a
7 common carrier subject, in whole or in part, to title II of this
8 Act, which are offered over a cable system. Such informa-
9 tional tariffs shall specify only the rates, terms, and condi-
10 tions for the provision of service and shall take effect on the
11 date specified therein.

12 “(B) Subparagraph (A) shall not apply to any private
13 telecommunications service which is a discrete service dedi-
14 cated to a single customer and operated by such customer.

15 “(3) A State shall deregulate the provision of intrastate
16 telecommunications services if it finds that such services are
17 subject to effective competition.

18 “(4) For purposes of this subsection, an intrastate tele-
19 communications service shall be considered to be subject to
20 effective competition in a particular geographic area or
21 market if there are reasonably available alternatives. In de-
22 termining whether there are reasonably available alterna-
23 tives, the State shall consider—

24 “(A) the number and size of providers of services;

1 “(B) the extent to which services are available
2 from providers in the relevant geographic area or
3 market;

4 “(C) the ability of such providers to make services
5 readily available at comparable rates, terms, and condi-
6 tions; and

7 “(D) other indicators of the extent of competition,
8 including affiliation of providers of services.

9 “(5) Nothing in paragraphs (2), (3), and (4) of this sub-
10 section shall be construed as being applicable to basic tele-
11 phone service.

12 “(h) Nothing in this Act shall be construed as prohibit-
13 ing a franchising authority and a cable operator from specify-
14 ing, in a franchise agreement or renewal thereof, that certain
15 cable services shall not be provided or shall be provided sub-
16 ject to conditions, if such cable services are obscene or are
17 otherwise unprotected by the United States Constitution.

18 “(i) The provisions of subsections (b), (c), and (d) shall
19 not apply to a franchise agreement in existence on the date of
20 enactment of this Act for a period of 5 years following the
21 date of enactment of this Act, or for the remaining term of
22 such franchise agreement, whichever is greater, in any State
23 which has in effect, and has had in effect since January 1,
24 1983, a statutory scheme deregulating rates which contains a
25 requirement regarding minimal channel capacity.

1 “(2) ‘assessment’ shall not include bonds, security
2 funds, letters of credit, insurance, indemnification, pen-
3 alties, liquidated damages or similar requirements
4 which are incidental to the enforcement of the franchis-
5 ing agreement.

6 “(e) Nothing in this section shall be deemed to require a
7 cable operator to renegotiate the provisions of an existing
8 franchise.

9 “RENEWALS AND EXTENSIONS

10 “SEC. 609. (a) In any case in which a cable system
11 operator submits an application to the franchising authority
12 for the renewal or other extension of such operator’s fran-
13 chise authorization, the franchising authority shall grant such
14 renewal or other extension unless it finds that—

15 “(1) the cable system operator has not substan-
16 tially complied with the material terms of such fran-
17 chise and with applicable law, or has been convicted of
18 a felony;

19 “(2) there has been a material change in the
20 legal, technical, or financial qualifications of the cable
21 system operator that would substantially impair the
22 continued provision of service by such operator;

23 “(3) the facilities to be provided by such operator,
24 including facilities for governmental access, are unrea-

1 sonable in light of the community need for and cost of
2 such facilities;

3 “(4) the signal delivered by the cable system
4 within the control of the cable system operator, has not
5 generally met technical standards as established by the
6 Commission; or

7 “(5) the proposals contained in the renewal appli-
8 cation are otherwise unreasonable.

9 “(b) A cable system operator must file for renewal at
10 least 24 months, but not more than 36 months, before the
11 expiration of the franchise. The franchising authority must
12 consider the renewal within 120 days of submission of the
13 application and conduct any proceedings necessary to ade-
14 quately consider the application.

15 “(c) A cable system operator with a franchise which
16 shall expire within 24 months after the date of enactment of
17 the Cable Telecommunications Act of 1983, shall be in com-
18 pliance with subsection (b) if he files an application for re-
19 newal within 60 days after such date of enactment.

20 “(d) The franchising authority shall—

21 “(1) negotiate in good faith with any cable system
22 operator regarding franchise renewal within 30 days
23 after the completion of proceedings pursuant to subsec-
24 tion (b); and

1 “(2) make a final decision on granting or denying
2 renewal within 12 months after receipt of an applica-
3 tion;

4 “(3) in the case of denial of an application—

5 “(A) not make the final decision for at least
6 7 months from the date of receipt of the applica-
7 tion; and

8 “(B) notify the applicant by written state-
9 ment, within 7 days after the final decision, of the
10 reasons for the denial.

11 “(e) Any renewal applicant adversely affected or ag-
12 grieved by a final decision of a franchising authority made
13 pursuant to subsection (d), or by a failure of the franchising
14 authority to act in accordance with subsection (d), may obtain
15 judicial review of such final decision in any court of compe-
16 tent jurisdiction. The existing franchise shall remain in effect
17 pending the completion of such judicial review. Such judicial
18 review shall be de novo, unless the renewal applicant has
19 been afforded a hearing on record before an independent
20 hearing examiner or administrative law judge consistent with
21 State law that requires—

22 “(1) adequate notice;

23 “(2) fair opportunity for participation by the re-
24 newal applicant, which includes—

25 “(A) discovery;

1 “(B) the filing of pleadings, motions, or ob-
2 jections;

3 “(C) the introduction of written or oral testi-
4 mony; and

5 “(D) cross-examination of opposing parties;
6 and

7 “(3) a written decision by the examiner or judge
8 based exclusively on the full record of the hearings and
9 stating the specific findings of fact and conclusions of
10 law on which the decision is based.

11 “UNAUTHORIZED INTERCEPTION OR RECEPTION

12 “SEC. 610. (a) No person or government authority shall
13 intercept or receive broadband telecommunications unless
14 specifically authorized to do so by a cable system operator,
15 channel programmer, or originator of broadband telecommuni-
16 cations or as may otherwise be specifically authorized by
17 Federal law.

18 “(b) In order to safeguard the right to privacy and secu-
19 rity of broadband telecommunications, such broadband tele-
20 communications shall be deemed to be a ‘wire communica-
21 tion’ within the meaning of section 2510(1) of title 18 of the
22 United States Code.

23 “(c) In the event that there may be any difference be-
24 tween the provisions of this section and chapter 119 of title
25 18 of the United States Code, or any regulations promulgat-

1 ed thereunder, it is the intent of the Congress that such chap-
2 ter 119 shall be controlling.

3 "PROTECTION OF SUBSCRIBER PRIVACY

4 "SEC. 611. (a)(1) Except as provided in paragraph (2) of
5 this subsection, no cable operator, channel programer, or
6 originator of broadband telecommunications may use the
7 cable system to collect personally identifiable information
8 with respect to a cable subscriber, except upon the prior writ-
9 ten or electronic consent of that subscriber.

10 "(2) The provisions of paragraph (1) of this subsection
11 shall not apply to the collection of information solely for bill-
12 ing purposes or to monitor whether there is unauthorized re-
13 ception of cable telecommunications.

14 "(3) A cable operator, channel programer, or originator
15 of broadband telecommunications shall ensure that any such
16 information is destroyed when the information is no longer
17 used or to be used for the purposes for which it was collected.

18 "(b) No cable operator, channel programer, or originator
19 of broadband telecommunications shall disclose personally
20 identifiable information obtained pursuant to subsection (a) of
21 this section with respect to a cable subscriber, or personally
22 identifiable information with respect to the services provided
23 to or received by a particular cable subscriber by way of a
24 cable system, except upon the prior written or electronic con-

1 sent of the subscriber, or pursuant to a lawful court order
2 authorizing such disclosure.

3 “(c) If a court shall authorize or order disclosure, the
4 cable subscriber shall be notified of such order by the person
5 to whom such order may be directed, within a reasonable
6 period of time before the disclosure is made, but in no event
7 less than 14 calendar days.

8 “(d) Each cable operator shall, at the time of entering
9 into an agreement to provide cable telecommunications, and
10 regularly thereafter, inform every subscriber of the rights of
11 the subscriber under this section. Such information shall in-
12 clude a description of the nature of the information to be
13 maintained by the cable operator, channel programer, or
14 originator of broadband telecommunications, and the location
15 and availability of such information.

16 “(e) A cable subscriber shall have access to all personal-
17 ly identifiable information regarding that subscriber which is
18 collected and maintained by a cable operator, channel pro-
19 gramer, or originator of broadband telecommunications. Such
20 information shall be available to the subscriber at reasonable
21 times and at a place designated by the cable operator, chan-
22 nel programer, or originator of broadband telecommunica-
23 tions.

24 “(f) Any cable subscriber whose privacy is violated in
25 contravention of this section, shall be entitled to recover civil

1 damages as authorized and in the manner set forth in section
2 2520 of title 18 of the United States Code. This remedy shall
3 be in addition to any other remedy available to such
4 subscriber.

5 "CRIMINAL AND CIVIL LIABILITY

6 "SEC. 612. Nothing in this title shall be deemed to
7 affect the criminal or civil liability of channel programers or
8 cable operators pursuant to the law of libel, slander, obscen-
9 ity, incitement, invasions of privacy, false or misleading ad-
10 vertising, or other similar laws, except that cable operators
11 shall not incur such liability for any program carried on any
12 public, educational, governmental, or other channel referred
13 to in subsection (a) of section 606, or for any program re-
14 quired by law to be carried on any other channel.

15 "PROGRAMING, SERVICES, AND FACILITIES

16 "SEC. 613. (a) No State or political subdivision or
17 agency thereof, or franchising authority, may require the pro-
18 vision of particular programing or other broadband services,
19 or facilities, equipment, services, or other items of value
20 which are not related to the provision of broadband telecom-
21 munications service.

22 "(b) A franchising authority may require, as part of the
23 franchise request for proposals—

24 "(1) channel capacity for public, educational or
25 governmental access purposes; and

1 “(2) the construction of cable system facilities or
2 provision of other cable-related equipment.

3 “(c) A cable operator may offer, but may not be required
4 to provide, as part of basic service or any other tier of serv-
5 ice—

6 “(1) channel capacity for other access uses; and

7 “(2) particular services.

8 “(d)(1) The cable operator may replace or remove a par-
9 ticular service specified in the cable franchise as part of the
10 basic service or any other tier of cable service or telecommu-
11 nications service in any case in which there has been a sig-
12 nificant change in circumstances since the cable operator’s
13 offer to provide such service. The cable operator may not be
14 required to retain a specified service in any particular catego-
15 ry of service other than basic service.

16 “(2) In any case in which a cable operator submits a
17 showing that, as a result of a significant change in circum-
18 stances, particular facilities and equipment required by the
19 franchise are economically, technically, or otherwise imprac-
20 ticable, the franchising authority shall enter into negotiations
21 with the cable operator for the termination, modification, or
22 deferral of such requirement. If such terms and conditions
23 cannot be agreed upon within 45 days, the matter shall be
24 submitted to binding arbitration. For purposes of arbitration,
25 each of the affected parties shall select one arbitrator and the

1 two arbitrators so selected shall choose a third arbitrator.
2 The existing franchise provisions, except for those which are
3 the subject of arbitration, shall not be affected by the arbitra-
4 tors' final decision.

5 “(e) Except as provided in subsection (c) of this section,
6 a franchising authority may, in accordance with the provi-
7 sions of this section, enforce any offer to provide particular
8 basic service set forth in subsection (c) or particular cable
9 services or telecommunications services or cable system facil-
10 ities or cable-related equipment offered by a cable operator:
11 *Provided* That the provision of such services, facilities, or
12 equipment is specifically required by the franchise agreement.

13 “(f) Notwithstanding the preceding provisions of this
14 section, in any case in which a franchise agreement in effect
15 on the date of the enactment of the Cable Telecommunica-
16 tions Act of 1983 requires the cable operator to provide par-
17 ticular programing, services, facilities, cable related equip-
18 ment, or channel capacity for access uses, such requirements,
19 subject to subsections (d) and (e), shall remain in effect for the
20 term of the franchise and in accordance with the provisions
21 thereof. For purposes of this subsection, a franchise agree-
22 ment containing such requirements shall be considered to
23 have been in effect on such date of enactment if such agree-
24 ment was the result of a franchise proceeding for which a
25 request for proposals was originally issued, however subse-

1 quently modified or replaced, on or prior to September 30,
2 1982.

3 “NO REGULATION AS COMMON CARRIER

4 “SEC. 614. No executive agency of the United States,
5 including the Commission, and no State or political subdivi-
6 sion or agency thereof, or franchising authority, shall have
7 authority to impose on a cable system regulation as a
8 common carrier or a utility to the extent that such cable
9 system provides broadband telecommunications service other
10 than basic telephone service.”

11 EXCLUSIVE JURISDICTION

12 SEC. 2. (a) Except to the extent otherwise specifically
13 provided in title VI of the Communications Act of 1934, as
14 added by the first section of this Act and as provided in sec-
15 tion 607 of such title, the Federal Government shall have
16 exclusive jurisdiction over broadband telecommunications re-
17 garding matters covered by such title.

18 (b) Any law of any State or political subdivision or
19 agency thereof, or franchising authority, in effect on the ef-
20 fective date of title VI of the Communications Act of 1934,
21 as added by the first section of this Act, which is in conflict
22 with the provision of subsection (a) of this section relating to
23 the exclusive jurisdiction of the Federal Government, shall be
24 deemed superseded, as of the expiration of the 6-month

1 period following the date of the enactment of this Act, and
2 shall thereafter be null and void and of no effect.

3 (c) Except to the extent otherwise provided by this Act
4 and the amendments made thereby, any State or political
5 subdivision or agency thereof, or franchising authority, may
6 exercise jurisdiction over matters which are of strictly local
7 concern and which are necessary for reasons of public health,
8 safety, and welfare, including the terms and conditions for
9 the granting of a franchise, the construction and operation of
10 a cable system, and the enforcement and administration of a
11 franchise.

12 **NEW AND ADDITIONAL SERVICES**

13 **SEC. 3.** Title I of the Communications Act of 1934 is
14 amended by inserting after section 6 the following new sec-
15 tions:

16 **“NEW AND ADDITIONAL SERVICES**

17 **“SEC. 7. (a)** Consistent with sound spectrum manage-
18 ment, the Commission shall, to the maximum feasible extent,
19 encourage the introduction of new and additional services by
20 new applicants, existing licensees, or other persons. In any
21 proceeding in which new or additional services are proposed,
22 such services shall be presumed to be in the public interest
23 whenever the Commission finds that such services are techni-
24 cally feasible without causing significant technical degrada-

1 tion to or interference with radio transmissions by other
2 licensees.

3 “(b) Any person may file with the Commission a petition
4 to establish or an application to offer a new or additional
5 service.

6 “(c) The Commission must determine whether the new
7 or additional service proposed in a petition or application is in
8 the public interest within 1 year after such petition or appli-
9 cation is filed. If the Commission initiates its own proceeding
10 for a new or additional service, such proceeding must be
11 completed within 12 months after it is initiated.

12 “DECLARATION

13 “SEC. 8. The Congress declares that competition is a
14 more efficient regulator than government of the provision of
15 diverse communications services and as competition contin-
16 ues to develop, the deregulation of communications services
17 should occur.”.

18 EFFECTIVE DATE

19 SEC. 4. The provisions of this Act and the amendments
20 made thereby shall take effect upon the date of enactment of
21 this Act.

22 REDESIGNATION

23 SEC. 5. The existing title VI of the Communications
24 Act of 1934 is redesignated as title VII, and sections 601

1 through 609 are redesignated as sections 701 through 709,
2 respectively.

Passed the Senate June 14 (legislative day, June 13),
1983.

Attest: WILLIAM F. HILDENBRAND,
Secretary.

1 is distributed by coaxial cable or any other closed
2 transmission medium;

3 “(2) ‘basic telephone service’ means two-way
4 voice grade communications that is held out to the
5 public and that would be subject to regulation by the
6 Commission or any State if offered by a common carri-
7 er subject, in whole or in part, to title II of this Act;

8 “(3) ‘broadband telecommunications’ means any
9 receipt or transmission of electromagnetic signals, in-
10 cluding basic service, cable service, and telecommuni-
11 cations service, over coaxial cable or any other closed
12 transmission medium;

13 “(4) ‘broadcasting’ means telecommunications by
14 radio intended to be received by the public, directly or
15 by the intermediary of relay stations;

16 “(5) ‘cable channel’ or ‘channel’ means that por-
17 tion of the electromagnetic frequency spectrum used in
18 a cable system for the propagation of an electromag-
19 netic signal;

20 “(6) ‘cable operator’ or ‘cable system operator’
21 means any person or persons, or an agent or employee
22 thereof, that provides basic service, cable service, or
23 telecommunications service over a cable system, or
24 that directly or indirectly owns a significant interest in
25 any cable system, or that otherwise controls or is re-

1 sponsible for, through any arrangement, the manage-
2 ment and operation of such a cable system;

3 “(7) ‘cable service’ means the provision by a
4 channel programmer of one-way programing on a per
5 channel, per program, or other basis which is distribut-
6 ed by coaxial cable or any other closed transmission
7 medium, but such term shall not include basic service;

8 “(8) ‘cable subscriber’ means any person who re-
9 ceives or transmits electromagnetic signals distributed
10 over a cable system;

11 “(9) ‘cable system’ means a facility or combina-
12 tion of facilities under the ownership or control of any
13 person or persons, which consist of a primary control
14 center used to receive and retransmit, or to originate
15 broadband telecommunications service over one or
16 more coaxial cables, or other closed transmission
17 media, from the primary control center to a point of
18 reception at the premises of a cable subscriber, but
19 such term does not include: (A) a facility or combina-
20 tion of facilities that serves only to retransmit the tele-
21 vision signals of television broadcast stations; (B) a fa-
22 cility or combination of facilities that serves only sub-
23 scribers in one or more multiple unit dwellings under
24 common ownership, control, or management; or (C) a
25 common carrier subject to the provisions of title II of

1 “(20) ‘United States’ means the several States
2 and territories, the District of Columbia, and the pos-
3 sessions of the United States.

4 “STATEMENT OF AUTHORITY

5 “SEC. 604. The provisions of this title shall apply as
6 follows:

7 “(1) The Commission shall have jurisdiction and
8 exercise authority with respect to broadband telecom-
9 munications in accordance with the provisions of this
10 title and other applicable provisions of law.

11 “(2) Nothing in this title shall be construed as
12 prohibiting any State or political subdivision or agency
13 thereof, or franchising authority, from awarding, in ac-
14 cordance with the provisions of this title, one or more
15 cable franchises within its jurisdiction.

16 “(3)(A) Except to the extent provided in para-
17 graph (B), no cable system shall provide basic service
18 or cable service without a cable franchise in compli-
19 ance with this title.

20 “(B) The provision of paragraph (A) shall not be
21 applicable in the case of any cable system in operation
22 on April 21, 1983.

23 “OWNERSHIP OR CONTROL OF CABLE SYSTEMS

24 “SEC. 605. (a) No State or political subdivision or
25 agency thereof, or franchising authority, shall have the au-

1 thority to prohibit, directly or indirectly, the ownership of
2 cable systems by any person by reason of that person's own-
3 ership of any other media or other interests, including broad-
4 cast, cable, newspaper, programing service, or other printed
5 or electronic information service.

6 “(b)(1) Notwithstanding the provisions of subsection (a)
7 of this section, for the purpose of ensuring fair and equitable
8 treatment of United States cable enterprises seeking access
9 to markets in a foreign country, the Commission shall have
10 authority to conduct inquiries applicable to foreign persons
11 from that country seeking access to domestic markets in the
12 United States in connection with the construction, ownership
13 and operation of cable enterprises as to whether such United
14 States cable enterprises are permitted fair and equitable
15 access to such foreign markets.

16 “(2) The Commission shall submit any information ob-
17 tained through such inquiries to the United States Trade
18 Representative to assist the Trade Representative in his
19 identification and analysis of acts, policies or practices which
20 constitute significant barriers to, or distortions of, United
21 States exports of services.

22 “(3) For purposes of this subsection, the term ‘foreign
23 persons’ includes any individual who is not a citizen of the
24 United States, any subsidiary (although established under the
25 laws of the United States or any State thereof) of a corpora-

1 tion or other business entity which was established under the
2 laws of a foreign country, any corporation or other business
3 entity established under the laws of a foreign country, or any
4 corporation or other business entity established under the
5 laws of the United States or any State thereof, if 25 percent
6 or more of the capital stock or equivalent ownership is owned
7 or controlled by an individual who is not a citizen of the
8 United States or by a corporation or other business entity
9 established under the laws of a foreign country, or any sub-
10 sidiary of a corporation or other business entity established
11 under the laws of a foreign country.

12 “(c)(1) Notwithstanding the provisions of subsection (a)
13 of this section, a State or political subdivision or agency
14 thereof, or franchising authority, may not acquire an owner-
15 ship interest in any cable system pursuant to a buy-back pro-
16 vision of a franchise or require a sale of a cable system to any
17 other person pursuant to a franchise, upon the expiration of
18 the franchise, unless such State, subdivision, agency, authori-
19 ty, or person acquires such ownership or interest at not less
20 than fair market value based upon the ongoing business value
21 of the system. In the event that the cable operator and a
22 State or political subdivision or agency thereof, or franchising
23 authority, are unable to agree upon any such fair market
24 value, then the matter of determining fair market value shall
25 be submitted to binding arbitration. For purposes of arbitra-

1 cate or set aside channels for public, educational, or govern-
2 mental users, and the cable system operator may offer in a
3 franchise to dedicate or set aside channels for other channel
4 users.

5 “(b) The franchising authority and the cable operator
6 may establish rules and procedures for the use of the chan-
7 nels set aside or dedicated pursuant to this section.

8 “(c) Until such time as there is demand for each channel
9 full time for its designated use, public, educational, govern-
10 mental, or other channel programing may be combined by the
11 cable system operator on one or more channels, and to the
12 extent time is available on such channels, they may be used
13 by the cable system operator for the provision of other
14 services.

15 “REGULATION OF RATES AND SERVICES

16 “SEC. 607. (a) Nothing in this title shall be construed as
17 prohibiting any State or political subdivision or agency there-
18 of, or franchising authority, from establishing, fixing, or oth-
19 erwise restricting the rates charged by cable operators—

20 “(1) to subscribers for the receipt of basic service,

21 “(2) to subscribers for equipment necessary for the
22 receipt of basic service, and

23 “(3) to subscribers for equipment which facilitates
24 the reception of basic service by hearing impaired indi-
25 viduals.

1 “(b)(1) Any rate regulated pursuant to this section may
2 be increased annually at the discretion of the cable operator
3 by an amount not to exceed the regional consumer price
4 index for the preceding 12 months, upon 30 days prior notice.
5 The ability to affect such increases shall be cumulative for
6 not more than 3 successive years.

7 “(2) Notwithstanding the provisions of paragraph (1) of
8 this subsection, nothing in this title shall be construed as pro-
9 hibiting any State or political subdivision or agency thereof,
10 or franchising authority, from providing that such automatic
11 increases shall not apply to a franchise which is in existence
12 on the date of the enactment of the Cable Telecommunica-
13 tions Act of 1983 and which provides for a fixed rate for
14 basic service over a specified period.

15 “(c) Notwithstanding the provisions of subsections (a)
16 and (b) of this section, a cable system operator may automati-
17 cally increase basic service rates which exceed the basic rates
18 allowed pursuant to subsection (a) or (b) of this section if—

19 “(1) such operator has requested the increase in
20 rates; and

21 “(2) the request is not acted on within 90 days
22 following the date of its receipt.

23 “(d)(1) Notwithstanding the provisions of subsection (a)
24 of this section, the authority to establish, fix, or otherwise
25 restrict the rates charged to subscribers for the provision of

1 basic services set forth in subsection (a) of this section, except
2 to the extent otherwise provided in paragraph (2) of this sub-
3 section, shall not be applicable in any case where the cable
4 system is located within the grade B contour of not less than
5 four television signals of which there shall be one affiliate of
6 each of the three major television networks.

7 “(2) The provisions of paragraph (1) of this subsection
8 shall not be applicable in the case of any franchise in exist-
9 ence prior to the date of the enactment of the Cable Tele-
10 communications Act of 1983, if the rates charged to subscrib-
11 ers for the provision of basic services are subject to regulation
12 or are restricted by any State or political subdivision or
13 agency thereof, or any franchising authority. The provisions
14 of this paragraph relating to existing rate regulation of basic
15 service shall be applicable for a period of 5 years following
16 the date of the enactment of such Act, or for a period equal
17 to one-half of the period of the remaining term of such fran-
18 chise, as of the date of the enactment of such Act, whichever
19 is greater. The provisions of paragraph (1) shall be applicable
20 to any renewal or other extension of any such franchise.

21 “(3) The provisions of paragraph (1) of this subsection
22 shall not be applicable where the cable system is subscribed
23 to by at least 80 percent of the residences to which cable
24 service is available, unless the cable operator demonstrates
25 that 90 percent of the time, adequate on-site reception of the

1 four television signals is available to more than 50 percent of
2 the households to which cable service is available. Such a
3 determination shall be made by the Commission. Failure by
4 the Commission to make a determination within 180 days
5 after the filing of an application by the cable operator shall be
6 deemed to be a determination that such satisfactory reception
7 is available.

8 “(e) No executive agency of the United States, including
9 the Commission, and no State or political subdivision or
10 agency thereof, or franchising authority, shall have authority
11 to regulate or restrict the rates for reconnection, additional
12 sets to the same subscriber, or sales of equipment.

13 “(f) No executive agency of the United States, including
14 the Commission, and no State or political subdivision or
15 agency thereof, or franchising authority, shall have authority
16 to regulate or restrict the provision of or nature of cable serv-
17 ices offered over a cable system except as provided in section
18 613 of this Act.

19 “(g)(1) No executive agency of the United States, in-
20 cluding the Commission, and no State or political subdivision
21 or agency thereof, or franchising authority, shall have author-
22 ity to regulate or restrict the provision of or nature of tele-
23 communications services offered over a cable system, except
24 with respect to the provision of basic telephone service, intra-

1 state telecommunications services, and except as provided in
2 section 613 of this Act.

3 “(2)(A) Subject to the provisions of subparagraph (B), a
4 State may require only the filing of informational tariffs for
5 intrastate telecommunications services that would be subject
6 to regulation by the Commission or any State if offered by a
7 common carrier subject, in whole or in part, to title II of this
8 Act, which are offered over a cable system. Such informa-
9 tional tariffs shall specify only the rates, terms, and condi-
10 tions for the provision of service and shall take effect on the
11 date specified therein.

12 “(B) Subparagraph (A) shall not apply to any private
13 telecommunications service which is a discrete service dedi-
14 cated to a single customer and operated by such customer.

15 “(3) A State shall deregulate the provision of intrastate
16 telecommunications services if it finds that such services are
17 subject to effective competition.

18 “(4) For purposes of this subsection, an intrastate tele-
19 communications service shall be considered to be subject to
20 effective competition in a particular geographic area or
21 market if there are reasonably available alternatives. In de-
22 termining whether there are reasonably available alterna-
23 tives, the State shall consider—

24 “(A) the number and size of providers of services;

1 “(B) the extent to which services are available
2 from providers in the relevant geographic area or
3 market;

4 “(C) the ability of such providers to make services
5 readily available at comparable rates, terms, and condi-
6 tions; and

7 “(D) other indicators of the extent of competition,
8 including affiliation of providers of services.

9 “(5) Nothing in paragraphs (2), (3), and (4) of this sub-
10 section shall be construed as being applicable to basic tele-
11 phone service.

12 “(h) Nothing in this Act shall be construed as prohibit-
13 ing a franchising authority and a cable operator from specify-
14 ing, in a franchise agreement or renewal thereof, that certain
15 cable services shall not be provided or shall be provided sub-
16 ject to conditions, if such cable services are obscene or are
17 otherwise unprotected by the United States Constitution.

18 “(i) The provisions of subsections (b), (c), and (d) shall
19 not apply to a franchise agreement in existence on the date of
20 enactment of this Act for a period of 5 years following the
21 date of enactment of this Act, or for the remaining term of
22 such franchise agreement, whichever is greater, in any State
23 which has in effect, and has had in effect since January 1,
24 1983, a statutory scheme deregulating rates which contains a
25 requirement regarding minimal channel capacity.

1 “FRANCHISE FEES

2 “SEC. 608. (a) Cable operators may be required in a
3 franchise to pay to a State or political subdivision or agency
4 thereof, or franchising authority, a franchise fee.

5 “(b)(1) No franchise fee paid by a cable system operator
6 for the privilege of holding a franchise, shall exceed an
7 annual aggregate of 5 percent of such cable operator’s gross
8 revenues derived from the operation of the cable system
9 which is the subject of the franchise.

10 “(2) Nothing in this section shall be construed as limit-
11 ing fees required by a franchise in effect on the date of enact-
12 ment of the Cable Telecommunications Act of 1983 to be
13 paid directly or indirectly to entities established for the pur-
14 pose of facilitating the use of channels set aside for public,
15 educational, or governmental use.

16 “(c) Any cable system operator may pass the cost of any
17 increase in a franchise fee through to subscribers, and may
18 designate the total franchise fee as a separate item on the
19 subscribers’ bills.

20 “(d) For the purposes of this section—

21 “(1) ‘franchise fee’ shall include any tax, fee or
22 assessment of any kind imposed by a franchising au-
23 thority or governmental authority on a cable system
24 operator or cable subscriber because of their status as
25 such; and

1 “(2) ‘assessment’ shall not include bonds, security
2 funds, letters of credit, insurance, indemnification, pen-
3 alties, liquidated damages or similar requirements
4 which are incidental to the enforcement of the franchis-
5 ing agreement.

6 “(e) Nothing in this section shall be deemed to require a
7 cable operator to renegotiate the provisions of an existing
8 franchise.

9 “RENEWALS AND EXTENSIONS

10 “SEC. 609. (a) In any case in which a cable system
11 operator submits an application to the franchising authority
12 for the renewal or other extension of such operator’s fran-
13 chise authorization, the franchising authority shall grant such
14 renewal or other extension unless it finds that—

15 “(1) the cable system operator has not substan-
16 tially complied with the material terms of such fran-
17 chise and with applicable law, or has been convicted of
18 a felony;

19 “(2) there has been a material change in the
20 legal, technical, or financial qualifications of the cable
21 system operator that would substantially impair the
22 continued provision of service by such operator;

23 “(3) the facilities to be provided by such operator,
24 including facilities for governmental access, are unrea-

1 sonable in light of the community need for and cost of
2 such facilities;

3 “(4) the signal delivered by the cable system
4 within the control of the cable system operator, has not
5 generally met technical standards as established by the
6 Commission; or

7 “(5) the proposals contained in the renewal appli-
8 cation are otherwise unreasonable.

9 “(b) A cable system operator must file for renewal at
10 least 24 months, but not more than 36 months, before the
11 expiration of the franchise. The franchising authority must
12 consider the renewal within 120 days of submission of the
13 application and conduct any proceedings necessary to ade-
14 quately consider the application.

15 “(c) A cable system operator with a franchise which
16 shall expire within 24 months after the date of enactment of
17 the Cable Telecommunications Act of 1983, shall be in com-
18 pliance with subsection (b) if he files an application for re-
19 newal within 60 days after such date of enactment.

20 “(d) The franchising authority shall—

21 “(1) negotiate in good faith with any cable system
22 operator regarding franchise renewal within 30 days
23 after the completion of proceedings pursuant to subsec-
24 tion (b); and

1 “(2) make a final decision on granting or denying
2 renewal within 12 months after receipt of an applica-
3 tion;

4 “(3) in the case of denial of an application—

5 “(A) not make the final decision for at least
6 7 months from the date of receipt of the applica-
7 tion; and

8 “(B) notify the applicant by written state-
9 ment, within 7 days after the final decision, of the
10 reasons for the denial.

11 “(e) Any renewal applicant adversely affected or ag-
12 grieved by a final decision of a franchising authority made
13 pursuant to subsection (d), or by a failure of the franchising
14 authority to act in accordance with subsection (d), may obtain
15 judicial review of such final decision in any court of compe-
16 tent jurisdiction. The existing franchise shall remain in effect
17 pending the completion of such judicial review. Such judicial
18 review shall be de novo, unless the renewal applicant has
19 been afforded a hearing on record before an independent
20 hearing examiner or administrative law judge consistent with
21 State law that requires—

22 “(1) adequate notice;

23 “(2) fair opportunity for participation by the re-
24 newal applicant, which includes—

25 “(A) discovery;

1 “(B) the filing of pleadings, motions, or ob-
2 jections;

3 “(C) the introduction of written or oral testi-
4 mony; and

5 “(D) cross-examination of opposing parties;
6 and

7 “(3) a written decision by the examiner or judge
8 based exclusively on the full record of the hearings and
9 stating the specific findings of fact and conclusions of
10 law on which the decision is based.

11 “UNAUTHORIZED INTERCEPTION OR RECEPTION

12 “SEC. 610. (a) No person or government authority shall
13 intercept or receive broadband telecommunications unless
14 specifically authorized to do so by a cable system operator,
15 channel programmer, or originator of broadband telecommuni-
16 cations or as may otherwise be specifically authorized by
17 Federal law.

18 “(b) In order to safeguard the right to privacy and secu-
19 rity of broadband telecommunications, such broadband tele-
20 communications shall be deemed to be a ‘wire communica-
21 tion’ within the meaning of section 2510(1) of title 18 of the
22 United States Code.

23 “(c) In the event that there may be any difference be-
24 tween the provisions of this section and chapter 119 of title
25 18 of the United States Code, or any regulations promulgat-

1 ed thereunder, it is the intent of the Congress that such chap-
2 ter 119 shall be controlling.

3 "PROTECTION OF SUBSCRIBER PRIVACY

4 "SEC. 611. (a)(1) Except as provided in paragraph (2) of
5 this subsection, no cable operator, channel programer, or
6 originator of broadband telecommunications may use the
7 cable system to collect personally identifiable information
8 with respect to a cable subscriber, except upon the prior writ-
9 ten or electronic consent of that subscriber.

10 "(2) The provisions of paragraph (1) of this subsection
11 shall not apply to the collection of information solely for bill-
12 ing purposes or to monitor whether there is unauthorized re-
13 ception of cable telecommunications.

14 "(3) A cable operator, channel programer, or originator
15 of broadband telecommunications shall ensure that any such
16 information is destroyed when the information is no longer
17 used or to be used for the purposes for which it was collected.

18 "(b) No cable operator, channel programer, or originator
19 of broadband telecommunications shall disclose personally
20 identifiable information obtained pursuant to subsection (a) of
21 this section with respect to a cable subscriber, or personally
22 identifiable information with respect to the services provided
23 to or received by a particular cable subscriber by way of a
24 cable system, except upon the prior written or electronic con-

1 sent of the subscriber, or pursuant to a lawful court order
2 authorizing such disclosure.

3 “(c) If a court shall authorize or order disclosure, the
4 cable subscriber shall be notified of such order by the person
5 to whom such order may be directed, within a reasonable
6 period of time before the disclosure is made, but in no event
7 less than 14 calendar days.

8 “(d) Each cable operator shall, at the time of entering
9 into an agreement to provide cable telecommunications, and
10 regularly thereafter, inform every subscriber of the rights of
11 the subscriber under this section. Such information shall in-
12 clude a description of the nature of the information to be
13 maintained by the cable operator, channel programer, or
14 originator of broadband telecommunications, and the location
15 and availability of such information.

16 “(e) A cable subscriber shall have access to all personal-
17 ly identifiable information regarding that subscriber which is
18 collected and maintained by a cable operator, channel pro-
19 gramer, or originator of broadband telecommunications. Such
20 information shall be available to the subscriber at reasonable
21 times and at a place designated by the cable operator, chan-
22 nel programer, or originator of broadband telecommunica-
23 tions.

24 “(f) Any cable subscriber whose privacy is violated in
25 contravention of this section, shall be entitled to recover civil

1 damages as authorized and in the manner set forth in section
2 2520 of title 18 of the United States Code. This remedy shall
3 be in addition to any other remedy available to such
4 subscriber.

5 "CRIMINAL AND CIVIL LIABILITY

6 "SEC. 612. Nothing in this title shall be deemed to
7 affect the criminal or civil liability of channel programers or
8 cable operators pursuant to the law of libel, slander, obscen-
9 ity, incitement, invasions of privacy, false or misleading ad-
10 vertising, or other similar laws, except that cable operators
11 shall not incur such liability for any program carried on any
12 public, educational, governmental, or other channel referred
13 to in subsection (a) of section 606, or for any program re-
14 quired by law to be carried on any other channel.

15 "PROGRAMING, SERVICES, AND FACILITIES

16 "SEC. 613. (a) No State or political subdivision or
17 agency thereof, or franchising authority, may require the pro-
18 vision of particular programing or other broadband services,
19 or facilities, equipment, services, or other items of value
20 which are not related to the provision of broadband telecom-
21 munications service.

22 "(b) A franchising authority may require, as part of the
23 franchise request for proposals—

24 "(1) channel capacity for public, educational or
25 governmental access purposes; and

1 quently modified or replaced, on or prior to September 30,
2 1982.

3 "NO REGULATION AS COMMON CARRIER

4 "SEC. 614. No executive agency of the United States,
5 including the Commission, and no State or political subdivi-
6 sion or agency thereof, or franchising authority, shall have
7 authority to impose on a cable system regulation as a
8 common carrier or a utility to the extent that such cable
9 system provides broadband telecommunications service other
10 than basic telephone service."

11 EXCLUSIVE JURISDICTION

12 SEC. 2. (a) Except to the extent otherwise specifically
13 provided in title VI of the Communications Act of 1934, as
14 added by the first section of this Act and as provided in sec-
15 tion 607 of such title, the Federal Government shall have
16 exclusive jurisdiction over broadband telecommunications re-
17 garding matters covered by such title.

18 (b) Any law of any State or political subdivision or
19 agency thereof, or franchising authority, in effect on the ef-
20 fective date of title VI of the Communications Act of 1934,
21 as added by the first section of this Act, which is in conflict
22 with the provision of subsection (a) of this section relating to
23 the exclusive jurisdiction of the Federal Government, shall be
24 deemed superseded, as of the expiration of the 6-month

1 period following the date of the enactment of this Act, and
2 shall thereafter be null and void and of no effect.

3 (c) Except to the extent otherwise provided by this Act
4 and the amendments made thereby, any State or political
5 subdivision or agency thereof, or franchising authority, may
6 exercise jurisdiction over matters which are of strictly local
7 concern and which are necessary for reasons of public health,
8 safety, and welfare, including the terms and conditions for
9 the granting of a franchise, the construction and operation of
10 a cable system, and the enforcement and administration of a
11 franchise.

12 NEW AND ADDITIONAL SERVICES

13 SEC. 3. Title I of the Communications Act of 1934 is
14 amended by inserting after section 6 the following new sec-
15 tions:

16 "NEW AND ADDITIONAL SERVICES

17 "SEC. 7. (a) Consistent with sound spectrum manage-
18 ment, the Commission shall, to the maximum feasible extent,
19 encourage the introduction of new and additional services by
20 new applicants, existing licensees, or other persons. In any
21 proceeding in which new or additional services are proposed,
22 such services shall be presumed to be in the public interest
23 whenever the Commission finds that such services are techni-
24 cally feasible without causing significant technical degrada-

1 is distributed by coaxial cable or any other closed
2 transmission medium;

3 “(2) ‘basic telephone service’ means two-way
4 voice grade communications that is held out to the
5 public and that would be subject to regulation by the
6 Commission or any State if offered by a common carri-
7 er subject, in whole or in part, to title II of this Act;

8 “(3) ‘broadband telecommunications’ means any
9 receipt or transmission of electromagnetic signals, in-
10 cluding basic service, cable service, and telecommuni-
11 cations service, over coaxial cable or any other closed
12 transmission medium;

13 “(4) ‘broadcasting’ means telecommunications by
14 radio intended to be received by the public, directly or
15 by the intermediary of relay stations;

16 “(5) ‘cable channel’ or ‘channel’ means that por-
17 tion of the electromagnetic frequency spectrum used in
18 a cable system for the propagation of an electromag-
19 netic signal;

20 “(6) ‘cable operator’ or ‘cable system operator’
21 means any person or persons, or an agent or employee
22 thereof, that provides basic service, cable service, or
23 telecommunications service over a cable system, or
24 that directly or indirectly owns a significant interest in
25 any cable system, or that otherwise controls or is re-

1 sponsible for, through any arrangement, the manage-
2 ment and operation of such a cable system;

3 “(7) ‘cable service’ means the provision by a
4 channel programmer of one-way programming on a per
5 channel, per program, or other basis which is distribut-
6 ed by coaxial cable or any other closed transmission
7 medium, but such term shall not include basic service;

8 “(8) ‘cable subscriber’ means any person who re-
9 ceives or transmits electromagnetic signals distributed
10 over a cable system;

11 “(9) ‘cable system’ means a facility or combina-
12 tion of facilities under the ownership or control of any
13 person or persons, which consist of a primary control
14 center used to receive and retransmit, or to originate
15 broadband telecommunications service over one or
16 more coaxial cables, or other closed transmission
17 media, from the primary control center to a point of
18 reception at the premises of a cable subscriber, but
19 such term does not include: (A) a facility or combina-
20 tion of facilities that serves only to retransmit the tele-
21 vision signals of television broadcast stations; (B) a fa-
22 cility or combination of facilities that serves only sub-
23 scribers in one or more multiple unit dwellings under
24 common ownership, control, or management; or (C) a
25 common carrier subject to the provisions of title II of

1 this Act whenever such carrier transmits broadband
2 telecommunications services other than basic service or
3 cable service;

4 “(10) ‘channel programmer’ or ‘programmer’ means
5 any person having an agreement to provide basic serv-
6 ice or cable service to a cable system operator, or any
7 person who leases, rents, or is otherwise authorized to
8 use the facilities of a cable system for the provision of
9 basic service or cable service, and such term shall in-
10 clude a cable system operator to the extent that such
11 operator, or person or persons under common owner-
12 ship or control with such operator, is engaged in the
13 provision of such service;

14 “(11) ‘closed transmission medium’ or ‘closed
15 transmission media’ means media having the capacity
16 to transmit electromagnetic signals over a common
17 transmission path such as coaxial cable, optical fiber,
18 wire, waveguide, or other such signal conductor or
19 device;

20 “(12) ‘franchise’ means a permit, license, ordi-
21 nance, resolution, right-of-way, contract, certificate,
22 agreement, or similar authorization issued by a fran-
23 chising authority which authorizes the provision of
24 basic service, cable service, or telecommunications
25 service by a cable operator;

1 “(13) ‘franchising authority’ means any State, po-
2 litical subdivision, or agency thereof, or any other gov-
3 ernmental entity empowered to grant a franchise;

4 “(14) ‘grade B contour’ means the field strength
5 of a television broadcast station computed in accord-
6 ance with regulations promulgated by the Commission;

7 “(15) ‘information’ means knowledge or intelli-
8 gence represented by any form of writing, signs, sig-
9 nals, pictures, sounds, or other symbols;

10 “(16) ‘law’ includes any regulation, rule, order,
11 standard, policy, requirement, procedure, or restriction;

12 “(17) ‘person’ means an individual, partnership,
13 association, joint stock company, trust, corporation or
14 any governmental authority;

15 “(18) ‘telecommunications’ means the transmis-
16 sion of information by electromagnetic means, with or
17 without benefit of any closed transmission medium, in-
18 cluding all instrumentalities, facilities, apparatus, and
19 services (including the collection, storage, forwarding,
20 switching, and delivery of such information) essential to
21 such transmission;

22 “(19) ‘telecommunications service’ means the of-
23 fering of telecommunications facilities, or of telecom-
24 munications but such term shall not include basic serv-
25 ice or cable service; and

1 “(20) ‘United States’ means the several States
2 and territories, the District of Columbia, and the pos-
3 sessions of the United States.

4 “STATEMENT OF AUTHORITY

5 “SEC. 604. The provisions of this title shall apply as
6 follows:

7 “(1) The Commission shall have jurisdiction and
8 exercise authority with respect to broadband telecom-
9 munications in accordance with the provisions of this
10 title and other applicable provisions of law.

11 “(2) Nothing in this title shall be construed as
12 prohibiting any State or political subdivision or agency
13 thereof, or franchising authority, from awarding, in ac-
14 cordance with the provisions of this title, one or more
15 cable franchises within its jurisdiction.

16 “(3)(A) Except to the extent provided in para-
17 graph (B), no cable system shall provide basic service
18 or cable service without a cable franchise in compli-
19 ance with this title.

20 “(B) The provision of paragraph (A) shall not be
21 applicable in the case of any cable system in operation
22 on April 21, 1983.

23 “OWNERSHIP OR CONTROL OF CABLE SYSTEMS

24 “SEC. 605. (a) No State or political subdivision or
25 agency thereof, or franchising authority, shall have the au-

1 thority to prohibit, directly or indirectly, the ownership of
2 cable systems by any person by reason of that person's own-
3 ership of any other media or other interests, including broad-
4 cast, cable, newspaper, programing service, or other printed
5 or electronic information service.

6 “(b)(1) Notwithstanding the provisions of subsection (a)
7 of this section, for the purpose of ensuring fair and equitable
8 treatment of United States cable enterprises seeking access
9 to markets in a foreign country, the Commission shall have
10 authority to conduct inquiries applicable to foreign persons
11 from that country seeking access to domestic markets in the
12 United States in connection with the construction, ownership
13 and operation of cable enterprises as to whether such United
14 States cable enterprises are permitted fair and equitable
15 access to such foreign markets.

16 “(2) The Commission shall submit any information ob-
17 tained through such inquiries to the United States Trade
18 Representative to assist the Trade Representative in his
19 identification and analysis of acts, policies or practices which
20 constitute significant barriers to, or distortions of, United
21 States exports of services.

22 “(3) For purposes of this subsection, the term ‘foreign
23 persons’ includes any individual who is not a citizen of the
24 United States, any subsidiary (although established under the
25 laws of the United States or any State thereof) of a corpora-

1 tion or other business entity which was established under the
2 laws of a foreign country, any corporation or other business
3 entity established under the laws of a foreign country, or any
4 corporation or other business entity established under the
5 laws of the United States or any State thereof, if 25 percent
6 or more of the capital stock or equivalent ownership is owned
7 or controlled by an individual who is not a citizen of the
8 United States or by a corporation or other business entity
9 established under the laws of a foreign country, or any sub-
10 sidiary of a corporation or other business entity established
11 under the laws of a foreign country.

12 “(c)(1) Notwithstanding the provisions of subsection (a)
13 of this section, a State or political subdivision or agency
14 thereof, or franchising authority, may not acquire an owner-
15 ship interest in any cable system pursuant to a buy-back pro-
16 vision of a franchise or require a sale of a cable system to any
17 other person pursuant to a franchise, upon the expiration of
18 the franchise, unless such State, subdivision, agency, authori-
19 ty, or person acquires such ownership or interest at not less
20 than fair market value based upon the ongoing business value
21 of the system. In the event that the cable operator and a
22 State or political subdivision or agency thereof, or franchising
23 authority, are unable to agree upon any such fair market
24 value, then the matter of determining fair market value shall
25 be submitted to binding arbitration. For purposes of arbitra-

1 cate or set aside channels for public, educational, or govern-
 2 mental users, and the cable system operator may offer in a
 3 franchise to dedicate or set aside channels for other channel
 4 users.

5 “(b) The franchising authority and the cable operator
 6 may establish rules and procedures for the use of the chan-
 7 nels set aside or dedicated pursuant to this section.

8 “(c) Until such time as there is demand for each channel
 9 full time for its designated use, public, educational, govern-
 10 mental, or other channel programing may be combined by the
 11 cable system operator on one or more channels, and to the
 12 extent time is available on such channels, they may be used
 13 by the cable system operator for the provision of other
 14 services.

15 “REGULATION OF RATES AND SERVICES

16 “SEC. 607. (a) Nothing in this title shall be construed as
 17 prohibiting any State or political subdivision or agency there-
 18 of, or franchising authority, from establishing, fixing, or oth-
 19 erwise restricting the rates charged by cable operators—

20 “(1) to subscribers for the receipt of basic service,

21 “(2) to subscribers for equipment necessary for the
 22 receipt of basic service, and

23 “(3) to subscribers for equipment which facilitates
 24 the reception of basic service by hearing impaired indi-
 25 viduals.

1 “(b)(1) Any rate regulated pursuant to this section may
2 be increased annually at the discretion of the cable operator
3 by an amount not to exceed the regional consumer price
4 index for the preceding 12 months, upon 30 days prior notice.
5 The ability to affect such increases shall be cumulative for
6 not more than 3 successive years.

7 “(2) Notwithstanding the provisions of paragraph (1) of
8 this subsection, nothing in this title shall be construed as pro-
9 hibiting any State or political subdivision or agency thereof,
10 or franchising authority, from providing that such automatic
11 increases shall not apply to a franchise which is in existence
12 on the date of the enactment of the Cable Telecommunica-
13 tions Act of 1983 and which provides for a fixed rate for
14 basic service over a specified period.

15 “(c) Notwithstanding the provisions of subsections (a)
16 and (b) of this section, a cable system operator may automati-
17 cally increase basic service rates which exceed the basic rates
18 allowed pursuant to subsection (a) or (b) of this section if—

19 “(1) such operator has requested the increase in
20 rates; and

21 “(2) the request is not acted on within 90 days
22 following the date of its receipt.

23 “(d)(1) Notwithstanding the provisions of subsection (a)
24 of this section, the authority to establish, fix, or otherwise
25 restrict the rates charged to subscribers for the provision of

1 basic services set forth in subsection (a) of this section, except
2 to the extent otherwise provided in paragraph (2) of this sub-
3 section, shall not be applicable in any case where the cable
4 system is located within the grade B contour of not less than
5 four television signals of which there shall be one affiliate of
6 each of the three major television networks.

7 “(2) The provisions of paragraph (1) of this subsection
8 shall not be applicable in the case of any franchise in exist-
9 ence prior to the date of the enactment of the Cable Tele-
10 communications Act of 1983, if the rates charged to subscrib-
11 ers for the provision of basic services are subject to regulation
12 or are restricted by any State or political subdivision or
13 agency thereof, or any franchising authority. The provisions
14 of this paragraph relating to existing rate regulation of basic
15 service shall be applicable for a period of 5 years following
16 the date of the enactment of such Act, or for a period equal
17 to one-half of the period of the remaining term of such fran-
18 chise, as of the date of the enactment of such Act, whichever
19 is greater. The provisions of paragraph (1) shall be applicable
20 to any renewal or other extension of any such franchise.

21 “(3) The provisions of paragraph (1) of this subsection
22 shall not be applicable where the cable system is subscribed
23 to by at least 80 percent of the residences to which cable
24 service is available, unless the cable operator demonstrates
25 that 90 percent of the time, adequate on-site reception of the

1 four television signals is available to more than 50 percent of
2 the households to which cable service is available. Such a
3 determination shall be made by the Commission. Failure by
4 the Commission to make a determination within 180 days
5 after the filing of an application by the cable operator shall be
6 deemed to be a determination that such satisfactory reception
7 is available.

8 “(e) No executive agency of the United States, including
9 the Commission, and no State or political subdivision or
10 agency thereof, or franchising authority, shall have authority
11 to regulate or restrict the rates for reconnection, additional
12 sets to the same subscriber, or sales of equipment.

13 “(f) No executive agency of the United States, including
14 the Commission, and no State or political subdivision or
15 agency thereof, or franchising authority, shall have authority
16 to regulate or restrict the provision of or nature of cable serv-
17 ices offered over a cable system except as provided in section
18 613 of this Act.

19 “(g)(1) No executive agency of the United States, in-
20 cluding the Commission, and no State or political subdivision
21 or agency thereof, or franchising authority, shall have author-
22 ity to regulate or restrict the provision of or nature of tele-
23 communications services offered over a cable system, except
24 with respect to the provision of basic telephone service, intra-

1 state telecommunications services, and except as provided in
2 section 613 of this Act.

3 “(2)(A) Subject to the provisions of subparagraph (B), a
4 State may require only the filing of informational tariffs for
5 intrastate telecommunications services that would be subject
6 to regulation by the Commission or any State if offered by a
7 common carrier subject, in whole or in part, to title II of this
8 Act, which are offered over a cable system. Such informa-
9 tional tariffs shall specify only the rates, terms, and condi-
10 tions for the provision of service and shall take effect on the
11 date specified therein.

12 “(B) Subparagraph (A) shall not apply to any private
13 telecommunications service which is a discrete service dedi-
14 cated to a single customer and operated by such customer.

15 “(3) A State shall deregulate the provision of intrastate
16 telecommunications services if it finds that such services are
17 subject to effective competition.

18 “(4) For purposes of this subsection, an intrastate tele-
19 communications service shall be considered to be subject to
20 effective competition in a particular geographic area or
21 market if there are reasonably available alternatives. In de-
22 termining whether there are reasonably available alterna-
23 tives, the State shall consider—

24 “(A) the number and size of providers of services;

1 “(B) the extent to which services are available
2 from providers in the relevant geographic area or
3 market;

4 “(C) the ability of such providers to make services
5 readily available at comparable rates, terms, and condi-
6 tions; and

7 “(D) other indicators of the extent of competition,
8 including affiliation of providers of services.

9 “(5) Nothing in paragraphs (2), (3), and (4) of this sub-
10 section shall be construed as being applicable to basic tele-
11 phone service.

12 “(h) Nothing in this Act shall be construed as prohibit-
13 ing a franchising authority and a cable operator from specify-
14 ing, in a franchise agreement or renewal thereof, that certain
15 cable services shall not be provided or shall be provided sub-
16 ject to conditions, if such cable services are obscene or are
17 otherwise unprotected by the United States Constitution.

18 “(i) The provisions of subsections (b), (c), and (d) shall
19 not apply to a franchise agreement in existence on the date of
20 enactment of this Act for a period of 5 years following the
21 date of enactment of this Act, or for the remaining term of
22 such franchise agreement, whichever is greater, in any State
23 which has in effect, and has had in effect since January 1,
24 1983, a statutory scheme deregulating rates which contains a
25 requirement regarding minimal channel capacity.

1 “FRANCHISE FEES

2 “SEC. 608. (a) Cable operators may be required in a
3 franchise to pay to a State or political subdivision or agency
4 thereof, or franchising authority, a franchise fee.

5 “(b)(1) No franchise fee paid by a cable system operator
6 for the privilege of holding a franchise, shall exceed an
7 annual aggregate of 5 percent of such cable operator’s gross
8 revenues derived from the operation of the cable system
9 which is the subject of the franchise.

10 “(2) Nothing in this section shall be construed as limit-
11 ing fees required by a franchise in effect on the date of enact-
12 ment of the Cable Telecommunications Act of 1983 to be
13 paid directly or indirectly to entities established for the pur-
14 pose of facilitating the use of channels set aside for public,
15 educational, or governmental use.

16 “(c) Any cable system operator may pass the cost of any
17 increase in a franchise fee through to subscribers, and may
18 designate the total franchise fee as a separate item on the
19 subscribers’ bills.

20 “(d) For the purposes of this section—

21 “(1) ‘franchise fee’ shall include any tax, fee or
22 assessment of any kind imposed by a franchising au-
23 thority or governmental authority on a cable system
24 operator or cable subscriber because of their status as
25 such; and

1 “(2) ‘assessment’ shall not include bonds, security
2 funds, letters of credit, insurance, indemnification, pen-
3 alties, liquidated damages or similar requirements
4 which are incidental to the enforcement of the franchis-
5 ing agreement.

6 “(e) Nothing in this section shall be deemed to require a
7 cable operator to renegotiate the provisions of an existing
8 franchise.

9 “RENEWALS AND EXTENSIONS

10 “SEC. 609. (a) In any case in which a cable system
11 operator submits an application to the franchising authority
12 for the renewal or other extension of such operator’s fran-
13 chise authorization, the franchising authority shall grant such
14 renewal or other extension unless it finds that—

15 “(1) the cable system operator has not substan-
16 tially complied with the material terms of such fran-
17 chise and with applicable law, or has been convicted of
18 a felony;

19 “(2) there has been a material change in the
20 legal, technical, or financial qualifications of the cable
21 system operator that would substantially impair the
22 continued provision of service by such operator;

23 “(3) the facilities to be provided by such operator,
24 including facilities for governmental access, are unrea-

1 sonable in light of the community need for and cost of
2 such facilities;

3 “(4) the signal delivered by the cable system
4 within the control of the cable system operator, has not
5 generally met technical standards as established by the
6 Commission; or

7 “(5) the proposals contained in the renewal appli-
8 cation are otherwise unreasonable.

9 “(b) A cable system operator must file for renewal at
10 least 24 months, but not more than 36 months, before the
11 expiration of the franchise. The franchising authority must
12 consider the renewal within 120 days of submission of the
13 application and conduct any proceedings necessary to ade-
14 quately consider the application.

15 “(c) A cable system operator with a franchise which
16 shall expire within 24 months after the date of enactment of
17 the Cable Telecommunications Act of 1983, shall be in com-
18 pliance with subsection (b) if he files an application for re-
19 newal within 60 days after such date of enactment.

20 “(d) The franchising authority shall—

21 “(1) negotiate in good faith with any cable system
22 operator regarding franchise renewal within 30 days
23 after the completion of proceedings pursuant to subsec-
24 tion (b); and

1 “(2) make a final decision on granting or denying
2 renewal within 12 months after receipt of an applica-
3 tion;

4 “(3) in the case of denial of an application—

5 “(A) not make the final decision for at least
6 7 months from the date of receipt of the applica-
7 tion; and

8 “(B) notify the applicant by written state-
9 ment, within 7 days after the final decision, of the
10 reasons for the denial.

11 “(e) Any renewal applicant adversely affected or ag-
12 grieved by a final decision of a franchising authority made
13 pursuant to subsection (d), or by a failure of the franchising
14 authority to act in accordance with subsection (d), may obtain
15 judicial review of such final decision in any court of compe-
16 tent jurisdiction. The existing franchise shall remain in effect
17 pending the completion of such judicial review. Such judicial
18 review shall be de novo, unless the renewal applicant has
19 been afforded a hearing on record before an independent
20 hearing examiner or administrative law judge consistent with
21 State law that requires—

22 “(1) adequate notice;

23 “(2) fair opportunity for participation by the re-
24 newal applicant, which includes—

25 “(A) discovery;

1 “(B) the filing of pleadings, motions, or ob-
2 jections;

3 “(C) the introduction of written or oral testi-
4 mony; and

5 “(D) cross-examination of opposing parties;
6 and

7 “(3) a written decision by the examiner or judge
8 based exclusively on the full record of the hearings and
9 stating the specific findings of fact and conclusions of
10 law on which the decision is based.

11 “UNAUTHORIZED INTERCEPTION OR RECEPTION

12 “SEC. 610. (a) No person or government authority shall
13 intercept or receive broadband telecommunications unless
14 specifically authorized to do so by a cable system operator,
15 channel programmer, or originator of broadband telecommuni-
16 cations or as may otherwise be specifically authorized by
17 Federal law.

18 “(b) In order to safeguard the right to privacy and secu-
19 rity of broadband telecommunications, such broadband tele-
20 communications shall be deemed to be a ‘wire communica-
21 tion’ within the meaning of section 2510(1) of title 18 of the
22 United States Code.

23 “(c) In the event that there may be any difference be-
24 tween the provisions of this section and chapter 119 of title
25 18 of the United States Code, or any regulations promulgat-

1 ed thereunder, it is the intent of the Congress that such chap-
2 ter 119 shall be controlling.

3 "PROTECTION OF SUBSCRIBER PRIVACY

4 "SEC. 611. (a)(1) Except as provided in paragraph (2) of
5 this subsection, no cable operator, channel programer, or
6 originator of broadband telecommunications may use the
7 cable system to collect personally identifiable information
8 with respect to a cable subscriber, except upon the prior writ-
9 ten or electronic consent of that subscriber.

10 "(2) The provisions of paragraph (1) of this subsection
11 shall not apply to the collection of information solely for bill-
12 ing purposes or to monitor whether there is unauthorized re-
13 ception of cable telecommunications.

14 "(3) A cable operator, channel programer, or originator
15 of broadband telecommunications shall ensure that any such
16 information is destroyed when the information is no longer
17 used or to be used for the purposes for which it was collected.

18 "(b) No cable operator, channel programer, or originator
19 of broadband telecommunications shall disclose personally
20 identifiable information obtained pursuant to subsection (a) of
21 this section with respect to a cable subscriber, or personally
22 identifiable information with respect to the services provided
23 to or received by a particular cable subscriber by way of a
24 cable system, except upon the prior written or electronic con-

1 sent of the subscriber, or pursuant to a lawful court order
2 authorizing such disclosure.

3 “(c) If a court shall authorize or order disclosure, the
4 cable subscriber shall be notified of such order by the person
5 to whom such order may be directed, within a reasonable
6 period of time before the disclosure is made, but in no event
7 less than 14 calendar days.

8 “(d) Each cable operator shall, at the time of entering
9 into an agreement to provide cable telecommunications, and
10 regularly thereafter, inform every subscriber of the rights of
11 the subscriber under this section. Such information shall in-
12 clude a description of the nature of the information to be
13 maintained by the cable operator, channel programer, or
14 originator of broadband telecommunications, and the location
15 and availability of such information.

16 “(e) A cable subscriber shall have access to all personal-
17 ly identifiable information regarding that subscriber which is
18 collected and maintained by a cable operator, channel pro-
19 gramer, or originator of broadband telecommunications. Such
20 information shall be available to the subscriber at reasonable
21 times and at a place designated by the cable operator, chan-
22 nel programer, or originator of broadband telecommunica-
23 tions.

24 “(f) Any cable subscriber whose privacy is violated in
25 contravention of this section, shall be entitled to recover civil

1 damages as authorized and in the manner set forth in section
2 2520 of title 18 of the United States Code. This remedy shall
3 be in addition to any other remedy available to such
4 subscriber.

5 “CRIMINAL AND CIVIL LIABILITY

6 “SEC. 612. Nothing in this title shall be deemed to
7 affect the criminal or civil liability of channel programers or
8 cable operators pursuant to the law of libel, slander, obscen-
9 ity, incitement, invasions of privacy, false or misleading ad-
10 vertising, or other similar laws, except that cable operators
11 shall not incur such liability for any program carried on any
12 public, educational, governmental, or other channel referred
13 to in subsection (a) of section 606, or for any program re-
14 quired by law to be carried on any other channel.

15 “PROGRAMING, SERVICES, AND FACILITIES

16 “SEC. 613. (a) No State or political subdivision or
17 agency thereof, or franchising authority, may require the pro-
18 vision of particular programing or other broadband services,
19 or facilities, equipment, services, or other items of value
20 which are not related to the provision of broadband telecom-
21 munications service.

22 “(b) A franchising authority may require, as part of the
23 franchise request for proposals—

24 “(1) channel capacity for public, educational or
25 governmental access purposes; and

1 “(2) the construction of cable system facilities or
2 provision of other cable-related equipment.

3 “(c) A cable operator may offer, but may not be required
4 to provide, as part of basic service or any other tier of serv-
5 ice—

6 “(1) channel capacity for other access uses; and

7 “(2) particular services.

8 “(d)(1) The cable operator may replace or remove a par-
9 ticular service specified in the cable franchise as part of the
10 basic service or any other tier of cable service or telecommu-
11 nications service in any case in which there has been a sig-
12 nificant change in circumstances since the cable operator’s
13 offer to provide such service. The cable operator may not be
14 required to retain a specified service in any particular catego-
15 ry of service other than basic service.

16 “(2) In any case in which a cable operator submits a
17 showing that, as a result of a significant change in circum-
18 stances, particular facilities and equipment required by the
19 franchise are economically, technically, or otherwise imprac-
20 ticable, the franchising authority shall enter into negotiations
21 with the cable operator for the termination, modification, or
22 deferral of such requirement. If such terms and conditions
23 cannot be agreed upon within 45 days, the matter shall be
24 submitted to binding arbitration. For purposes of arbitration,
25 each of the affected parties shall select one arbitrator and the

1 two arbitrators so selected shall choose a third arbitrator.
2 The existing franchise provisions, except for those which are
3 the subject of arbitration, shall not be affected by the arbitra-
4 tors' final decision.

5 “(e) Except as provided in subsection (c) of this section,
6 a franchising authority may, in accordance with the provi-
7 sions of this section, enforce any offer to provide particular
8 basic service set forth in subsection (c) or particular cable
9 services or telecommunications services or cable system facil-
10 ities or cable-related equipment offered by a cable operator:
11 *Provided* That the provision of such services, facilities, or
12 equipment is specifically required by the franchise agreement.

13 “(f) Notwithstanding the preceding provisions of this
14 section, in any case in which a franchise agreement in effect
15 on the date of the enactment of the Cable Telecommunica-
16 tions Act of 1983 requires the cable operator to provide par-
17 ticular programing, services, facilities, cable related equip-
18 ment, or channel capacity for access uses, such requirements,
19 subject to subsections (d) and (e), shall remain in effect for the
20 term of the franchise and in accordance with the provisions
21 thereof. For purposes of this subsection, a franchise agree-
22 ment containing such requirements shall be considered to
23 have been in effect on such date of enactment if such agree-
24 ment was the result of a franchise proceeding for which a
25 request for proposals was originally issued, however subse-

1 quently modified or replaced, on or prior to September 30,
2 1982.

3 "NO REGULATION AS COMMON CARRIER

4 "SEC. 614. No executive agency of the United States,
5 including the Commission, and no State or political subdivi-
6 sion or agency thereof, or franchising authority, shall have
7 authority to impose on a cable system regulation as a
8 common carrier or a utility to the extent that such cable
9 system provides broadband telecommunications service other
10 than basic telephone service."

11 EXCLUSIVE JURISDICTION

12 SEC. 2. (a) Except to the extent otherwise specifically
13 provided in title VI of the Communications Act of 1934, as
14 added by the first section of this Act and as provided in sec-
15 tion 607 of such title, the Federal Government shall have
16 exclusive jurisdiction over broadband telecommunications re-
17 garding matters covered by such title.

18 (b) Any law of any State or political subdivision or
19 agency thereof, or franchising authority, in effect on the ef-
20 fective date of title VI of the Communications Act of 1934,
21 as added by the first section of this Act, which is in conflict
22 with the provision of subsection (a) of this section relating to
23 the exclusive jurisdiction of the Federal Government, shall be
24 deemed superseded, as of the expiration of the 6-month

1 period following the date of the enactment of this Act, and
 2 shall thereafter be null and void and of no effect.

3 (c) Except to the extent otherwise provided by this Act
 4 and the amendments made thereby, any State or political
 5 subdivision or agency thereof, or franchising authority, may
 6 exercise jurisdiction over matters which are of strictly local
 7 concern and which are necessary for reasons of public health,
 8 safety, and welfare, including the terms and conditions for
 9 the granting of a franchise, the construction and operation of
 10 a cable system, and the enforcement and administration of a
 11 franchise.

12 **NEW AND ADDITIONAL SERVICES**

13 **SEC. 3.** Title I of the Communications Act of 1934 is
 14 amended by inserting after section 6 the following new sec-
 15 tions:

16 **“NEW AND ADDITIONAL SERVICES**

17 **“SEC. 7. (a)** Consistent with sound spectrum manage-
 18 ment, the Commission shall, to the maximum feasible extent,
 19 encourage the introduction of new and additional services by
 20 new applicants, existing licensees, or other persons. In any
 21 proceeding in which new or additional services are proposed,
 22 such services shall be presumed to be in the public interest
 23 whenever the Commission finds that such services are techni-
 24 cally feasible without causing significant technical degrada-

1 through 609 are redesignated as sections 701 through 709,
2 respectively.

Passed the Senate June 14 (legislative day, June 13),
1983.

Attest: WILLIAM F. HILDENBRAND,
Secretary.