

“(15) A cable television system which carries the signal of a local television broadcaster is assisting the broadcaster to increase its viewership, and thereby attract additional advertising revenues that otherwise might be earned by the cable system operator. As a result, there is an economic incentive for cable systems to terminate the retransmission of the broadcast signal, refuse to carry new signals, or reposition a broadcast signal to a disadvantageous channel position. There is a substantial likelihood that absent the reimposition of such a requirement, additional local broadcast signals will be deleted, repositioned, or not carried.

“(16) As a result of the economic incentive that cable systems have to delete, reposition, or not carry local broadcast signals, coupled with the absence of a requirement that such systems carry local broadcast signals, the economic viability of free local broadcast television and its ability to originate quality local programming will be seriously jeopardized.

“(17) Consumers who subscribe to cable television often do so to obtain local broadcast signals which they otherwise would not be able to receive, or to obtain improved signals. Most subscribers to cable television systems do not or cannot maintain antennas to receive broadcast television services, do not have input selector switches to convert from a cable to antenna reception system, or cannot otherwise receive broadcast television services. The regulatory system created by the Cable Communications Policy Act of 1984 was premised upon the continued existence of mandatory carriage obligations for cable systems, ensuring that local stations would be protected from anticompetitive conduct by cable systems.

“(18) Cable television systems often are the single most efficient distribution system for television programming. A Government mandate for a substantial societal investment in alternative distribution systems for cable subscribers, such as the ‘A/B’ input selector antenna system, is not an enduring or feasible method of distribution and is not in the public interest.

“(19) At the same time, broadcast programming that is carried remains the most popular programming on cable systems, and a substantial portion of the benefits for which consumers pay cable systems is derived from carriage of the signals of network affiliates, independent television stations, and public television stations. Also cable programming placed on channels adjacent to popular off-the-air signals obtains a larger audience than on other channel positions. Cable systems, therefore, obtain great benefits from local broadcast signals which, until now, they have been able to obtain without the consent of the broadcaster or any copyright liability. This has resulted in an effective subsidy of the development of cable systems by local broadcasters. While at one time, when cable systems did not attempt to compete with local broadcasters for programming, audience, and advertising, this subsidy may have been appropriate, it is so no longer and results in a competitive imbalance between the 2 industries.

“(20) The Cable Communications Policy Act of 1984, in its amendments to the Communications Act of 1934 [47 U.S.C. 151 et seq.], limited the regulatory authority of franchising authorities over cable operators. Franchising authorities are finding it difficult under the current regulatory scheme to deny renewals to cable systems that are not adequately serving cable subscribers.

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

“(b) STATEMENT OF POLICY.—It is the policy of the Congress in this Act [enacting sections 334, 335, 534 to 537, 544a, 548, and 555a of this title, amending sections 325, 332, 522, 532, 533, 541 to 544, 546, 551 to 555, and 558 of this title, and enacting provisions set out as notes

under this section and sections 325, 531, 543, and 554 of this title] to—

“(1) promote the availability to the public of a diversity of views and information through cable television and other video distribution media;

“(2) rely on the marketplace, to the maximum extent feasible, to achieve that availability;

“(3) ensure that cable operators continue to expand, where economically justified, their capacity and the programs offered over their cable systems;

“(4) where cable television systems are not subject to effective competition, ensure that consumer interests are protected in receipt of cable service; and

“(5) ensure that cable television operators do not have undue market power vis-a-vis video programmers and consumers.”

#### SPORTS PROGRAMMING MIGRATION STUDY AND REPORT

Pub. L. 102-385, §26, Oct. 5, 1992, 106 Stat. 1502, directed Federal Communications Commission to investigate and analyze, on a sport-by-sport basis, trends in migration of local, regional, and national sports programming from carriage by broadcast stations to carriage over cable programming networks and pay-per-view systems, including economic causes and consequences of such trends, and further directed Commission to submit to Congress interim and final reports of such study, no later than July 1, 1993, and July 1, 1994, respectively, along with recommendations for legislative or regulatory activity.

#### APPLICABILITY OF ANTITRUST LAWS TO PUB. L. 102-385

Pub. L. 102-385, §27, Oct. 5, 1992, 106 Stat. 1503, provided that: “Nothing in this Act [enacting sections 334, 335, 534 to 537, 544a, 548, and 555a of this title, amending sections 325, 332, 522, 532, 533, 541 to 544, 546, 551 to 555, and 558 of this title, and enacting provisions set out as notes under this section and sections 325, 531, 543, and 554 of this title] or the amendments made by this Act shall be construed to alter or restrict in any manner the applicability of any Federal or State antitrust law.”

#### EFFECT OF CABLE COMMUNICATIONS POLICY ACT OF 1984 ON JURISDICTION OF FEDERAL COMMUNICATIONS COMMISSION RESPECTING WIRE OR RADIO COMMUNICATIONS THROUGH CABLE SYSTEMS

Pub. L. 98-549, §3(b), Oct. 30, 1984, 98 Stat. 2801, provided that: “The provisions of this Act [enacting this subchapter and section 611 of this title, amending sections 152, 224, 309, and 605 of this title, section 2511 of Title 18, Crimes and Criminal Procedure, and section 1805 of Title 50, War and National Defense, and enacting provisions set out as notes under this section and sections 543, 605, and 609 of this title] and amendments made by this Act shall not be construed to affect any jurisdiction the Federal Communications Commission may have under the Communications Act of 1934 [this chapter] with respect to any communication by wire or radio (other than cable service, as defined in section 602(5) of such Act [section 522(5) of this title]) which is provided through a cable system, or persons or facilities engaged in such communications.”

### § 522. Definitions

For purposes of this subchapter—

(1) the term “activated channels” means those channels engineered at the headend of a cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel designated for public, educational, or governmental use;

(2) the term “affiliate”, when used in relation to any person, means another person who owns or controls, is owned or controlled by, or

is under common ownership or control with, such person;

(3) the term “basic cable service” means any service tier which includes the retransmission of local television broadcast signals;

(4) the term “cable channel” or “channel” means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by the Commission by regulation);

(5) the term “cable operator” means any person or group of persons (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system;

(6) the term “cable service” means—

(A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and

(B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service;

(7) the term “cable system” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of 1 or more television broadcast stations; (B) a facility that serves subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of subchapter II of this chapter, except that such facility shall be considered a cable system (other than for purposes of section 541(c) of this title) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with section 573 of this title; or (E) any facilities of any electric utility used solely for operating its electric utility system;

(8) the term “Federal agency” means any agency of the United States, including the Commission;

(9) the term “franchise” means an initial authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to section 546 of this title), issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system;

(10) the term “franchising authority” means any governmental entity empowered by Federal, State, or local law to grant a franchise;

(11) the term “grade B contour” means the field strength of a television broadcast station computed in accordance with regulations promulgated by the Commission;

(12) the term “interactive on-demand services” means a service providing video programming to subscribers over switched networks on an on-demand, point-to-point basis, but does not include services providing video programming prescheduled by the programming provider;

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

(14) the term “other programming service” means information that a cable operator makes available to all subscribers generally;

(15) the term “person” means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity;

(16) the term “public, educational, or governmental access facilities” means—

(A) channel capacity designated for public, educational, or governmental use; and

(B) facilities and equipment for the use of such channel capacity;

(17) the term “service tier” means a category of cable service or other services provided by a cable operator and for which a separate rate is charged by the cable operator;

(18) the term “State” means any State, or political subdivision, or agency thereof;

(19) the term “usable activated channels” means activated channels of a cable system, except those channels whose use for the distribution of broadcast signals would conflict with technical and safety regulations as determined by the Commission; and

(20) the term “video programming” means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

(June 19, 1934, ch. 652, title VI, §602, as added Pub. L. 98-549, §2, Oct. 30, 1984, 98 Stat. 2780; amended Pub. L. 102-385, §2(c), Oct. 5, 1992, 106 Stat. 1463; Pub. L. 104-104, title III, §§301(a), 302(b)(2), Feb. 8, 1996, 110 Stat. 114, 124.)

#### Editorial Notes

##### AMENDMENTS

1996—Par. (6)(B). Pub. L. 104-104, §301(a)(1), inserted “or use” after “the selection”.

Par. (7)(B). Pub. L. 104-104, §301(a)(2), added subpar. (B) and struck out former subpar. (B) which read as follows: “a facility that serves only subscribers in 1 or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities uses any public right-of-way;”.

Par. (7)(C) to (E). Pub. L. 104-104, §302(b)(2)(A), which directed substitution of “, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with section 573 of this title; or (E)” for “, or (D)”, was executed by making the substitution for “; or (D)” to reflect the probable intent of Congress.

Pars. (12) to (20). Pub. L. 104-104, §302(b)(2)(B), (C), added par. (12) and redesignated former pars. (12) to (19) as (13) to (20), respectively.

1992—Pub. L. 102-385 added pars. (1), (12), and (18) and redesignated former pars. (1) to (10) as (2) to (11), re-

spectively, former pars. (11) to (15) as (13) to (17), respectively, and former par. (16) as (19).

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-385 effective 60 days after Oct. 5, 1992, see section 28 of Pub. L. 102-385, set out as a note under section 325 of this title.

##### EFFECTIVE DATE

Section effective 60 days after Oct. 30, 1984, except where otherwise expressly provided, see section 9(a) of Pub. L. 98-549, set out as a note under section 521 of this title.

#### PART II—USE OF CABLE CHANNELS AND CABLE OWNERSHIP RESTRICTIONS

### § 531. Cable channels for public, educational, or governmental use

#### (a) Authority to establish requirements with respect to designation or use of channel capacity

A franchising authority may establish requirements in a franchise with respect to the designation or use of channel capacity for public, educational, or governmental use only to the extent provided in this section.

#### (b) Authority to require designation for public, educational, or governmental use

A franchising authority may in its request for proposals require as part of a franchise, and may require as part of a cable operator's proposal for a franchise renewal, subject to section 546 of this title, that channel capacity be designated for public, educational, or governmental use, and channel capacity on institutional networks be designated for educational or governmental use, and may require rules and procedures for the use of the channel capacity designated pursuant to this section.

#### (c) Enforcement authority

A franchising authority may enforce any requirement in any franchise regarding the providing or use of such channel capacity. Such enforcement authority includes the authority to enforce any provisions of the franchise for services, facilities, or equipment proposed by the cable operator which relate to public, educational, or governmental use of channel capacity, whether or not required by the franchising authority pursuant to subsection (b).

#### (d) Promulgation of rules and procedures

In the case of any franchise under which channel capacity is designated under subsection (b), the franchising authority shall prescribe—

(1) rules and procedures under which the cable operator is permitted to use such channel capacity for the provision of other services if such channel capacity is not being used for the purposes designated, and

(2) rules and procedures under which such permitted use shall cease.

#### (e) Editorial control by cable operator

Subject to section 544(d) of this title, a cable operator shall not exercise any editorial control over any public, educational, or governmental use of channel capacity provided pursuant to

this section, except a cable operator may refuse to transmit any public access program or portion of a public access program which contains obscenity, indecency, or nudity.

#### (f) "Institutional network" defined

For purposes of this section, the term "institutional network" means a communication network which is constructed or operated by the cable operator and which is generally available only to subscribers who are not residential subscribers.

(June 19, 1934, ch. 652, title VI, §611, as added Pub. L. 98-549, §2, Oct. 30, 1984, 98 Stat. 2782; Pub. L. 104-104, title V, §506(a), Feb. 8, 1996, 110 Stat. 136.)

#### Editorial Notes

##### AMENDMENTS

1996—Subsec. (e). Pub. L. 104-104 inserted before period at end “”, except a cable operator may refuse to transmit any public access program or portion of a public access program which contains obscenity, indecency, or nudity”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section effective 60 days after Oct. 30, 1984, except where otherwise expressly provided, see section 9(a) of Pub. L. 98-549, set out as a note under section 521 of this title.

##### REGULATIONS

Pub. L. 102-385, §10(c), Oct. 5, 1992, 106 Stat. 1486, provided that: “Within 180 days following the date of the enactment of this Act [Oct. 5, 1992], the Federal Communications Commission shall promulgate such regulations as may be necessary to enable a cable operator of a cable system to prohibit the use, on such system, of any channel capacity of any public, educational, or governmental access facility for any programming which contains obscene material, sexually explicit conduct, or material soliciting or promoting unlawful conduct.”

### § 532. Cable channels for commercial use

#### (a) Purpose

The purpose of this section is to promote competition in the delivery of diverse sources of video programming and to assure that the widest possible diversity of information sources are made available to the public from cable systems in a manner consistent with growth and development of cable systems.

#### (b) Designation of channel capacity for commercial use

(1) A cable operator shall designate channel capacity for commercial use by persons unaffiliated with the operator in accordance with the following requirements:

(A) An operator of any cable system with 36 or more (but not more than 54) activated channels shall designate 10 percent of such channels which are not otherwise required for use (or the use of which is not prohibited) by Federal law or regulation.

(B) An operator of any cable system with 55 or more (but not more than 100) activated channels shall designate 15 percent of such channels which are not otherwise required for