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103D CONGRESS
1ST SESSION

H. R. 3636

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

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 22, 1993

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

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A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Communications Competition and Information Infrastructure Act of 1993".

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TITLE I—TELECOMMUNICATIONS INFRASTRUCTURE AND COMPETITION

SEC. 101. POLICY; DEFINITIONS.

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

(1) by inserting "(a)" after "SECTION 1."; and

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

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

"(1) to preserve and enhance universal telecommunications service at affordable rates;

"(2) to encourage the continued development and deployment of advanced and reliable capabilities and services in telecommunications networks;

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

"(4) to ensure a seamless and open nationwide telecommunications network through joint planning, coordination, and service arrangements between and among carriers; and

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"(5) to ensure that common carriers' networks function at a high standard of quality in delivering advances in network capabilities and services.".

(b) DEFINITIONS.—Section 3 of such Act (47 U.S.C. 153) is amended by adding at the end thereof the following new subsections:

"(hh) 'Information service' means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

"(ii) 'Equal access' means to afford, to any person seeking to provide an information service or a competing telecommunications service, reasonable and nondiscriminatory access—

"(1) to databases, signaling systems, poles, ducts, conduits, and rights-of-way owned or controlled by a local exchange carrier, or other facilities or information (including customer numbers) integral to the transmission, routing, or other provision of telephone exchange services;

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

"(3) that is sufficient to ensure the full interoperability of the equipment and facilities of the carrier and of the person seeking such access.

"(jj) 'Open platform service' means a switched, end-to-end digital telecommunications service, subject to title II of this Act, which (1) provides subscribers with sufficient network capability to access multimedia information services, (2) is widely available throughout each State, (3) is provided based on accepted standards, and (4) is available to all customers on a single line basis upon reasonable request.

"(kk) 'Local exchange carrier' means any person that is engaged in the provision of telephone exchange service or telephone exchange access service.

"(ll) 'Telephone exchange access service' means the offering of telephone exchange services or facilities for the purpose of the origination or termination of interexchange telecommunications services to or from an exchange area.

"(mm) 'Telecommunications' means the transmission, between or among points specified by the customer, of information of the customer's choosing, without change in the form or content of the information as sent

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and received, by means of an electromagnetic transmission medium, including all instrumentalities, facilities, apparatus, and services (including the collection, storage, forwarding, switching, and delivery of such information) essential to such transmission.

"(nn) 'Telecommunications service' means the offering, on a common carrier or other basis, of telecommunications facilities, or of telecommunications by means of such facilities. Such term does not include an information service.".

SEC. 102. EQUAL ACCESS AND NETWORK FUNCTIONALITY AND QUALITY.

(a) AMENDMENT.—Section 201 of the Communications Act of 1934 (47 U.S.C. 201) is amended by adding at the end thereof the following new subsections:

"(c) EQUAL ACCESS.—

"(1) OPENNESS AND ACCESSIBILITY OBLIGATIONS.—

"(A) COMMON CARRIER OBLIGATIONS.—The duty of a common carrier under subsection (a) to furnish communications service includes the duty to furnish that service in accordance with such regulations with respect to the openness and accessibility of common carrier networks as the Commission may prescribe as nec-

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essary or desirable in the public interest pursuant to this subsection.

"(B) ADDITIONAL OBLIGATIONS OF LOCAL EXCHANGE CARRIERS.—The duty under such subsection of a local exchange carrier includes the duty—

"(i) to provide, in accordance with the regulations prescribed under paragraph (2), equal access to and interconnection with the facilities of the carrier's networks to any other carrier or person providing telecommunications services reasonably requesting such equal access and interconnection, so that the networks are fully interoperable; and

"(ii) to offer unbundled features, functions, and capabilities in accordance with requirements prescribed by the Commission pursuant to this subsection and other laws.

"(2) EQUAL ACCESS AND INTERCONNECTION REGULATIONS.—

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

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

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

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"(C) EXEMPTIONS AND MODIFICATIONS.—Notwithstanding any other provision of this subsection, a local exchange carrier in a rural area shall not be required to provide equal access and interconnection to another local exchange carrier. The Commission may modify the requirements of this paragraph for any local exchange carrier that has, in the aggregate nationwide, fewer than 500,000 subscriber lines installed, to the extent that the Commission determines that compliance with such requirements would be unduly economically burdensome, technologically infeasible, or otherwise not in the public interest.

"(D) JOINT BOARD ON EQUAL ACCESS AND INTERCONNECTION STANDARDS.—Within 30 days after the date of enactment of this subsection, the Commission shall convene a Federal-State Joint Board under section 410(c) for the purpose of preparing a recommended decision for the Commission with respect to the equal access and interconnection regulations required by this paragraph.

"(E) ENFORCEMENT OF EXISTING REGULATIONS.—Nothing in this section shall be con-

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strued to prohibit the Commission from enforcing regulations prescribed prior to the date of enactment of this section in fulfilling the requirements of this subsection to the extent that such regulations are consistent with the provisions of this subsection.

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

"(A) effectively prohibit any provider of any telecommunication services from providing that or any other such service, or impose any restrictions on entry into the business of providing any such service that is inconsistent with this subsection or any other provision of this Act, or any regulation thereunder;

"(B) prohibit any carrier or other person providing telecommunications services from exercising the access and interconnection rights provided under this subsection; or

"(C) impose any limitation on the exercise of such rights that is inconsistent with this subsection or the regulations prescribed under this subsection.

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"(4) TARIFFS.—

"(A) GENERALLY.—A local exchange carrier shall, within 18 months after the date of enactment of this subsection, prepare and file tariffs in accordance with this Act with respect to the services or elements offered to comply with the equal access and interconnection regulations required under this subsection. The costs that a carrier incurs in providing such services or elements of exchange services shall be borne solely by the users of the features and functions comprising such services or which uses or includes such service element. The Commission shall review such tariffs to ensure that—

"(i) the charges for such services or elements of exchange services are cost-based; and

"(ii) the terms and conditions contained in such tariffs do not bundle together any separable elements, features, or functions.

"(B) SUPPORTING INFORMATION.—A local exchange carrier shall submit supporting information with its tariffs for equal access and

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interconnection that is sufficient to enable the Commission and the public to determine the relationship between the proposed charges and the costs of providing such services or elements of exchange services. The submission of such information shall be pursuant to rules adopted by the Commission to ensure that similarly situated carriers provide such information in a uniform fashion.

"(5) PRICING FLEXIBILITY.—(A) Within 270 days after the date of enactment of this subsection, the Commission, by regulation, shall establish criteria for determining—

"(i) whether a telecommunications service or provider of such service has become, or is reasonably certain imminently to become, subject to competition, either within a geographic area or within a class or category of service;

"(ii) whether such competition will effectively prevent rates for such service that are unjust or unreasonable or that are unjustly or unreasonably discriminatory; and

"(iii) appropriate flexible pricing procedures that can be used in lieu of the filing of tariff schedules, or in lieu of other pricing pro-

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cedures established by the Commission, and that are consistent with the public interest, convenience, and necessity.

"(B) The Commission, with respect to rates for interstate or foreign communications, and State commissions, with respect to rates for intrastate communications, shall, upon application—

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

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

The Commission shall approve or reject any such application within 180 days after its submission.

"(6) JOINT BOARD TO PRESERVE UNIVERSAL SERVICE.—

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

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Commission and State commissions for the preservation of universal service. As a part of preparing such recommendations, the Joint Board shall survey providers of telephone exchange service and consult with State commissions in order to determine the pecuniary difference between the cost of providing universal service and the prices determined to be appropriate for such service. In making such recommendations, the Joint Board shall base policies for the preservation of universal service on the following principles:

"(i) A plan adopted by the Commission and the States should ensure the continued viability of universal service by maintaining quality services at affordable prices.

"(ii) Such plan should define the nature and extent of the services encompassed within carriers' universal service obligations and should seek to promote access to advanced telecommunications services for all Americans by including advanced telecommunications services in the

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definition of universal service, while maintaining affordable rates.

"(iii) Such plan should establish specific and predictable mechanisms to provide adequate and sustainable support for universal service.

"(iv) All providers of telecommunications services should make an equitable and nondiscriminatory contribution to preservation of universal service.

"(B) REPORT; COMMISSION RESPONSE.—The Joint Board convened pursuant to subparagraph (A) shall report its recommendations within 270 days after the date of enactment of this subsection. The Commission shall complete any proceeding to implement such recommendations within one year after such date of enactment. A State may adopt regulations to implement the Joint Board's recommendations, except that such regulations shall not, after 18 months after such date of enactment, be inconsistent with regulations prescribed by the Commission to implement such recommendations.

"(7) RESALE.—The resale or sharing of telephone exchange service (or unbundled elements of

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such service) in conjunction with the furnishing of a telecommunications service or any information service shall not be prohibited nor subject to unreasonable conditions by the carrier, the Commission, or any State.

"(8) REVIEW OF STANDARDS AND REQUIREMENTS.—At least once every three years, the Commission shall—

"(A) conduct a proceeding in which interested parties shall have an opportunity to comment on whether the standards and requirements established by or under this subsection have opened the networks of carriers to reasonable and nondiscriminatory access by providers of telecommunications services and information services;

"(B) review the definition of universal service and evaluate the extent to which universal service has been protected and access to advanced services has been facilitated pursuant to this subsection and the plans and regulations thereunder; and

"(C) submit to the Congress a report containing a statement of the Commission's findings pursuant to such proceeding, and including

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an identification of any defects or delays observed in attaining the objectives of this subsection and a plan for correcting such defects and delays.

"(9) STUDY OF RURAL PHONE SERVICE.—No later than 1 year after the date of enactment of this subsection, the Commission shall initiate an inquiry to examine the effects of competition in the provision of telephone exchange access and telephone exchange service on the availability and rates for telephone exchange access and telephone exchange service furnished by rural exchange carriers.

"(d) NETWORK FUNCTIONALITY AND QUALITY.—

"(1) FUNCTIONALITY AND RELIABILITY OBLIGATIONS.—The duty of a common carrier under subsection (a) to furnish communications service includes the duty to furnish that service in accordance with such regulations of functionality and reliability as the Commission may prescribe as necessary or desirable in the public interest pursuant to this subsection.

"(2) COORDINATED PLANNING FOR INTEROPERABILITY AND OTHER PURPOSES.—The Commission shall establish—

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"(A) procedures for the conduct of coordinated network planning by common carriers and other providers of telecommunications or information services, subject to Commission supervision, for the effective and efficient interconnection and interoperability of public and private networks; and

"(B) procedures for the development, subject to Commission supervision, of—

"(i) standards for the interconnection and interoperability of such networks;

"(ii) standards for the design of such networks that promote access to network capabilities and services by individuals with disabilities; and

"(iii) standards to ensure that the design of such networks does not impede access to information services by subscribers to telephone exchange service furnished by a rural exchange carrier.

"(3) OPEN PLATFORM SERVICE.—

"(A) STUDY.—No later than 90 days after the enactment of this subsection, the Commission shall initiate an inquiry to consider the rules and policies necessary to make open plat-

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form service available to all subscribers at reasonable rates based on the reasonably identifiable costs of providing such services, utilizing existing facilities to the maximum extent feasible and economically practicable. The inquiry required under this paragraph shall be completed within 120 days after initiation.

"(B) REGULATIONS.—On the basis of the results of the inquiry required under subparagraph (A), the Commission shall prescribe and make effective such regulations as are necessary to implement the inquiry's conclusions. Such regulations may require a local exchange carrier to file, in the appropriate jurisdiction, tariffs for the origination and termination of open platform service as soon as such service is economically and technically feasible. In establishing any such regulations, the Commission shall take into account the proximate and long-term deployment plans of local exchange carriers, and may establish a procedure to delay for a reasonable period of time any requirement of open platform service if a petition from a local exchange carrier demonstrates that compliance with such requirement would significantly delay

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the deployment of a more advanced technology. Any such regulations shall provide for the allocation of all costs of facilities jointly used to provide open platform service and telephone exchange service. Nothing in this subsection shall be construed to limit a State's authority to continue to regulate any services subject to State jurisdiction under this Act.

"(C) CONTINUING OVERSIGHT.—Commencing not later than 2 years after the date of enactment of this subsection, the Commission shall conduct an inquiry on the progress of open platform service deployment. The Commission shall submit a report to the Congress on the results of such inquiry within 90 days after the commencement of such inquiry and annually thereafter for the succeeding 5 years.

"(4) ACCESSIBILITY REGULATIONS.—

"(A) REGULATIONS.—The Commission shall, within 1 year after enactment of this section, prescribe such regulations as are necessary to ensure that advances in network services deployed by local exchange carriers shall be accessible and usable by individuals with disabilities, including individuals with functional limitations

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of hearing, vision, movement, manipulation, speech and interpretation of information, unless the cost of making the services accessible and usable would result in an undue burden or adverse competitive impact. Such regulations shall seek to permit the use of both standard and special equipment, and seek to minimize the need of individuals to acquire additional devices beyond those used by the general public to obtain such access.

"(B) COMPATIBILITY.—Such regulations shall require that whenever an undue burden or adverse competitive impact would result from the requirements in subparagraph (A), the local exchange carrier that deploys the network service shall ensure that the network service in question is compatible with existing peripheral devices or specialized customer premises equipment commonly used by persons with disabilities to achieve access, unless doing so would result in an undue burden or adverse competitive impact.

"(C) UNDUE BURDEN.—The term 'undue burden' means significant difficulty or expense. In determining whether the activity necessary

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to comply with the requirements of this paragraph would result in an undue burden, the factors to be considered include:

"(i) The nature and cost of the activity.

"(ii) The impact on the operation of the facility involved in the deployment of the network service.

"(iii) The financial resources of the local exchange carrier.

"(iv) The type of operations of the local exchange carrier.

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

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

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

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put the local exchange carrier at a competitive disadvantage. This factor may be considered so long as competing network service providers are not held to the same obligation with respect to access by persons with disabilities.

"(E) EFFECTIVE DATE.—The regulations required by this paragraph shall become effective 18 months after the date of enactment of this subsection.

"(5) QUALITY RULES.—(A) The Commission shall designate or otherwise establish network reliability and quality performance measures or benchmarks for common carriers for the purpose of ensuring the continued maintenance and evolution of common carrier facilities and service. Not later than 180 days after the date of enactment of this subsection, the Commission shall initiate a rulemaking proceeding to establish performance measures or benchmarks for maintaining common carrier network quality.

"(B) Such rules and regulations shall include—

"(i) quantitative network reliability and service quality performance measures or benchmarks;

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"(ii) procedures to monitor and evaluate common carrier efforts to increase network reliability and service quality; and

"(iii) procedures to resolve network reliability and service quality complaints.

"(C) Throughout the process of developing network reliability and service quality performance measures or benchmarks, as required by subparagraph (A), the Commission shall coordinate and consult with service and equipment providers and users and State regulatory bodies to ensure their concerns and interests are given full consideration in such process.

"(6) RURAL EXEMPTION.—The Commission may modify, or grant exemptions from, the requirements of this subsection in the case of a common carrier providing telecommunications services in a rural area.".

(b) CONFORMING AMENDMENT.—Section 2(b) of the Communications Act of 1934 (47 U.S.C.152(b)) is amended by inserting "201(c) and (d)" after "Except as provided in sections".

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SEC. 103. DISCRIMINATORY INTERCONNECTION.

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

"(c) EXPEDITED REVIEW OF CERTAIN COMPLAINTS.—The Commission shall issue a final order with respect to any complaint arising from alleged violations of the rules and orders prescribed pursuant to section 201(c) within 180 days after such complaint is filed.".

SEC. 104. EXPEDITED LICENSING OF NEW TECHNOLOGIES AND SERVICES.

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

"(c) LICENSING OF NEW TECHNOLOGIES.—

"(1) EXPEDITED RULEMAKING.—Within 24 months after making a determination under subsection (b) that a technology or service related to the furnishing of telecommunications services is in the public interest, the Commission shall, with respect to any such service requiring a license or other authorization from the Commission, adopt and make effective rules for—

"(A) the provision of such technology or service; and

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"(B) the filing of applications for the licenses or authorizations necessary to offer such technology or service to the public, and shall act on any such application within 24 months after it is filed.

"(2) REVIEW OF APPLICATIONS.—Any application filed by a carrier under this subsection for the construction or extension of a line shall also be subject to section 214 and to any necessary approval by the appropriate State commissions.".

SEC. 105. NEW OR EXTENDED LINES.

Section 214 of the Communications Act of 1934 is amended by adding at the end the following new subsection:

"(e) Any application filed under this section by a provider of telephone exchange service for authority to construct or extend a line shall address the means by which such construction or extension will meet the network access needs of individuals with disabilities.".

TITLE II—COMMUNICATIONS COMPETITIVENESS

SEC. 201. CABLE SERVICE PROVIDED BY TELEPHONE COMPANIES.

(a) GENERAL REQUIREMENT.—

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

"(b)(1) Subject to the requirements of part V and the other provisions of this title, any common carrier subject in whole or in part to title II of this Act may, either through its own facilities or through an affiliate owned by, operated by, controlled by, or under common control with the common carrier, provide video programming directly to subscribers in its telephone service area.

"(2) Subject to the requirements of part V and the other provisions of this title, any common carrier subject in whole or in part to title II of this Act may provide channels of communications or pole, line, or conduit space, or other rental arrangements, to any entity which is directly or indirectly owned by, operated by, controlled by, or under common control with such common carrier, if such facilities or arrangements are to be used for, or in connection with, the provision of video programming directly to subscribers in its telephone service area.".

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

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

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

"(18) the term 'telephone service area' when used in connection with a common carrier subject in whole or in part to title II of this Act means the area within which such carrier provides telephone exchange service as of November 20, 1993, but if any common carrier after such date transfers its exchange service facilities to another common carrier, the area to which such facilities provide telephone exchange service shall be treated as part of the telephone service area of the acquiring common carrier and not of the selling common carrier.

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

"PART V—CABLE SERVICE PROVIDED BY TELEPHONE COMPANIES

"SEC. 651. DEFINITIONS.

"For purposes of this part—

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"(1) the term 'affiliated video programming' means any video programming which is (A) owned or controlled by, or under common control with, a common carrier, and (B) provided by the common carrier or an affiliate directly to subscribers in its telephone service area;

"(2) the term 'control' means—

"(A) an ownership interest in which an entity has the right to vote more than 50 percent of the outstanding common stock or other ownership interest; or

"(B) actual working control, as defined in the order of the Commission entitled "Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competitive Act of 1992—Horizontal and Vertical Ownership Limits, Cross-Ownership Limitations, and Anti-Trafficking Provisions", MM Docket 92–264, adopted September 23, 1993, if no single entity directly or indirectly has the right to vote more than 50 percent of the outstanding common stock or other ownership interest;

"(3) the term 'video platform' has the same meaning as the term 'basic platform' in the order of the Commission entitled 'Telephone Company-Cable

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

"(4) the term 'rural area' means a geographic area that does not include either—

"(A) any incorporated or unincorporated place of 10,000 inhabitants or more, or any part thereof; or

"(B) any territory, incorporated or unincorporated, included in an urbanized area.

"SEC. 652. SEPARATE VIDEO PROGRAMMING AFFILIATE.

"(a) IN GENERAL.—Except as provided in subsection (d) of this section, a common carrier subject to title II of this Act shall not provide video programming directly to subscribers in its telephone service area unless such video programming is provided through a video programming affiliate that is separate from such carrier.

"(b) BOOKS AND MARKETING.—

"(1) IN GENERAL.—A video programming affiliate of a common carrier shall—

"(A) maintain books, records, and accounts separate from such carrier which identify all transactions with such carrier;

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

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stitutional advertising carried out by such carrier shall be permitted so long as each party bears its pro rata share of the costs; and

"(C) not own real or personal property in common with such carrier.

"(2) INBOUND TELEMARKETING.—Notwithstanding paragraph (1)(B), a common carrier may provide inbound telemarketing or referral services related to the provision of video programming by a video programming affiliate of such carrier. If such services are provided to a video programming affiliate, such services shall be made available to any video programmer or cable operator on request, on nondiscriminatory terms, at compensatory prices, and subject to regulations of the Commission to ensure that the carrier's method of providing telemarketing or referral and its price structure do not competitively disadvantage any video programmer or cable operator, regardless of size, including those which do not use the carrier's telemarketing services.

"(3) JOINT TELEMARKETING.—Notwithstanding paragraph (1)(B), a common carrier may petition the Commission for permission to market video programming directly, upon showing that a cable op-

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erator or other entity directly or indirectly provides telecommunications services and markets such services jointly with video programming services. The common carrier shall specify the geographic region covered by the petition. Any such petition shall be granted or denied within 180 days.

"(c) BUSINESS TRANSACTIONS WITH CARRIER SUBJECT TO REGULATION.—Any contract, agreement, arrangement, or other manner of conducting business, between a common carrier and its video programming affiliate, providing for—

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

"(2) the furnishing of goods or services between such affiliate and such carrier; or

"(3) the transfer to or use by such affiliate for its benefit of any asset or resource of such carrier,

shall be pursuant to regulation prescribed by the Commission, shall be on a fully compensatory and auditable basis, shall be without cost to the telephone service ratepayers of the carrier, shall be filed with the Commission, and shall be in compliance with rules established by the Commission which will be sufficient to enable the Commission to assess the compliance of any transaction.

"(d) WAIVER.—

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"(1) CRITERIA FOR WAIVER.—The Commission may waive any of the requirements of this section for small or rural telephone companies, and may, beginning 5 years after the date of enactment of this section, waive such requirements for any common carrier, if the Commission determines, after notice and comment, that—

"(A) such waiver will not affect the ability of the Commission to ensure that all video programming activity is carried out without any support from telephone ratepayers;

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

"(C) such waiver otherwise is in the public interest.

"(2) DEADLINE FOR ACTION.—The Commission shall act to approve or disapprove a waiver application within 180 days after the date it is filed.

"SEC. 653. ESTABLISHMENT OF VIDEO PLATFORM.

"(a) COMMON CARRIER OBLIGATIONS.—Any common carrier subject to title II of this Act and that provides, through a video programming affiliate, video programming directly to subscribers in its telephone service area, shall establish a video platform. The Commission,

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

"(b) COMMISSION STUDY.—The Commission shall conduct a study of whether it is in the public interest to extend the requirements of subsection (a) to cable operators in lieu of the requirements of section 612. The Commission shall submit to the Congress a report on the results of such study not later than 2 years after the date of enactment of this section.

"SEC. 654. PROVISION OF AFFILIATED VIDEO PROGRAMMING.

"(a) LIMITATION.—A common carrier which provides, through its video programming affiliate, affiliated video programming directly to subscribers in its telephone service area, shall make available such capacity as is requested by unaffiliated video program providers upon reasonable notice. A common carrier shall not be required under this subsection to provide more than 75 percent of

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

"(b) EVALUATION BY COMMISSION.—The Commission shall, not later than 2 years after the date of enactment of this part, evaluate the effect of subsection (a) on the video programming marketplace and, on the basis of that evaluation, make recommendations to Congress concerning appropriate modifications, if any, to subsection (a).

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

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

"SEC. 655. PROHIBITION OF CROSS-SUBSIDIZATION.

"(a) COMMON CARRIER PROHIBITIONS.—The Commission shall prescribe regulations to prohibit a common carrier from engaging in any practice that results in the inclusion in rates for telephone exchange service of any operating expenses, costs, depreciation charges, capital investments, or other expenses associated with the provision of video programming by the common carrier or its video programming affiliate.

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"(b) CABLE OPERATOR PROHIBITIONS.—The Commission shall prescribe regulations to prohibit a cable operator from engaging in any practice that results in the inclusion in rates for cable service of any operating expenses, costs, depreciation charges, capital investments, or other expenses associated with the provision of telecommunications service by the cable operator or its telecommunications service affiliate.

"SEC. 656. PROHIBITION ON BUYOUTS.

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

"(b) EXCEPTIONS.—Notwithstanding subsection (a), a common carrier may—

"(1) obtain a controlling interest in, or form a joint venture or other partnership with, a cable system that serves a rural area;

"(2) obtain a controlling interest in, or form a joint venture or other partnership with, a cable system or systems, if such systems in the aggregate serve less than 10 percent of the households in the

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telephone service area of such carrier and its affiliated common carriers; or

"(3) acquire the use of that part of the transmission facilities of such a cable system extending from the last multi-user terminal to the premises of the end user if such use is reasonably limited in scope and duration.

"(c) WAIVER.—

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

"(A) because of the nature of the market served by the cable system concerned—

"(i) the incumbent cable operator would be subjected to undue economic distress by the enforcement of such subsection; or

"(ii) the cable system would not be economically viable if such subsection were enforced; and

"(B) the local franchising authority approves of such waiver.

"(2) DEADLINE FOR ACTION.—The Commission shall act to approve or disapprove a waiver application within 180 days after the date it is filed.

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"SEC. 657. PENALTIES.

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

"SEC. 658. CONSUMER PROTECTION.

"(a) JOINT BOARD REQUIRED.—The Commission shall, within 30 days after the date of enactment of this part, convene a Federal-State Joint Board under the provisions of section 410(c) for the purpose of establishing the practices, classifications, and regulations as may be necessary to ensure proper jurisdictional separation and allocation of the costs of establishing and providing a video platform and allocations of those costs between regulated and unregulated services, including affiliated video programming. The Board shall issue its recommendations to the Commission within 270 days after the date of enactment of this part.

"(b) COMMISSION REGULATIONS REQUIRED.—The Commission, with respect to interstate switched access service, and the States, with respect to telephone exchange service and intrastate interexchange service, shall, within one year after the date of the enactment of this part, establish such rules and regulations as may be necessary to implement section 655.

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"(c) NO EFFECT ON CARRIER REGULATION AUTHORITY.—Nothing in this section shall be construed to limit or supersede the authority of any State or the Commission with respect to the allocation of costs associated with intrastate or interstate communication services.

"SEC. 659. APPLICABILITY OF FRANCHISE AND OTHER REQUIREMENTS.

"(a) IN GENERAL.—Except as provided in subsection (b)—

"(1) the provisions of part II and sections 628, 631 and 632 of this title, and section 325 of title III, shall apply, and

"(2) the provisions of parts III and IV (other than sections 628, 631, and 632) of this title shall not apply,

to any video platform established by a common carrier in accordance with the requirements of this part.

"(b) IMPLEMENTATION OF REQUIREMENTS.—

"(1) REGULATIONS.—The Commission shall prescribe regulations to ensure that a video programming affiliate of a common carrier shall establish a video platform under this part that provides (A) capacity for public, educational, and governmental use, (B) capacity for commercial use, (C) carriage of commercial and non-commercial broad-

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cast television stations, and (D) an opportunity for commercial broadcast stations to choose between mandatory carriage and reimbursement for retransmission of the signal of such station. In prescribing such regulations, the Commission shall impose obligations that are no greater or lesser than the obligations contained in the provisions described in subsection (a)(1) of this section.

"(2) FEES.—A video programming affiliate of any common carrier that establishes a video platform under this part shall be subject to the payment of fees imposed by a local franchising authority, in lieu of the fees required under section 622. The rate at which such fees are imposed shall not exceed the rate at which franchise fees are imposed on any cable operator transmitting video programming in the same service area.

"SEC. 660. RURAL AREA EXEMPTION.

"The provisions of sections 652, 653, 654, and 656 shall not apply to video programming provided in a rural area by a common carrier that provides telephone exchange service in the same area.".

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