

## **G. Non-Local Exchange Carriers as Open Video System Operators**

### **1. Statutory Provisions**

63. New subsection 653(a)(1) of the Communications Act provides:

A local exchange carrier may provide cable service to its cable service subscribers in its telephone service area through an open video system that complies with this section. To the extent permitted by such regulations as the Commission may prescribe consistent with the public interest, convenience, and necessity, an operator of a cable system or any other person may provide video programming through an open video system that complies with this section.<sup>77</sup>

### **2. Discussion**

64. We seek comment on whether subsection 653(a)(1) permits cable operators and others to become open video system operators, or whether they may be only authorized to provide video programming on others' open video systems. For instance, we ask whether Section 653's statements that a local exchange carrier "may provide cable service" through an open video system, while cable operators and others "may provide video programming" through an open video system,<sup>78</sup> is significant. If the statutory language permits, we believe that there may be significant benefits to permitting cable operators and others to become open video system operators. These benefits include promoting competitive parity by providing cable operators and others with one of the video delivery options that is available to telephone companies under the 1996 Act, and providing an outlet for unaffiliated video programming providers. Again, we note that the overall goals of the open video system provisions of the 1996 Act include enhancing competition and maximizing consumer choice.

65. In addition, we seek comment on what factors should govern the Commission's public interest determination under this subsection, whether it is interpreted to mean that: (1) cable operators and other persons may become open video system operators; or (2) cable operators and other persons can only provide video programming over a local exchange carrier's open video system.

66. On a related matter, we anticipate that open video system operators, as well as cable operators for that matter, may wish to offer bundled packages of local and long-distance telephone service, video programming delivery, and data transmission over integrated networks. The bundling of these individual services can provide consumers with lower cost and more convenient choices. In some instances, however, consumers may wish to continue

---

<sup>77</sup> Communications Act § 653(a)(1).

<sup>78</sup> *Id.*

purchasing only an individual unbundled service. We seek comment on whether increased competition in the marketplace will be sufficient to provide an array of service offerings, both bundled and unbundled, to all consumers willing to pay the cost of those offerings; in particular, we ask whether the Commission can and should adopt regulations regarding the bundling of services by open video system operators (e.g., whether subscribers should be informed of the price for individual services that are offered on a bundled basis). We also seek comment on whether the Commission can and should adopt regulations regarding the joint marketing of such bundled services. In this context, we seek comment on whether the 1996 Act's new rules concerning joint marketing of local and long distance telephone service may provide a useful model.<sup>79</sup> Finally, we seek comment on whether there are any state regulations that address these issues.

## **H. Certification Process**

### **1. Statutory Provisions**

67. New subsection 653(a)(1) of the Communications Act provides that:

An operator of an open video system shall qualify for reduced regulatory burdens under subsection (c) of this section if the operator of such system certifies to the Commission that such carrier complies with the Commission's regulations under subsection (b) and the Commission approves such certification. The Commission shall publish notice of the receipt of any such certification and shall act to approve or disapprove any such certification within 10 days after receipt of such certification.<sup>80</sup>

### **2. Discussion**

68. This provision requires the Commission to render a decision to approve or deny a certification to become an open video system operator within ten days after receipt of such certification.<sup>81</sup> In light of this statutory review period, we seek comment on the approach we should take in establishing certification procedures. For example, we solicit comment on the proper point in time for certification. We seek comment on whether it would be consistent with the 1996 Act to establish a review process that only would make a determination that the application is facially proper, subject to a more thorough review if a dispute subsequently arises regarding compliance with the open video system provisions.

69. We also seek comment on the type of showing, including any documentation, that the open video system applicant should be required to submit in support of its

---

<sup>79</sup> See 1996 Act § 151(a).

<sup>80</sup> Communications Act § 653(a)(1).

<sup>81</sup> *Id.*

certification, including information related to the system operator's compliance or anticipated compliance with the 1996 Act's requirements concerning the allocation of capacity and determination of carriage rates, and the Commission's regulations implementing these statutory provisions. Should we require the filing of this information as a prerequisite to the filing of a request for certification? We also seek comment on how we should handle pleadings that are filed with respect to the certification within the 10-day review period.

70. In addition, we seek comment on what steps local exchange carriers should be required to take prior to certification with respect to establishing cost allocation procedures between regulated and unregulated services under Part 64 of the Commission's rules. Part 64 sets forth the rules under which telephone companies allocate costs between their regulated telecommunications services and their unregulated services. The Part 64 rules would apply here to require the telephone company to segregate its cost of providing regulated telecommunications services from its cost of providing an unregulated service (i.e., the provision of video programming over an open video system).<sup>82</sup> Thus, we seek comment on what actions or representations regarding the Part 64 process should be required in the open video certification process -- e.g., should the applicant be required to represent that it has filed or will file the appropriate amendments to its Cost Allocation Manual?

## **I. Dispute Resolution**

### **1. Statutory Provisions**

71. New subsection 653(a)(2) of the Communications Act provides that:

The Commission shall have the authority to resolve disputes under this section and the regulations prescribed thereunder. Any such dispute shall be resolved within 180 days after notice of such dispute is submitted to the Commission. At that time or subsequently in a separate damages proceeding, the Commission may, in the case of any violation of this section, require carriage, award damages to any person denied carriage, or any combination of such sanctions. Any aggrieved party may seek any other remedy available under this Act.<sup>83</sup>

### **2. Discussion**

72. We seek comment generally on implementing the above statutory provision, though we urge commenters to keep in mind the Commission's goal of conserving resources

---

<sup>82</sup> We expect that the specific cost allocation requirements of Part 64 between telephone company operations and open video system operations will be addressed in a separate rulemaking, which the Commission will initiate shortly.

<sup>83</sup> Communications Act § 653(a)(2).

and keeping procedures simple and inexpensive to follow. In particular, we seek comment on whether the Commission could or should establish a procedure, such as the one the Commission employs to resolve program access disputes,<sup>84</sup> and if so, the standards and procedures that should be used when notifying the Commission of a dispute, including what sort of information a party to the dispute should provide to the Commission or other parties to the dispute. In the alternative, we seek comment on whether we can and should establish more informal procedures, such as alternative dispute resolution mechanisms, which would require or encourage parties to first try to resolve the dispute without the Commission's direct involvement. We seek comment on how the Commission could implement an alternative dispute resolution process and still ensure that it resolved the dispute within the 180 days set forth in the 1996 Act.

#### **J. Advanced Telecommunications Incentives**

73. In addition, we note that subsection 706(a) of the 1996 Act requires the Commission to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment."<sup>85</sup> We seek comment on how we can advance Congress' goal within the context of our open video system rules.

### **III. REPORT AND ORDER -- REPEAL OF VIDEO DIALTONE RULES, CROSS OWNERSHIP RULES AND SECTION 214 REQUIREMENTS**

#### **1. Statutory Provisions**

74. Subsection 302(b)(1) of the 1996 Act provides: "Subsection (b) of section 613 (47 U.S.C. 533(b)) [i.e., the telephone-cable cross-ownership restriction] is repealed."<sup>86</sup> In addition, subsection 302(a) of the 1996 Act adds new subsection 651(c) of the Communications Act, which provides that a common carrier shall no longer be required to obtain a certificate under Section 214 to establish or operate a system for the delivery of video programming.<sup>87</sup> Finally, subsection 302(b)(3) of the 1996 Act states: "The Commission's regulations and policies with respect to video dialtone requirements issued in

---

<sup>84</sup> See 47 C.F.R. § 76.1003 (setting forth streamlined and simple dispute procedures).

<sup>85</sup> 1996 Act § 706(a).

<sup>86</sup> 1996 Act § 302(b)(1).

<sup>87</sup> Communications Act § 651(c).

CC Docket No. 87-266 shall cease to be effective on the date of enactment of this Act."<sup>88</sup> This provision also states: "This paragraph shall not be construed to require the termination of any video-dialtone system that the Commission has approved before the date of enactment of this Act."<sup>89</sup> The Conference Report further provides that "[r]epeal of the Commission's video dialtone regulations is not intended to alter the status of any video dialtone service offered before the regulations required by this section become effective."<sup>90</sup>

## 2. Discussion

75. In this order we modify our rules to conform to sections 302(b)(1) and 302(b)(3) of the 1996 Act, which repealed the telephone-cable cross-ownership restriction and eliminated our video dialtone rules and policies upon enactment.<sup>91</sup> We also hereby terminate the docket in which our video dialtone rules and policies were promulgated (CC Docket No. 87-266). Further, we hereby revoke: (1) the Common Carrier Bureau's Memorandum Opinion and Order adopting subsidiary accounting and reporting requirements for video dialtone;<sup>92</sup> and (2) Responsible Accounting Officer Letter 25 ("*RAO Letter 25*"), which sets forth specific guidelines for accounting classifications, subsidiary records, and amendments to cost allocation manuals for video dialtone.<sup>93</sup> Finally, consistent with subsection 302(b)(3) of the 1996 Act, we do not require currently approved video dialtone systems to cease operations.

76. In addition, in order to conform our rules to new section 651(c) of the Communications Act, we modify our rules to the extent they relate to any requirement that a common carrier obtain a certificate under Section 214 to establish or operate a video programming delivery system. Pursuant to subsection 651(c), we will no longer require that a common carrier obtain Section 214 authorization to establish or operate a video programming delivery system, even a video programming delivery system provided on a common carrier

---

<sup>88</sup> 1996 Act § 302(b)(3).

<sup>89</sup> *Id.*

<sup>90</sup> Conference Report at 179.

<sup>91</sup> The revised rules are set forth in Appendix B.

<sup>92</sup> See Reporting Requirements on Video Dialtone and Jurisdictional Separations for Local Exchange Carriers Offering Video Dialtone Services, 10 FCC Rcd 11292 (Com. Car. Bur., Sept. 29, 1995).

<sup>93</sup> See *RAO Letter 25*, 10 FCC Rcd 6008 (Com. Car. Bur., Apr. 3, 1995), *applications for review pending*. We do not revoke *RAO Letter 25* with respect to one issue: the accounting classification of what *RAO Letter 25* described as asynchronous transfer mode (ATM) equipment. That issue will be addressed in a future proceeding.

basis pursuant to Title II of the Communications Act.

#### IV. REGULATORY FLEXIBILITY ANALYSES

##### A. Initial Regulatory Flexibility Analysis for the Notice of Proposed Rulemaking

77. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. §§ 601-612, the Commission's Initial Regulatory Flexibility Analysis with respect to the NPRM is as follows:

78. Reason for action: The Commission is issuing this NPRM to seek comment on various issues concerning implementation of the open video system provisions of the 1996 Act.

79. Objectives: To provide an opportunity for public comment and to provide a record for a Commission decision on the issues discussed in the NPRM.

80. Legal Basis: The NPRM is adopted pursuant to Section 302 of the 1996 Act; and sections 1, 2, 4(i), 201-205, 215, 220, 303(r), 601-602, 611-616, 621-624, and 625-634 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, 201-205, 215, 220, 303(r), 521-522, 531-536, and 545-554.

81. Description, potential impact, and number of small entities affected: Amending our rules to, for example, increase the programming distribution outlets for video programming providers, may directly impact entities which are small business entities, as defined in Section 601(3) of the Regulatory Flexibility Act.

82. Reporting, recordkeeping, and other compliance requirements: None.

83. Federal rules which overlap, duplicate, or conflict with the Commission's proposal: None.

84. Any significant alternatives minimizing impact on small entities and consistent with stated objectives: The NPRM solicits comments on a variety of alternatives.

85. Comments are solicited: Written comments are requested on this Initial Regulatory Flexibility Analysis. These comments must be filed in accordance with the same filing deadlines set for comments on the other issues in this NPRM, but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of the Notice to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. § 601, *et seq.*

## **B. Final Analysis for the Report and Order**

86. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. §§ 601-612, the Commission's Flexibility Analysis with respect to the Report and Order is as follows:

87. Need and purpose of this action: The Commission issues this Report and Order to enact or revise rules governing telephone companies' provision of video programming in response to the 1996 Act.

88. Significant Alternatives considered: Not applicable because action is taken pursuant to statutory directive.

89. Federal rules that overlap, duplicate or conflict with these rules: None.

## **V. INITIAL PAPERWORK REDUCTION ACT OF 1995 ANALYSIS**

90. This Report and Order and NPRM contains either a proposed or modified information collection. As part of our continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget ("OMB") to take this opportunity to comment on the information collections contained in this Report and Order and NPRM, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due at the same time as other comments on the NPRM; OMB comments are due 60 days from the date of publication of this Report and Order and NPRM in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

## **VI. EFFECTIVE DATE**

91. The elimination of the rules concerning video dialtone, cross-ownership and Section 214 authorization for the delivery of video adopted in the Report and Order were effective upon enactment of the 1996 Act, and we amend these rules to conform to those statutory changes.

## **VII. PROCEDURAL PROVISIONS**

92. *Ex parte Rules - Non-Restricted Proceeding.* This is a non-restricted notice and

comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in Commission's rules. See generally 47 C.F.R. §§ 1.1202, 1.1203, and 1.1206(a).

93. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before April 1, 1996, and reply comments on or before April 11, 1996. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. We find these periods for the filing of comments and reply comments to be reasonable in light of the 1996 Act's mandate that, within six months of the 1996 Act's enactment, the Commission complete all actions necessary (including any reconsideration) to prescribe certain regulations concerning open video systems. See *Florida Power & Light Co. v. United States*, 846 F.2d 765 (D.C. Cir. 1988) cert. denied, 490 U.S. 1045 (1989). Parties are also asked to submit, if possible, draft rules that reflect their positions. If you want each Commissioner to receive a personal copy of your comments, you must file an original and nine copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Larry Walke of the Cables Services Bureau, 2033 M Street, N.W., Room 408A, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C. 20554.

94. Parties are also asked to submit comments and reply comments on diskette. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Larry Walke of the Cable Services Bureau, 2033 M Street, N.W., Room 408A, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using MS DOS 5.0 and WordPerfect 5.1 software. The diskette should be submitted in "read only" mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

95. Written comments by the public on the proposed and/or modified information collections are due on or before March 28, 1996. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 60 days after publication of the Report and Order and NPRM in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20054, or via the Internet to [dconway@fcc.gov](mailto:dconway@fcc.gov), and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725-17th Street, N.W., Washington, D.C. 20503 or via the Internet to

## VIII. ORDERING CLAUSES

96. IT IS ORDERED that pursuant to Section 302 of the 1996 Act, and sections 1, 2, 4(i), 201-205, 215, 220, 303(r), 601-602, 611-616, 621-624, and 625-634 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, 201-205, 215, 220, 303(r), 521-522, 531-536, and 545-554, NOTICE IS HEREBY GIVEN of proposed amendments to Part 76, in accordance with the proposals, discussions, and statements of issues in this NPRM and that COMMENT IS SOUGHT regarding such proposals, discussion, and statements of issues.

97. IT IS FURTHER ORDERED that the Commission's regulations and policies with respect to video dialtone requirements issued in CC Docket No. 87-266 ARE HEREBY REMOVED.

98. IT IS FURTHER ORDERED that CC Docket No. 87-266 IS HEREBY TERMINATED.

99. IT IS FURTHER ORDERED that the Commission's regulations ARE HEREBY AMENDED as set forth in Appendix B, below.

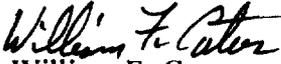
100. IT IS FURTHER ORDERED that the Common Carrier Bureau's Memorandum Opinion and Order adopting subsidiary accounting and reporting requirements for video dialtone, and *RAO Letter 25* (except with respect to the ATM equipment issue, as noted above) ARE HEREBY REVOKED.

101. IT IS FURTHER ORDERED that in light of the 1996 Act's termination of the Commission's rules and policies concerning video dialtone, WE FIND FOR GOOD CAUSE that notice and comment on the actions taken in paragraphs 97-100 above would be impracticable, unnecessary and contrary to the public interest. *See* 5 U.S.C. § 553(b)(B).

102. IT IS FURTHER ORDERED that the Secretary shall send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. §§ 601, *et seq.* (1981).

103. For additional information regarding this proceeding, contact Rick Chessen or Larry Walke, Policy & Rules Division, Cable Services Bureau (202) 416-0800.

FEDERAL COMMUNICATIONS COMMISSION

  
William F. Caton  
Acting Secretary

**APPENDIX A**

Section 302 of the 1996 Act

(j) **AGGREGATION OF EQUIPMENT COSTS.**—Section 623(a) (47 U.S.C. 543(a)) is amended by adding at the end the following new paragraph:

“(7) **AGGREGATION OF EQUIPMENT COSTS.**—

“(A) **IN GENERAL.**—The Commission shall allow cable operators, pursuant to any rules promulgated under subsection (b)(3), to aggregate, on a franchise, system, regional, or company level, their equipment costs into broad categories, such as converter boxes, regardless of the varying levels of functionality of the equipment within each such broad category. Such aggregation shall not be permitted with respect to equipment used by subscribers who receive only a rate regulated basic service tier.

“(B) **REVISION TO COMMISSION RULES; FORMS.**—Within 120 days of the date of enactment of the Telecommunications Act of 1996, the Commission shall issue revisions to the appropriate rules and forms necessary to implement subparagraph (A).”

(k) **TREATMENT OF PRIOR YEAR LOSSES.**—

47 USC 543.

(1) **AMENDMENT.**—Section 623 (48 U.S.C. 543) is amended by adding at the end thereof the following:

“(n) **TREATMENT OF PRIOR YEAR LOSSES.**—Notwithstanding any other provision of this section or of section 612, losses associated with a cable system (including losses associated with the grant or award of a franchise) that were incurred prior to September 4, 1992, with respect to a cable system that is owned and operated by the original franchisee of such system shall not be disallowed, in whole or in part, in the determination of whether the rates for any tier of service or any type of equipment that is subject to regulation under this section are lawful.”

47 USC 543 note.

(2) **EFFECTIVE DATE.**—The amendment made by paragraph (1) shall take effect on the date of enactment of this Act and shall be applicable to any rate proposal filed on or after September 4, 1993, upon which no final action has been taken by December 1, 1995.

#### **SEC. 302. CABLE SERVICE PROVIDED BY TELEPHONE COMPANIES.**

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

### **“PART V—VIDEO PROGRAMMING SERVICES PROVIDED BY TELEPHONE COMPANIES**

47 USC 571.

#### **“SEC. 651. REGULATORY TREATMENT OF VIDEO PROGRAMMING SERVICES.**

“(a) **LIMITATIONS ON CABLE REGULATION.**—

“(1) **RADIO-BASED SYSTEMS.**—To the extent that a common carrier (or any other person) is providing video programming to subscribers using radio communication, such carrier (or other person) shall be subject to the requirements of title III and section 652, but shall not otherwise be subject to the requirements of this title.

“(2) **COMMON CARRIAGE OF VIDEO TRAFFIC.**—To the extent that a common carrier is providing transmission of video programming on a common carrier basis, such carrier shall be subject to the requirements of title II and section 652.

but shall not otherwise be subject to the requirements of this title. This paragraph shall not affect the treatment under section 602(7)(C) of a facility of a common carrier as a cable system.

“(3) CABLE SYSTEMS AND OPEN VIDEO SYSTEMS.—To the extent that a common carrier is providing video programming to its subscribers in any manner other than that described in paragraphs (1) and (2)—

“(A) such carrier shall be subject to the requirements of this title, unless such programming is provided by means of an open video system for which the Commission has approved a certification under section 653; or

“(B) if such programming is provided by means of an open video system for which the Commission has approved a certification under section 653, such carrier shall be subject to the requirements of this part, but shall be subject to parts I through IV of this title only as provided in 653(c).

“(4) ELECTION TO OPERATE AS OPEN VIDEO SYSTEM.—A common carrier that is providing video programming in a manner described in paragraph (1) or (2), or a combination thereof, may elect to provide such programming by means of an open video system that complies with section 653. If the Commission approves such carrier’s certification under section 653, such carrier shall be subject to the requirements of this part, but shall be subject to parts I through IV of this title only as provided in 653(c).

“(b) LIMITATIONS ON INTERCONNECTION OBLIGATIONS.—A local exchange carrier that provides cable service through an open video system or a cable system shall not be required, pursuant to title II of this Act, to make capacity available on a nondiscriminatory basis to any other person for the provision of cable service directly to subscribers.

“(c) ADDITIONAL REGULATORY RELIEF.—A common carrier shall not be required to obtain a certificate under section 214 with respect to the establishment or operation of a system for the delivery of video programming.

**“SEC. 652. PROHIBITION ON BUY OUTS.**

47 USC 572.

“(a) ACQUISITIONS BY CARRIERS.—No local exchange carrier or any affiliate of such carrier owned by, operated by, controlled by, or under common control with such carrier may purchase or otherwise acquire directly or indirectly more than a 10 percent financial interest, or any management interest, in any cable operator providing cable service within the local exchange carrier’s telephone service area.

“(b) ACQUISITIONS BY CABLE OPERATORS.—No cable operator or affiliate of a cable operator that is owned by, operated by, controlled by, or under common ownership with such cable operator may purchase or otherwise acquire, directly or indirectly, more than a 10 percent financial interest, or any management interest, in any local exchange carrier providing telephone exchange service within such cable operator’s franchise area.

“(c) JOINT VENTURES.—A local exchange carrier and a cable operator whose telephone service area and cable franchise area, respectively, are in the same market may not enter into any joint venture or partnership to provide video programming directly to

subscribers or to provide telecommunications services within such market.

**“(d) EXCEPTIONS.—**

**“(1) RURAL SYSTEMS.—**Notwithstanding subsections (a), (b), and (c) of this section, a local exchange carrier (with respect to a cable system located in its telephone service area) and a cable operator (with respect to the facilities of a local exchange carrier used to provide telephone exchange service in its cable franchise area) may obtain a controlling interest in, management interest in, or enter into a joint venture or partnership with the operator of such system or facilities for the use of such system or facilities to the extent that—

**“(A) such system or facilities only serve incorporated or unincorporated—**

**“(i) places or territories that have fewer than 35,000 inhabitants; and**

**“(ii) are outside an urbanized area, as defined by the Bureau of the Census; and**

**“(B) in the case of a local exchange carrier, such system, in the aggregate with any other system in which such carrier has an interest, serves less than 10 percent of the households in the telephone service area of such carrier.**

**“(2) JOINT USE.—**Notwithstanding subsection (c), a local exchange carrier may obtain, with the concurrence of the cable operator on the rates, terms, and conditions, the use of that part of the transmission facilities of a cable system extending from the last multi-user terminal to the premises of the end user, if such use is reasonably limited in scope and duration, as determined by the Commission.

**“(3) ACQUISITIONS IN COMPETITIVE MARKETS.—**Notwithstanding subsections (a) and (c), a local exchange carrier may obtain a controlling interest in, or form a joint venture or other partnership with, or provide financing to, a cable system (hereinafter in this paragraph referred to as ‘the subject cable system’), if—

**“(A) the subject cable system operates in a television market that is not in the top 25 markets, and such market has more than 1 cable system operator, and the subject cable system is not the cable system with the most subscribers in such television market;**

**“(B) the subject cable system and the cable system with the most subscribers in such television market held on May 1, 1995, cable television franchises from the largest municipality in the television market and the boundaries of such franchises were identical on such date;**

**“(C) the subject cable system is not owned by or under common ownership or control of any one of the 50 cable system operators with the most subscribers as such operators existed on May 1, 1995; and**

**“(D) the system with the most subscribers in the television market is owned by or under common ownership or control of any one of the 10 largest cable system operators as such operators existed on May 1, 1995.**

**“(4) EXEMPT CABLE SYSTEMS.—**Subsection (a) does not apply to any cable system if—

“(A) the cable system serves no more than 17,000 cable subscribers, of which no less than 8,000 live within an urban area, and no less than 6,000 live within a nonurbanized area as of June 1, 1995;

“(B) the cable system is not owned by, or under common ownership or control with, any of the 50 largest cable system operators in existence on June 1, 1995; and

“(C) the cable system operates in a television market that was not in the top 100 television markets as of June 1, 1995.

“(5) **SMALL CABLE SYSTEMS IN NONURBAN AREAS.**—Notwithstanding subsections (a) and (c), a local exchange carrier with less than \$100,000,000 in annual operating revenues (or any affiliate of such carrier owned by, operated by, controlled by, or under common control with such carrier) may purchase or otherwise acquire more than a 10 percent financial interest in, or any management interest in, or enter into a joint venture or partnership with, any cable system within the local exchange carrier’s telephone service area that serves no more than 20,000 cable subscribers, if no more than 12,000 of those subscribers live within an urbanized area, as defined by the Bureau of the Census.

“(6) **WAIVERS.**—The Commission may waive the restrictions of subsections (a), (b), or (c) only if—

“(A) the Commission determines that, because of the nature of the market served by the affected cable system or facilities used to provide telephone exchange service—

“(i) the affected cable operator or local exchange carrier would be subjected to undue economic distress by the enforcement of such provisions;

“(ii) the system or facilities would not be economically viable if such provisions were enforced; or

“(iii) the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served; and

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

“(e) **DEFINITION OF TELEPHONE SERVICE AREA.**—For purposes of this section, 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 provided telephone exchange service as of January 1, 1993, but if any common carrier after such date transfers its telephone 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.

“**SEC. 653. ESTABLISHMENT OF OPEN VIDEO SYSTEMS.**

47 USC 573.

“(a) **OPEN VIDEO SYSTEMS.**—

“(1) **CERTIFICATES OF COMPLIANCE.**—A local exchange carrier may provide cable service to its cable service subscribers in its telephone service area through an open video system that complies with this section. To the extent permitted by such regulations as the Commission may prescribe consistent

Publication.

with the public interest, convenience, and necessity, an operator of a cable system or any other person may provide video programming through an open video system that complies with this section. An operator of an open video system shall qualify for reduced regulatory burdens under subsection (c) of this section if the operator of such system certifies to the Commission that such carrier complies with the Commission's regulations under subsection (b) and the Commission approves such certification. The Commission shall publish notice of the receipt of any such certification and shall act to approve or disapprove any such certification within 10 days after receipt of such certification.

“(2) DISPUTE RESOLUTION.—The Commission shall have the authority to resolve disputes under this section and the regulations prescribed thereunder. Any such dispute shall be resolved within 180 days after notice of such dispute is submitted to the Commission. At that time or subsequently in a separate damages proceeding, the Commission may, in the case of any violation of this section, require carriage, award damages to any person denied carriage, or any combination of such sanctions. Any aggrieved party may seek any other remedy available under this Act.

“(b) COMMISSION ACTIONS.—

“(1) REGULATIONS REQUIRED.—Within 6 months after the date of enactment of the Telecommunications Act of 1996, the Commission shall complete all actions necessary (including any reconsideration) to prescribe regulations that—

“(A) except as required pursuant to section 611, 614, or 615, prohibit an operator of an open video system from discriminating among video programming providers with regard to carriage on its open video system, and ensure that the rates, terms, and conditions for such carriage are just and reasonable, and are not unjustly or unreasonably discriminatory;

“(B) if demand exceeds the channel capacity of the open video system, prohibit an operator of an open video system and its affiliates from selecting the video programming services for carriage on more than one-third of the activated channel capacity on such system, but nothing in this subparagraph shall be construed to limit the number of channels that the carrier and its affiliates may offer to provide directly to subscribers;

“(C) permit an operator of an open video system to carry on only one channel any video programming service that is offered by more than one video programming provider (including the local exchange carrier's video programming affiliate): *Provided*, That subscribers have ready and immediate access to any such video programming service;

“(D) extend to the distribution of video programming over open video systems the Commission's regulations concerning sports exclusivity (47 C.F.R. 76.67), network nonduplication (47 C.F.R. 76.92 et seq.), and syndicated exclusivity (47 C.F.R. 76.151 et seq.); and

“(E)(i) prohibit an operator of an open video system from unreasonably discriminating in favor of the operator or its affiliates with regard to material or information (including advertising) provided by the operator to subscrib-

ers for the purposes of selecting programming on the open video system, or in the way such material or information is presented to subscribers;

“(ii) require an operator of an open video system to ensure that video programming providers or copyright holders (or both) are able suitably and uniquely to identify their programming services to subscribers;

“(iii) if such identification is transmitted as part of the programming signal, require the carrier to transmit such identification without change or alteration; and

“(iv) prohibit an operator of an open video system from omitting television broadcast stations or other unaffiliated video programming services carried on such system from any navigational device, guide, or menu.

“(2) CONSUMER ACCESS.—Subject to the requirements of paragraph (1) and the regulations thereunder, nothing in this section prohibits a common carrier or its affiliate from negotiating mutually agreeable terms and conditions with over-the-air broadcast stations and other unaffiliated video programming providers to allow consumer access to their signals on any level or screen of any gateway, menu, or other program guide, whether provided by the carrier or its affiliate.

“(c) REDUCED REGULATORY BURDENS FOR OPEN VIDEO SYSTEMS.—

“(1) IN GENERAL.—Any provision that applies to a cable operator under—

“(A) sections 613 (other than subsection (a) thereof), 616, 623(f), 628, 631, and 634 of this title, shall apply,

“(B) sections 611, 614, and 615 of this title, and section 325 of title III, shall apply in accordance with the regulations prescribed under paragraph (2), and

“(C) sections 612 and 617, and parts III and IV (other than sections 623(f), 628, 631, and 634), of this title shall not apply,

to any operator of an open video system for which the Commission has approved a certification under this section.

“(2) IMPLEMENTATION.—

“(A) COMMISSION ACTION.—In the rulemaking proceeding to prescribe the regulations required by subsection (b)(1), the Commission shall, to the extent possible, impose obligations that are no greater or lesser than the obligations contained in the provisions described in paragraph (1)(B) of this subsection. The Commission shall complete all action (including any reconsideration) to prescribe such regulations no later than 6 months after the date of enactment of the Telecommunications Act of 1996.

“(B) FEES.—An operator of an open video system under this part may be subject to the payment of fees on the gross revenues of the operator for the provision of cable service imposed by a local franchising authority or other governmental entity, in lieu of the franchise fees permitted 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 franchise area, as determined in accordance with regulations prescribed by the Commission. An operator of an open video system may designate that portion

of a subscriber's bill attributable to the fee under this subparagraph as a separate item on the bill.

"(3) REGULATORY STREAMLINING.—With respect to the establishment and operation of an open video system, the requirements of this section shall apply in lieu of, and not in addition to, the requirements of title II.

"(4) TREATMENT AS CABLE OPERATOR.—Nothing in this Act precludes a video programming provider making use of an open video system from being treated as an operator of a cable system for purposes of section 111 of title 17, United States Code.

"(d) DEFINITION OF TELEPHONE SERVICE AREA.—For purposes of this section, 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 is offering telephone exchange service."

(b) CONFORMING AND TECHNICAL AMENDMENTS.—

(1) REPEAL.—Subsection (b) of section 613 (47 U.S.C. 533(b)) is repealed.

(2) DEFINITIONS.—Section 602 (47 U.S.C. 531) is amended—

(A) in paragraph (7), by striking ", or (D)" and inserting the following: ", unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with section 653 of this title; or (E)";

(B) by redesignating paragraphs (12) through (19) as paragraphs (13) through (20), respectively; and

(C) by inserting after paragraph (11) the following new paragraph:

"(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;"

(3) TERMINATION OF VIDEO-DIALTONE REGULATIONS.—The Commission's regulations and policies with respect to video dialtone requirements issued in CC Docket No. 87-266 shall cease to be effective on the date of enactment of this Act. This paragraph shall not be construed to require the termination of any video-dialtone system that the Commission has approved before the date of enactment of this Act.

## APPENDIX B

### Rule Changes

Part 63 of Title 47 of the Code of Federal Regulations is amended as follows:

Part 63 -- Extension of lines and discontinuance, reduction, outage and impairment of service by common carriers; and grants of recognized private operating agency status.

1. The authority citation for Part 63 continues to read as follows:

AUTHORITY: Sections 1, 4(i), 4(j), 201-205, 218 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. secs. 151, 154(i), 154(j), 201-205, 218 and 403, unless otherwise noted.

2. Section 63.08 is amended by removing paragraph (a)(i), redesignating (a)(ii) and (a)(iii) as paragraphs (a)(1) and (a)(2), respectively, removing the second sentence of paragraph of newly redesignated (a)(2), revising the second sentence of paragraph (b), revising paragraph (c), and adding paragraph (e) to read as follows:

Section 63.08 - Lines outside of a carrier's exchange telephone service area.

\* \* \* \* \*

(b) \* \* \* "Nondominant" is defined as in Section 61.3(t) of this chapter.

(c) A common carrier or its affiliate is not required to file for authority pursuant to 47 U.S.C. 214 and 47 CFR 63.01 to discontinue, reduce, or impair non-common carrier service.

\* \* \* \* \*

(e) As used above, the term "affiliate" bars any financial or business relationship whatsoever by contract or otherwise, directly or indirectly between the carrier and the customer, except only the carrier-user relationship.

Note to paragraph (e): Examples of situations in which a carrier and its customer will be deemed to be controlled or having a relationship include the following, among others: Where one is the debtor or creditor of the other (except with respect to charges for communication services); where they have a common officer, director, or other employee at the management level; where there is any element of ownership or other financial interest by one in the other; and where any part has a financial interest in both.

3. Section 63.09 is removed.

4. Section 63.16 is removed.

5. Section 63.52(b) is amended by removing the reference to "63.54".
6. Sections 63.54 through 63.58 are removed.