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May 17, 1996

VIA HAND DELIVERY

RECEIVED ORIGINAL

MAY 1 7 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: Ex Parte Presentation in CS Docket 96-46
Re: Ex Parte Presentation in CS Docket 96-83
Re: Ex Parte Presentation in IB Docket 95-59

Dear Mr. Caton:

Pursuant to 47 C.F.R. § 1.1206, I submit this original and one copy of a letter disclosing a written and oral ex parte presentation in the above-referenced proceedings.

On May 16, 1996, the undersigned and Kevin McCarty, Barrie Tabin, Nicholas P. Miller, and J. Darrell Peterson, on behalf of the National League of Cities; the United States Conference of Mayors; the National Association of Counties; the National Association of Telecommunications Officers and Advisors; Montgomery County, Maryland; the City of Los Angeles, California; the City of Chillicothe, Ohio; the City of Dearborn, Michigan; the City of Dubuque, Iowa; the City of St. Louis, Missouri; the City of Santa Clara, California; the City of Tallahassee, Florida, The Natural Trust for Historic Preservation; League of Arizona Cities and Towns; League of California Cities; Colorado Municipal League; Connecticut Conference of Municipalities; Delaware League of Local Governments; Florida League of Cities; Georgia Municipal Association; Association of Idaho Cities; Illinois Municipal League; Indiana Association of Cities and Towns; Iowa League of Cities; League of Kansas Municipalities; Kentucky League of Cities; Maine Municipal Association; Michigan Municipal League; League of Minnesota Cities; Mississippi Municipal Association; League of Nebraska Municipalities; New Hampshire Municipal Association; New

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Jersey State League of Municipalities; New Mexico Municipal League; New York State Conference of Mayors and Municipal Officials; North Carolina League of Municipalities; North Dakota League of Cities; Ohio Municipal League; Oklahoma Municipal League; League of Oregon Cities; Pennsylvania League of Cities and Municipalities; Municipal Association of South Carolina; Texas Municipal League; Vermont League of Cities and Towns; Virginia Municipal League; Association of Washington Cities; and Wyoming Association of Municipalities met with Christopher J. Wright of the Office of General Counsel. The meeting dealt with issues arising in connection with federal preemption, the scope of Commerce Clause authority, unfunded mandates, the Regulatory Flexibility Act, and Fifth Amendment issues, with regard to open video systems and zoning proceedings, and including matters set forth in the attached materials, which were given to Mr. Wright at the meeting.

Very truly yours,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By Frederick E. Ellrod III

Frederick E. Ellrod III

Enclosures

cc: Christopher J. Wright, Esq. (w/o encl.)

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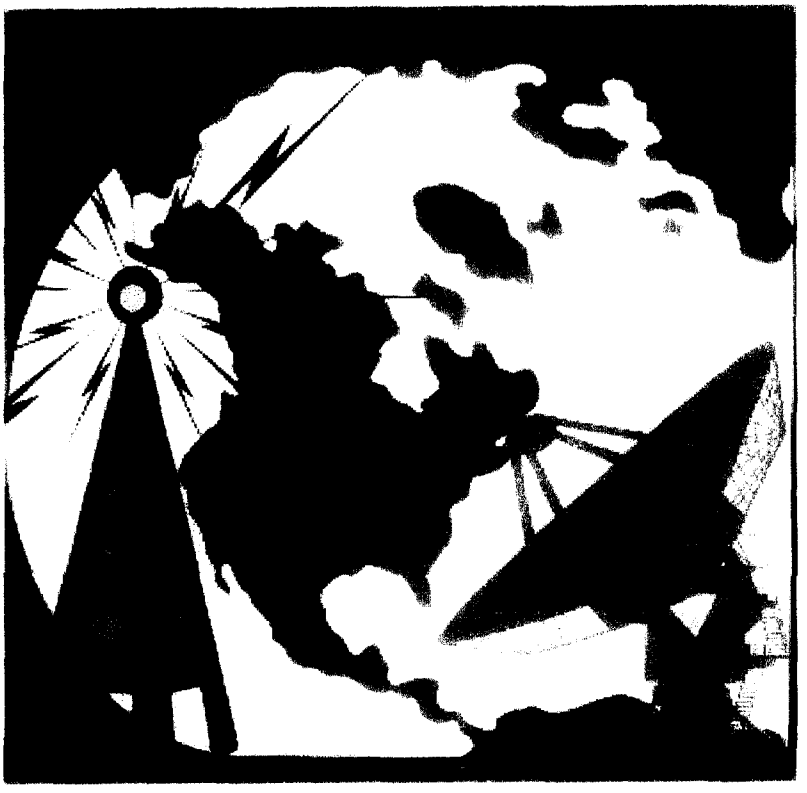

Local Government Roles and Responsibilities In Telecommunications

Briefing for the
Federal Communications Commission
by

National Association of Counties
National Association of Telecommunications Officers and Advisors
National League of Cities
U.S. Conference of Mayors

May 16, 1996

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B R I E F I N G

PREPARED FOR

THE FEDERAL COMMUNICATIONS COMMISSION
BUREAU CHIEFS

2:00PM
May 16, 1996
Federal Commuincations Commission
Commission Meeting Room 856
1919 M Street,. N.W.
Washington, D.C.

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OVERVIEW

I. The rights, roles, and responsibilities of local governments:
the framework in which national communications policy takes place--

A. Trustees of public property
fair value for public resources consumed for private gain

B. Responsibility for community health and safety
balance competing community interests
zoning, building codes, criminal laws, other tools
right of way management
consumer protection

C. Responsibility for public welfare
develop and defend community quality of life
infrastructure development
economic development
service delivery
schools, libraries, health care, traffic management, property records and taxes, social services

II. These principles are reflected and respected in:

A. Congressional actions

B. Administration policy

C. Existing agreements with cable and telecommunications providers

III. These principles should be reflected in FCC policy.

IV. Conclusion for Communications Policy:

A. Local elected officials want the highest and best quality of community life

B. No single industry or business interest should have priority in the balancing necessary to achieve this.

C. If local officials choose poorly, the marketplace and the electorate will correct the problem quickly. If bad federal rules are put in place, there is no real recourse at the local level.

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they shall be considered as part of the rules of such House, respectively, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of each House.

2 USC 1516.

SEC. 109. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Congressional Budget Office $4,500,000 for each of the fiscal years 1996, 1997, 1998, 1999, 2000, 2001, and 2002 to carry out the provisions of this title.

2 USC 1511 note.

SEC. 110. EFFECTIVE DATE.

This title shall take effect on January 1, 1996 or on the date 90 days after appropriations are made available as authorized under section 109, whichever is earlier and shall apply to legislation considered on and after such date.

TITLE II—REGULATORY ACCOUNTABILITY AND REFORM

2 USC 1531.

SEC. 201. REGULATORY PROCESS.

Each agency shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).

2 USC 1532.

SEC. 202. STATEMENTS TO ACCOMPANY SIGNIFICANT REGULATORY ACTIONS.

(a) IN GENERAL.—Unless otherwise prohibited by law, before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement containing—

(1) an identification of the provision of Federal law under which the rule is being promulgated;

(2) a qualitative and quantitative assessment of the anticipated costs and benefits of the Federal mandate, including the costs and benefits to State, local, and tribal governments or the private sector, as well as the effect of the Federal mandate on health, safety, and the natural environment and such an assessment shall include—

(A) an analysis of the extent to which such costs to State, local, and tribal governments may be paid with Federal financial assistance (or otherwise paid for by the Federal Government); and

(B) the extent to which there are available Federal resources to carry out the intergovernmental mandate;

(3) estimates by the agency, if and to the extent that the agency determines that accurate estimates are reasonably feasible, of—

(A) the future compliance costs of the Federal mandate; and

(B) any disproportionate budgetary effects of the Federal mandate upon any particular regions of the nation or particular State, local, or tribal governments, urban or rural or other types of communities, or particular segments of the private sector;

(4) estimates by the agency of the effect on the national economy, such as the effect on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness of United States goods and services, if and to the extent that the agency in its sole discretion determines that accurate estimates are reasonably feasible and that such effect is relevant and material; and

(5)(A) a description of the extent of the agency's prior consultation with elected representatives (under section 204) of the affected State, local, and tribal governments;

(B) a summary of the comments and concerns that were presented by State, local, or tribal governments either orally or in writing to the agency; and

(C) a summary of the agency's evaluation of those comments and concerns.

(b) PROMULGATION.—In promulgating a general notice of proposed rulemaking or a final rule for which a statement under subsection (a) is required, the agency shall include in the promulgation a summary of the information contained in the statement.

(c) PREPARATION IN CONJUNCTION WITH OTHER STATEMENT.—Any agency may prepare any statement required under subsection (a) in conjunction with or as a part of any other statement or analysis, provided that the statement or analysis satisfies the provisions of subsection (a).

SEC. 203. SMALL GOVERNMENT AGENCY PLAN. 2 USC 1533.

(a) EFFECTS ON SMALL GOVERNMENTS.—Before establishing any regulatory requirements that might significantly or uniquely affect small governments, agencies shall have developed a plan under which the agency shall—

(1) provide notice of the requirements to potentially affected small governments, if any;

(2) enable officials of affected small governments to provide meaningful and timely input in the development of regulatory proposals containing significant Federal intergovernmental mandates; and

(3) inform, educate, and advise small governments on compliance with the requirements.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to each agency to carry out the provisions of this section and for no other purpose, such sums as are necessary.

SEC. 204. STATE, LOCAL, AND TRIBAL GOVERNMENT INPUT. 2 USC 1534.

(a) IN GENERAL.—Each agency shall, to the extent permitted in law, develop an effective process to permit elected officers of State, local, and tribal governments (or their designated employees

with authority to act on their behalf) to provide meaningful and timely input in the development of regulatory proposals containing significant Federal intergovernmental mandates.

(b) MEETINGS BETWEEN STATE, LOCAL, TRIBAL AND FEDERAL OFFICERS.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to actions in support of intergovernmental communications where—

(1) meetings are held exclusively between Federal officials and elected officers of State, local, and tribal governments (or their designated employees with authority to act on their behalf) acting in their official capacities; and

(2) such meetings are solely for the purposes of exchanging views, information, or advice relating to the management or implementation of Federal programs established pursuant to public law that explicitly or inherently share intergovernmental responsibilities or administration.

(c) IMPLEMENTING GUIDELINES.—No later than 6 months after the date of enactment of this Act, the President shall issue guidelines and instructions to Federal agencies for appropriate implementation of subsections (a) and (b) consistent with applicable laws and regulations.

2 USC 1535.

SEC. 205. LEAST BURDENSOME OPTION OR EXPLANATION REQUIRED.

(a) IN GENERAL.—Except as provided in subsection (b), before promulgating any rule for which a written statement is required under section 202, the agency shall identify and consider a reasonable number of regulatory alternatives and from those alternatives select the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, for—

(1) State, local, and tribal governments, in the case of a rule containing a Federal intergovernmental mandate; and

(2) the private sector, in the case of a rule containing a Federal private sector mandate.

(b) EXCEPTION.—The provisions of subsection (a) shall apply unless—

(1) the head of the affected agency publishes with the final rule an explanation of why the least costly, most cost-effective or least burdensome method of achieving the objectives of the rule was not adopted; or

(2) the provisions are inconsistent with law.

(c) OMB CERTIFICATION.—No later than 1 year after the date of the enactment of this Act, the Director of the Office of Management and Budget shall certify to Congress, with a written explanation, agency compliance with this section and include in that certification agencies and rulemakings that fail to adequately comply with this section.

2 USC 1536.

SEC. 206. ASSISTANCE TO THE CONGRESSIONAL BUDGET OFFICE.

The Director of the Office of Management and Budget shall—

(1) collect from agencies the statements prepared under section 202; and

(2) periodically forward copies of such statements to the Director of the Congressional Budget Office on a reasonably timely basis after promulgation of the general notice of proposed rulemaking or of the final rule for which the statement was prepared.

104TH CONGRESS
2D SESSION

H. R. 3136

IN THE SENATE OF THE UNITED STATES

MARCH 28, 1996
Received

AN ACT

To provide for enactment of the Senior Citizens' Right to Work Act of 1996, the Line Item Veto Act, and the Small Business Growth and Fairness Act of 1996, and to provide for a permanent increase in the public debt limit.

1 mum statutory penalty (i) in the complaint, or (ii)
2 elsewhere when accompanied by an express demand
3 for a lesser amount."

4 **SEC. 233. EFFECTIVE DATE.**

5 The amendments made by sections 331 and 332 shall
6 apply to civil actions and adversary adjudications com-
7 menced on or after the date of the enactment of this sub-
8 title.

9 Subtitle D—Regulatory Flexibility
10 Act Amendments

11 **SEC. 241. REGULATORY FLEXIBILITY ANALYSES.**

12 (a) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—
13 (1) SECTION 603.—Section 603(a) of title 5,
14 United States Code, is amended—
15 (A) by inserting after "proposed rule", the
16 phrase ", or publishes a notice of proposed rule-
17 making for an interpretative rule involving the
18 internal revenue laws of the United States";
19 and
20 (B) by inserting at the end of the sub-
21 section, the following new sentence: "In the
22 case of an interpretative rule involving the in-
23 ternal revenue laws of the United States, this
24 chapter applies to interpretative rules published
25 in the Federal Register for codification in the

1 Code of Federal Regulations, but only to the
2 extent that such interpretative rules impose on
3 small entities a collection of information re-
4 quirement.".

5 (2) SECTION 601.—Section 601 of title 5, Unit-
6 ed States Code, is amended by striking "and" at the
7 end of paragraph (5), by striking the period at the
8 end of paragraph (6) and inserting "; and", and by
9 adding at the end the following:

10 "(7) the term 'collection of information'—

11 "(A) means the obtaining, causing to be
12 obtained, soliciting, or requiring the disclosure
13 to third parties or the public, of facts or opin-
14 ions by or for an agency, regardless of form or
15 format, calling for either—

16 "(i) answers to identical questions
17 posed to, or identical reporting or record-
18 keeping requirements imposed on, 10 or
19 more persons, other than agencies, instru-
20 mentalities, or employees of the United
21 States; or

22 "(ii) answers to questions posed to
23 agencies, instrumentalities, or employees of
24 the United States which are to be used for
25 general statistical purposes; and

1 "(B) shall not include a collection of infor-
2 mation described under section 3518(c)(1) of
3 title 44, United States Code.
4 "(8) RECORDKEEPING REQUIREMENT.—The
5 term 'recordkeeping requirement' means a require-
6 ment imposed by an agency on persons to maintain
7 specified records.
8 (b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—
9 Section 604 of title 5, United States Code, is amended—
10 (1) in subsection (a) to read as follows:
11 "(a) When an agency promulgates a final rule under
12 section 553 of this title, after being required by that sec-
13 tion or any other law to publish a general notice of pro-
14 posed rulemaking, or promulgates a final interpretative
15 rule involving the internal revenue laws of the United
16 States as described in section 603(a), the agency shall pre-
17 pare a final regulatory flexibility analysis. Each final regu-
18 latory flexibility analysis shall contain—
19 "(1) a succinct statement of the need for, and
20 objectives of, the rule;
21 "(2) a summary of the significant issues raised
22 by the public comments in response to the initial
23 regulatory flexibility analysis, a summary of the as-
24 sessment of the agency of such issues, and a state-

1 ment of any changes made in the proposed rule as
2 a result of such comments;
3 "(3) a description of and an estimate of the
4 number of small entities to which the rule will apply
5 or an explanation of why no such estimate is avail-
6 able;
7 "(4) a description of the projected reporting,
8 record keeping and other compliance requirements of
9 the rule, including an estimate of the classes of
10 small entities which will be subject to the require-
11 ment and the type of professional skills necessary
12 for preparation of the report or record; and
13 "(5) a description of the steps the agency has
14 taken to minimize the significant economic impact
15 on small entities consistent with the stated objectives
16 of applicable statutes, including a statement of the
17 factual, policy, and legal reasons for selecting the al-
18 ternative adopted in the final rule and why each one
19 of the other significant alternatives to the rule con-
20 sidered by the agency which affect the impact on
21 small entities was rejected."; and
22 (2) in subsection (b), by striking "at the time"
23 and all that follows and inserting "such analysis or
24 a summary thereof."

104TH CONGRESS 2d Session | HOUSE OF REPRESENTATIVES | REPORT 104–458

TELECOMMUNICATIONS ACT OF 1996

JANUARY 31, 1996. Ordered to be printed

Mr. BLILEY, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany S. 652]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 652), to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment, insert the following:

SECTION 1. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the "Telecommunications Act of 1996".

(b) REFERENCES.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Communications Act of 1934 (47 U.S.C. 151 et seq.).

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title; references.
Sec. 2. Table of contents.
Sec. 3. Definitions.

"SEC. 253. REMOVAL OF BARRIERS TO ENTRY.

"(a) IN GENERAL.—No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

"(b) STATE REGULATORY AUTHORITY.—Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

"(c) STATE AND LOCAL GOVERNMENT AUTHORITY.—Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.

"(d) PREEMPTION.—If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b), the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.

Subsection (c) of new section 254 provides that nothing in new section 254 affects the authority of States or local governments to manage the public rights-of-way or to require, on a competitively neutral and nondiscriminatory basis, fair and reasonable compensation for the use of public rights-of-way, on a nondiscriminatory basis, provided any compensation required is publicly disclosed.

Conference agreement

The conference agreement adds a new section 653 to the Communications Act. The conferees recognize that telephone companies need to be able to choose from among multiple video entry options to encourage entry, and so systems under this section allowed to tailor services to meet the unique competitive and consumer needs of individual markets. New section 653(a) focuses on the establishment of open video systems by local exchange carriers and provides for reduced regulatory burdens subject to compliance with the provisions of new section 653(b) and Commission certification of a carrier's intent to comply. New section 653(a) also gives the Commission authority to resolve disputes (and award damages), but requires such resolution to occur within 180 days after notice of the dispute is submitted to the Commission.

New section 653(b) gives the Commission six months from the date of enactment to complete all actions necessary, including any reconsideration, to prescribe regulations to accomplish the following—

except as required by section 611, 614 or 615, to prohibit open video system operators from discriminating among video programmers with regard to carriage, and ensure that the rates, terms and conditions for carriage are just and reasonable and are not unjustly or unreasonably discriminatory;

if demand exceeds channel capacity, to prohibit an open video system operator and its affiliates from selecting the video programming services that occupy more than one-third of the activated channel capacity of the system; but this limitation does not in any way limit the number of channels a carrier and its affiliates may offer to provide directly to subscribers;

to permit an open video system operator to require channel sharing; that is, to carry only one channel of 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;

to extend the Commission's regulations concerning sports exclusivity, network nonduplication and syndicated exclusivity to the distribution of video programming over open video systems, must carry for commercial and noncommercial broadcast stations, and retransmission content; and,

to prohibit an open video system operator from unreasonably discriminating in favor of itself and its affiliates with regard to material or information provided for the purpose of selecting programming or presenting information to subscribers; to require an open video system operator to ensure that video programming providers or copyright holders are able to identify their programming services to subscribers; to require the operator to transmit such identification without change or alteration; and to prohibit an open video system operator from omitting television broadcasters or other unaffiliated video programming services from carriage on any navigational device, guide, or menu.

New section 653(c) sets forth the reduced regulatory burdens imposed on open video systems. There are several reasons for streamlining the regulatory obligations of such systems. First, the conferees hope that this approach will encourage common carriers to deploy open video systems and introduce vigorous competition in entertainment and information markets. Second, the conferees recognize that common carriers that deploy open systems will be "new" entrants in established markets and deserve lighter regulatory burdens to level the playing field. Third, the development of competition and the operation of market forces mean that government oversight and regulation can and should be reduced.

New section 653(c)(1)(A) states that the following provisions that apply to cable operators also apply to certified operators of open video systems—sections 613 (other than subsection (a)(2) thereof), 616, 623(f), 628, 631, and 634; new section 653(c)(1)(B) states that the following sections—611, 612, 614, and 615, and section 325 of title III—apply in accordance with regulations prescribed under paragraph (2); and, new section 653(c)(1)(C) states that sections 612 and 617, and parts III and IV (other than sections 623(f), 628, 631, and 634), of this title do not apply.

With respect to the rulemaking proceeding required by new section 653(b)(1), new section 653(c)(2)(A) requires that the Commission shall, to the extent possible, impose obligations that are no greater or lesser than the obligations contained in the provisions described in new section 653(c)(1)(B).

New section 653(c)(2)(B) states that open video system operators may be subject to fees imposed by local franchising authorities, but that such fees are in lieu of fees required under section 622. A State governmental authority could also impose taxes, fees or other assessments in lieu of franchise or franchise-like fees imposed by municipalities. In another effort to ensure parity among video providers, the conferees state that such fees may only be assessed on revenues derived from comparable cable services and the rate at which such fees are imposed on operators of open video systems may not exceed the rate at which franchise fees are imposed on any cable operator in the corresponding franchise area. Open system operators would have the same flexibility as their cable operator competitors to state separately these fees on their customer bills.

The conferees intend that an operator of an open video system under this part shall be subject, to the extent permissible under State and local law, to the authority of a local government to manage its public rights-of-way in a nondiscriminatory and competitively neutral manner.

New section 653(c)(3) is a further attempt to ensure that operators of open video systems are not burdened with unreasonable regulatory obligations. It states that the requirements of new section 653 are intended to operate in lieu of, and not in addition to, the requirements of title II. The conferees do not intend that the Commission impose title II-like regulation under the authority of this section.

Rules and regulations adopted by the Commission pursuant to its jurisdiction under title II should not be merged with or added to the rules and regulations governing open video systems, which

SEC. 303. PREEMPTION OF FRANCHISING AUTHORITY REGULATION OF TELECOMMUNICATIONS SERVICES.

(a) PROVISION OF TELECOMMUNICATIONS SERVICES BY A CABLE OPERATOR.—Section 621(b) (47 U.S.C. 541(b)) is amended by adding at the end thereof the following new paragraph:

"(3)(A) If a cable operator or affiliate thereof is engaged in the provision of telecommunications services—

"(i) such cable operator or affiliate shall not be required to obtain a franchise under this title for the provision of telecommunications services; and

"(ii) the provisions of this title shall not apply to such cable operator or affiliate for the provision of telecommunications services.

"(B) A franchising authority may not impose any requirement under this title that has the purpose or effect of prohibiting, limiting, restricting, or conditioning the provision of a telecommunications service by a cable operator or an affiliate thereof.

"(C) A franchising authority may not order a cable operator or affiliate thereof—

"(i) to discontinue the provision of a telecommunications service, or

"(ii) to discontinue the operation of a cable system, to the extent such cable system is used for the provision of a telecommunications service, by reason of the failure of such cable operator or affiliate thereof to obtain a franchise or franchise renewal under this title with respect to the provision of such telecommunications service.

"(D) Except as otherwise permitted by sections 611 and 612, a franchising authority may not require a cable operator to provide any telecommunications service or facilities, other than institutional networks, as a condition of the initial grant of a franchise, a franchise renewal, or a transfer of a franchise.".

(b) FRANCHISE FEES.—Section 622(b) (47 U.S.C. 542(b)) is amended by inserting "to provide cable services" immediately before the period at the end of the first sentence thereof.

Conference agreement

The conference agreement adopts the House provision with some minor, technical modifications. The conferees intend that, to the extent permissible under State and local law, telecommunications services, including those provided by a cable company, shall be subject to the authority of a local government to, in a nondiscriminatory and competitively neutral way, manage its public rights-of-way and charge fair and reasonable fees.

Section 601.

(c) FEDERAL, STATE, AND LOCAL LAW.—

(1) NO IMPLIED EFFECT.—This Act and the amendments made by this Act shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided in such Act or amendments.

(2) STATE TAX SAVINGS PROVISION.—Notwithstanding paragraph (1), nothing in this Act or the amendments made by this Act shall be construed to modify, impair, or supersede, or authorize the modification, impairment, or supersession of, any State or local law pertaining to taxation, except as provided in sections 622 and 653(c) of the Communications Act of 1934 and section 602 of this Act.

The conference agreement adopts the House provision stating that the bill does not have any effect on any other Federal, State, or local law unless the bill expressly so provides. This provision prevents affected parties from asserting that the bill impliedly preempts other laws.

The conference agreement adopts the House version of the State tax savings clause with a modification to clarify that fees for open video systems are excluded from the savings clause.

SEC. 704. FACILITIES SITING; RADIO FREQUENCY EMISSION STANDARDS.

(a) NATIONAL WIRELESS TELECOMMUNICATIONS SITING POLICY.—Section 332(c) (47 U.S.C. 332(c)) is amended by adding at the end the following new paragraph:

"(7) PRESERVATION OF LOCAL ZONING AUTHORITY.—

"(A) GENERAL AUTHORITY.—Except as provided in this paragraph, nothing in this Act shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

"(B) LIMITATIONS.—

"(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof—

"(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

"(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

"(ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.

"(iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

"(iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.