

revise the rule in order to fulfill more completely its objections. For all of these reasons,  
BellSouth requests that the Commission reconsider its decision in this proceeding.

Respectfully submitted,

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October 4, 1996

## **Exhibit 1**

### **§ 1.4000. Restrictions impairing reception of Television Broadcast Signals, Direct Broadcast Satellite Services or Multichannel Multipoint Distribution Services**

(a) Any restriction, including but not limited to any state or local law or regulation, including zoning, land-use, or building regulation, or any private covenant, homeowners' association rule or similar restriction on property within the exclusive use or control of the antenna user where the user has a direct or indirect ownership interest in the property, that impairs the installation, maintenance, or use of:

(1) an antenna that is designed to receive direct broadcast satellite service, including direct-to-home satellite services, that is one meter or less in diameter or is located in Alaska; or

(2) an antenna that is designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, and that is one meter or less in diameter or diagonal measurement; or

(3) an antenna that is designed to receive television broadcast signals,

is prohibited, to the extent it so impairs, ~~subject to paragraph (b)~~. For purposes of this rule, a law, regulation or restriction impairs installation, maintenance or use of an antenna if it: (1) unreasonably delays or prevents installation, maintenance or use, (2) imposes any requirement of approval or permit prior to installation, (3) unreasonably increases the cost of installation, maintenance or use, or ~~(4)~~ precludes reception of an acceptable quality signal. No civil, criminal, administrative, or other legal action of any kind shall be taken to enforce any restriction or regulation prohibited by this rule except pursuant to paragraph ~~(b)~~ or ~~(c)~~. No fine or other penalties shall accrue against an antenna user while a proceeding is pending to determine the validity of any restriction.

~~(b) Any restriction otherwise prohibited by paragraph (a) is permitted if:~~

~~(1) it is necessary to accomplish a clearly defined safety objective that is either stated in the text, preamble or legislative history of the restriction or described as applying to that restriction in a document that is readily available to antenna users, and would be applied to the extent practicable in a non-discriminatory manner to other appurtenances, devices, or fixtures that are comparable in size, weight and appearance to~~

~~these antennas and to which local regulation would normally apply; or~~

~~(2) it is necessary to preserve an historic district listed or eligible for listing in the National Register of Historic Places, as set forth in the National Historic Preservation Act of 1966, as amended, 16 U.S.C. § 470a, and imposes no greater restrictions on antennas covered by this rule than are imposed on the installation, maintenance or use of other modern appurtenances, devices or fixtures that are comparable in size, weight, and appearance to these antennas; and~~

~~(3) it is no more burdensome to affected antenna users than is necessary to achieve the objectives described above.~~

(e) Local governments or associations may apply to the Commission for a waiver of this rule under Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3. Waiver requests will be put on public notice. The Commission may grant a waiver upon a showing by the applicant of local concerns of a highly specialized or unusual nature. No petition for waiver shall be considered unless it specifies the restriction at issue. Waivers granted in accordance with this section shall not apply to restrictions amended or enacted after the waiver is granted. Any responsive pleadings must be served on all parties and filed within 30 days after release of a public notice that such petition has been filed. Any replies must be filed within 15 days thereafter.

~~(c)~~ Parties may petition the Commission for a declaratory ruling under Section 1.2 of the Commission's rules, 47 C.F.R. § 1.2, ~~or a court of competent jurisdiction~~, to determine whether a particular restriction is permissible or prohibited under this rule. ~~Petitions to the Commission~~ will be put on public notice. Any responsive pleadings must be served on all parties and filed within 30 days after release of a public notice that such petition has been filed. Any replies must be filed within 15 days thereafter.

~~(d)~~ In any ~~Commission~~ proceeding regarding the scope or interpretation of any provision of this section, the burden of demonstrating that a particular governmental or nongovernmental restriction complies with this section and does not impair the installation, maintenance or use of devices designed for over-the-air reception of video programming services shall be on the party that seeks to impose or maintain the restriction.

(ef) All allegations of fact contained in petitions and related pleadings before the Commission must be supported by affidavit of a person or persons with actual knowledge thereof. An original and two copies of all petitions and pleadings should be addressed to the Secretary, Federal Communications Commission, 1919 M St.,

N.W.; Washington, D.C. 20554. Copies of the petitions and related pleadings will be available for public inspection in the Cable Reference Room in Washington, D.C. Copies will be available for purchase from the Commission's contract copy center, and Commission decisions will be available on the Internet.

**Exhibit 2**

***Joint Explanatory Statement of the Committee of Conference  
in H.R. Rep. No. 104-458, 104th Cong., 2d Sess. 166 (1996)***

104TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT  
2d Session } { 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.*

SECTION 206—AUTOMATED SHIP DISTRESS AND SAFETY SYSTEMS

*Senate bill*

Section 306 of the Senate bill provides that notwithstanding any other provision of the Communications Act, any ship documented under the laws of the United States operating in accordance with the Global Maritime Distress and Safety System provisions of the Safety of Life at Sea Convention is not required to be equipped with a radio telegraphy station operated by one or more radio officers or operators.

*House amendment*

This House provision is identical.

*Conference agreement*

The conference agreement adopts the Senate provision with a modification placing the provision as an amendment to section 364 of the Communications Act. This provision permits a ship that fully complies with the Global Maritime Distress and Safety System (GMDSS) provisions of the Safety of Life at Sea Convention to be exempted from requirements to carry a radio telegraph station operated by one or more radio operators. Due to the conferees' concern about the proper implementation of the GMDSS, the provision specifies that this exemption shall only take effect upon the United States Coast Guard's determination that the system is fully installed, maintained, and is operating properly on each vessel.

SECTION 207—RESTRICTIONS ON OVER-THE-AIR RECEPTION DEVICES

*Senate bill*

No provision.

*House amendment*

Section 308 of the House amendment directs the Commission to promulgate rules prohibiting restrictions which inhibit a viewer's ability to receive video programming from over-the-air broadcast stations or direct broadcast satellite services.

*Conference agreement*

The conference agreement adopts the House provision with modifications to extend the prohibition to devices that permit reception of multichannel multipoint distribution services.

TITLE III—CABLE SERVICES

SECTION 301—CABLE ACT REFORM

*Senate bill*

Section 203(a) of the Senate bill amends the definition of "cable system" in section 602 of the Communications Act.

Section 203(b) of section 204 of the bill limits the rate regulations currently imposed by the 1992 Cable Act.

Paragraph (1) amends the rate regulation provisions of section 623 of the Communications Act for the expanded tier. First, it eliminates the ability of a single subscriber to initiate a rate com-

**Exhibit 3**

**House of Representatives Report on H.R. 1555  
H.R. Rep. No. 104-204, 104th Cong., 1st Sess. 123-24 (1995)**

House Report on H.R. 1555 (Report No. 104-204)

104TH CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 104-204  
1st Session } Part 1

COMMUNICATIONS ACT OF 1995

JULY 24, 1995.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BILEY, from the Committee on Commerce,  
submitted the following

REPORT

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 1555]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill (H.R. 1555) to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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*Section 305. Broadcast license renewal procedures*

Section 305 amends section 309 of the Communications Act by adding a new subsection (k) mandating a change in the manner in which broadcast license renewal applications are processed. Subsection (k) allows for Commission consideration of the renewal application of the incumbent broadcast licensee without the contemporaneous consideration of competing applications. Under this subsection, the Commission would grant a renewal application if it finds that the station, during its term, had served the public interest, convenience, and necessity; there had been no serious violations by the licensee of the Act or Commission rules; and there had been no other violations of the Act or Commission rules which, taken together, indicate a pattern of abuse. If the Commission finds that the licensee has failed to meet these requirements, it could deny the renewal application or grant a conditional approval, including renewal for a lesser term. Only after denying a renewal application could the Commission accept and consider competing applications for the license.

The Committee believes this change in procedure will lead to a more efficient method of renewing broadcast licenses and should result in a significant cost saving to the Commission. The Committee notes that subsection (k) does not alter the standard of renewal employed by the Commission and does not jeopardize the ability of the public to participate actively in the renewal process through the use of petitions-to-deny and informal complaints. Further, this section in no way limits the ability of the Commission to act sua sponte in enforcing the Act or Commission rules.

*Section 306. Exclusive Federal jurisdiction over direct broadcast satellite service*

Section 306 amends section 303 of the Communications Act of 1934 to clarify that the Commission has exclusive jurisdiction over the regulation of direct broadcast satellite (DBS) service. DBS is a direct-to-home satellite broadcasting service which utilizes Ku-Band satellites. The Commission currently regulates and issues licenses for DBS service pursuant to its authority contained in Title III of the Communications Act. Section 306 reaffirms and clarifies that the Commission has exclusive authority over the regulation of DBS service. Federal jurisdiction over DBS service will ensure that there is a unified, national system of rules reflecting the national, interstate nature of DBS service.

*Section 307. Automated ship distress and safety systems*

This section states that notwithstanding the Communications Act of 1934, a ship shall not be required to be equipped with a radio telegraphy station operated by one or more radio officers or operators.

*Section 308. Restrictions on over-the-air reception devices*

Section 308 directs the Commission to promulgate rules prohibiting restrictions which inhibit a viewer's ability to receive video programming from over-the-air broadcast stations or direct broadcast satellite services. The Committee intends this section to preempt enforcement of State or local statutes and regulations, or State or

local legal requirements, or restrictive covenants or encumbrances that prevent the use of antennae designed for off-the-air reception of television broadcast signals or of satellite receivers designed for receipt of DBS services. Existing regulations, including but not limited to, zoning laws, ordinances, restrictive covenants or homeowners' association rules, shall be unenforceable to the extent contrary to this section.

The Committee notes that the "Direct Broadcast Satellite Service" is a specific service that is limited to higher power DBS satellites. This service does not include lower power C-band satellites, which require larger dishes in order for subscribers to receive their signals. Thus, this section does not prevent the enforcement of State or local statutes and regulations, or State or local legal requirements, or restrictive covenants or encumbrances that limit the use and placement of C-band satellite dishes.

*Section 309. DBS signal security*

Section 309 amends section 705(e)(4) of the Communications Act of 1934 to extend the current legal protection against signal piracy to direct-broadcast services. The Committee finds this section necessary to protect the DBS industry from unauthorized decryption of its signals by pirates or hackers.

TITLE IV—EFFECT ON OTHER LAWS

*Section 401. Relationship to other laws*

Section 401 of the bill contains savings provisions for other applicable laws.

Subsection (a) provides that, although Title I of the bill supersedes the MFJ's line-of-business restrictions, the other parts of the MFJ are not affected. For clarity, those other parts are explicitly enumerated.

Subsection (b) provides that nothing in this Act shall be construed to modify, impair, or supersede any of the Federal antitrust laws.

Subsection (c) provides that nothing in the Act shall be construed to modify, impair, or supersede any other Federal law other than law expressly referred to in this Act. This subsection also contains a savings clause for State and local law, except "to the extent such law would impair or prevent the operation of this Act."

Subsection (d) provides that the provisions of the GTE consent decree shall cease to be effective on the date of the enactment of this Act. GTE's consent decree resulted from its 1982 acquisition of Southern Pacific Communications Company (Sprint), which provided national long distance service, and Southern Pacific Satellite Company (Spacenet), a provider of satellite communications services. The Department of Justice, as part of its statutory Hart-Scott-Rodino Act review of the proposed acquisition, negotiated a consent decree with GTE. The consent decree was approved in December, 1984 and permitted GTE to proceed with its acquisition of Sprint, but regulated its provision of interexchange services. The agreement required structural separation between General Telephone Operating Companies (GTOCs) and the Sprint assets and prohibited the GTOCs from providing interexchange services. The decree

CERTIFICATE OF SERVICE

I hereby certify that I have this 4th day of October, 1996, served a copy of the foregoing "Petition for Reconsideration" on the following persons by hand-delivery.

The Honorable Reed E. Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, N.W., Room 814  
Washington, DC 20554

The Honorable James H. Quello  
Commissioner  
Federal Communications Commission  
1919 M Street, N.W., Room 802  
Washington, DC 20554

The Honorable Rachelle B. Chong  
Commissioner  
Federal Communications Commission  
1919 M Street, N.W., Room 844  
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The Honorable Susan Ness  
Commissioner  
Federal Communications Commission  
1919 M Street, N.W., Room 832  
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Ms. Meredith Jones, Chief  
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Federal Communications Commission  
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Brett Kilbourne