



Board of County Commissioners

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October 27, 1997

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FEDERAL ROOM

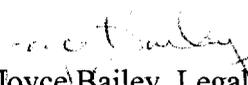
Office of the Secretary
Federal Communications Commission
Washington, D.C. 20554

RE: Preemption of State and Local Zoning and Land Use Restrictions on the Siting,
Placement and Construction of Broadcast Station Transmission Facilities
FCC 97-296, MM Docket No. 97-182
Notice of Proposed Rule Making

Gentlemen:

Enclosed is an original and 9 copies of the Comments of the County of Jefferson, State of Colorado for filing in the above referenced proceeding.

Very truly yours,


Joyce Bailey, Legal Assistant
Jefferson County Attorney's Office
(303) 271-8969

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of

Preemption of State and Local Zoning and
Land Use Restrictions on the Siting,
Placement and Construction of Broadcast
Station Transmission Facilities

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MM Docket No. 97-182

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FEDERAL COMMUNICATIONS COMMISSION

COMMENTS OF:

The County of Jefferson, State of Colorado
100 Jefferson County Parkway
Golden, Colorado 80419

The County of Jefferson, State of Colorado files these comments by and through the Jefferson County Attorney's Office, by Claire B. Levy, Assistant County Attorney.

SUMMARY OF COMMENTS

Jefferson County, Colorado opposes the Petition for Further Notice of Proposed Rule Making submitted by the National Association of Broadcasters and the Association for Maximum Service Television for the following reasons, which will be set forth in more detail herein:

1. There is no Congressional authority to preempt state and local land use authority over broadcast station transmission facilities.
2. There has not been any showing of a need for federal preemption of local land use and regulatory authority in order to carry out a federal interest.
3. The examples of obstacles cited in the Petition for Further Notice of Proposed Rule Making are either isolated examples that have not been shown to create a nation-wide problem, or the regulatory provisions at issue have been misrepresented to the Federal Communications Commission.
4. The proposed rule would effect a total preemption of local regulatory authority,

contrary to the portrayal of the rule as only a narrowly targeted policy.

5. The provision for alternative dispute resolution violates the right of local governments and their residents to have access to the courts.

6. Local governments have important interests in siting issues that are not and cannot be addressed by the Federal Communications Commission. Protecting these interests does not conflict with federal interests.

FEDERAL AUTHORITY TO PREEMPT

State or local law can be preempted in either of two general ways. "If Congress evidences an intent to occupy a given field, any state law falling within that field is preempted. . . . If Congress has not entirely displaced state regulation over the matter in question, state law is still preempted to the extent it actually conflicts with federal law, that is, when it is impossible to comply with both state and federal law, . . . or where that state law stands as an obstacle to the accomplishment of the full purposes and objectives of Congress." California Coastal Commission v. Granite Rock Company, 480 U.S. 572, 581, 107 S.Ct. 1419, 1425, 94 L.Ed. 2d 577 (1987). Preemption is neither warranted or justified under either principle set forth by the Supreme Court.

Congress has not evidenced an intent to occupy the field of broadcast transmission facilities to the exclusion of local regulation. The Telecommunications Act of 1996 ("the Act") contains several specific references to preemption, none of which are applicable here. Section 253 of the Act creates authority to preempt state or local laws that create barriers to entry to the market. This section does not apply to Digital Television broadcasters since only currently licensed broadcasters were given licenses to broadcast DTV. In addition, the preemption authority contemplated that the FCC would preempt local laws only on a case by case basis and did not give broad rule-making authority to preempt across the board. Section 704 of the Act creates a limited preemption of state and local regulations that impair the ability of mobile communications providers to site facilities. This section does not apply to DTV. In short, the Act is silent as to intent to preempt local regulatory authority that relates to siting and construction of broadcast station transmission facilities.

If Congress had intended the FCC to preempt local land use authority it would have clearly granted that authority. The section preempting land use regulation over mobile communications facilities is instructive. The initial version of the Act completely preempted local zoning authority. In the Conference Committee, this provision was deleted and replaced with a carefully worded section that was the product of much negotiation. (**Appendix 1** contains a portion of the original bill and excerpts from the Conference Committee Report.) The process

that produced the preemption language in Section 704 of the Act (47 U.S.C. 332(c)(7)) evidences Congressional intent not to preempt local land use authority except in limited circumstances and subject to very carefully prescribed limits. The legislative history indicates that Congress has been protective of local land use authority when it has been given the opportunity to address the issue directly.

The circumstances that led to limited preemption of land use authority over mobile communications facilities are different than those that apply to broadcast station transmission facilities (hereinafter referred to as "TV towers"). Mobile communications providers (hereinafter referred to generically as "cellular facilities") will require in excess of 100,000 sites in widely dispersed areas in order to provide basic coverage. Because of the large number of facilities needed and the fact that they would have to be located throughout a jurisdiction, limited preemption was perceived to be necessary to implement deregulation of cellular service. In contrast, a very large area can be served by just one TV tower and TV broadcasters have a great deal more flexibility in siting their facilities while still being able to provide adequate coverage. This is evident from the fact that all of the commercially feasible television markets are currently being served by television stations without the aid of federal preemption. Therefore, it is evident that silence in the Act on preemption for TV towers indicates no Congressional intent to occupy the field.

Preemption is not justified by the second principle: preemption based on an actual conflict with federal law or where local law creates an obstacle to accomplishing the objectives of Congress. The fact that there is no actual conflict between dual regulatory authority is again evident from the fact that from the earliest days of TV broadcasting, local land use authority has not interfered with the development of the industry. Federal regulations control allocation of frequency, licensing conditions, interference concerns, areas of coverage, etc. Local regulations control matters of local concern such as the location of the tower, environmental impacts, setbacks from property lines, tower safety matters, etc. It is completely feasible to obtain local zoning approval for a TV tower site and then apply for a construction permit from the FCC, thereby complying with both sets of regulations. There is no inherent conflict between areas in which federal regulation operates and matters of local control.

Local law is not creating an obstacle to accomplishing the objectives of Congress. The NAB petition cites the rapid transition from analog to digital television and the shortage of qualified contractors to construct TV towers as justification for federal preemption of local land use and regulatory authority. The petition cites several examples, which will be discussed in more detail below, to show why preemption is necessary. None of the examples cited have resulted in an inability to meet the deadline for broadcasting DTV. In fact, according to the FCC's fact-sheets and news releases, only two DTV construction permits have been applied for to date. At a recent meeting of representatives from the television markets in which broadcasters

are required to begin DTV transmission by May 1, 1999, only two of the entities had received inquiries from television stations concerning locating DTV antennae. There is simply no evidence that local regulations have or will impede the rapid transition to digital television.

The FCC has mandated DTV broadcasting in the top ten markets by May 1, 1999 and in the next 20 markets by November 1, 1999. Therefore, of the 1400 existing TV towers (this figure is found in the NAB petition on page 6), only a very small fraction of them are under immediate time constraints. Local regulation appears to present a timing problem which can be accommodated with foresight and planning. Local regulation does not create an actual conflict between inconsistent requirements. Preemption of all state and local regulation nation-wide is not justified simply to facilitate construction in ten locations.

Preemption of local laws and regulations should only be undertaken where there is clear Congressional intent to preempt or where there is compelling evidence that local control is impeding an important federal objective. There is no Congressional mandate to preempt local control and there has been no evidence to date that the transition deadlines cannot be met as a result of local regulations.

NO SHOWING OF NEED FOR PREEMPTION

The NAB Petition for Further Notice of Proposed Rule Making details the difficulties faced by broadcasters due to the shortage of qualified contractors. This difficulty is based on certain assumptions about the size of the needed facilities and the ability of existing towers to support DTV antennae. Assuming, arguendo, that these assumptions are correct, the NAB asserts that state and local regulation of tower siting and construction will compound the problem and impede implementation of the roll-out schedule. This section of the Petition is based on broad generalizations and assumptions. It lacks any specific example of a local regulation that has or will impair the ability to construct DTV towers.

Given the fact that there have been only two applications for construction permits that have been granted, it appears that a lack of timely planning by the television industry is the source of perceived problems with implementing the FCC's timetable for transferring to DTV. DTV has been under discussion since the early 90's. In Jefferson County, we began laying the regulatory groundwork for the transition by developing a Telecommunications Land Use Plan in 1985, revised in 1993. The television industry could have begun planning for new tower facilities early on, even though the specifications of frequencies and other technical matters had not yet been resolved. Instead, it appears that the television broadcasters have waited until the eleventh hour and have then resorted to a request for federal preemption before making any serious attempt to fulfill the federal mandate.

Local governments lobbied heavily for a rapid transition to DTV so that frequencies currently used for analog TV could be reused for local public safety purposes and other communications purposes. Local governments also have an interest in assuring that their residents receive state of the art TV broadcasts. There is no reason for local governments to seek to delay or obstruct transition to DTV.

The NAB Petition sites on pages 9 and 10 the requirements and restrictions it feels obstruct construction of towers. They include requirements for environmental assessments, "fall radius" requirements, inflexible co-location requirements, and tower marking and lighting requirements. The Petition references local concern about interference with consumer appliances, health effects of exposure to RF radiation, and the appearance of the towers. The Petition also asserts that broadcasters are subject to protracted procedural machinations. All of these requirements and concerns are legitimate areas of local interest that have a real and tangible impact on residents in the vicinity of large TV towers. None of the requirements or concerns cited will prevent the construction or modification of TV towers. None of the requirements or concerns conflict with federal regulations or interfere with a TV broadcaster's ability to comply with federal regulations. At most, they may require consultation with local government before a site is selected, and they may require some time and expense to assure local governments that the facility will be safe. Requiring broadcasters to be flexible in locating their facilities and to demonstrate their safety does not constitute an insurmountable obstacle to federal goals. Federal preemption of local laws is not warranted simply because compliance is burdensome.

JEFFERSON COUNTY, COLORADO'S BROADCAST TOWER REGULATIONS

The Petition, page 12, specifically sites a portion of the regulations of Jefferson County, Colorado to support preemption. A close look at the regulation and an understanding of the context of the regulation demonstrates that it is a reasonable regulation, related to local concerns, which does not prohibit broadcasters from satisfying their needs.

All of the TV towers for the major networks and the majority of FM radio stations that serve the Denver metropolitan area are located on Lookout Mountain west of Denver in unincorporated Jefferson County. In the 1940s and early 1950s, when broadcasters were beginning to locate their towers, Lookout Mountain was a community that consisted mostly of summer cabins. In 1955 it was zoned for residential use. As roads improved and as the Denver area has grown, those summer cabins have become year-round homes and additional homes have been constructed. Now, Lookout Mountain is a developed residential community.

Jefferson County adopted a Telecommunications Land Use Plan ("the Plan") in 1985 and revised the Plan in 1993. In both instances, the TV broadcast industry participated in the process and accommodations were made to their interests. The basic focus of the Plan is to locate TV

towers in areas that provide the best opportunities for screening, and to require TV stations to co-locate on towers to the extent technologically feasible. The Plan also calls for consolidation of uses onto as few towers as possible to prevent the visual clutter of multiple single user towers. There are several mountains in unincorporated Jefferson County that currently have TV towers on them. Some parts of these mountains are better than others for locating TV towers, and some mountains are better than others from a land use perspective in terms of proximity to residences, tourist attractions and other public uses, and in terms of visual prominence.

Many of the TV towers were erected on Lookout Mountain before the land was zoned for residential use. Those towers do not conform to the zoning, and have the status of being legal nonconforming uses. All legal nonconforming uses and structures in most jurisdictions, regardless of type, are subject to the general limitation that the use may not be expanded or enlarged. Because TV towers are different in nature from buildings or other structures, the Jefferson County Zoning Resolution contains language to define explicitly what would constitute an unlawful expansion of the use or structure. As with the Plan, representatives of the TV broadcast industry participated in drafting these regulations. Although they did not consent to the limitation on expansion, language was inserted in the regulation at their request in order to provide operational flexibility. Specifically, alterations are allowed as necessary to conform to safety regulations; existing antennas may be maintained or replaced with another antenna that provides the same type of service; and new antennas may be added to a tower if the tower and antenna together do not exceed 200 feet in height (because Lookout Mountain is already 2000 feet higher than the surrounding area, that height is sufficient for many purposes). These limitations on expanding existing nonconforming towers were adopted with the express purpose of requiring the TV tower owners to rezone the land in order to extend the useful life of the tower with DTV service. The reason for this was so that Jefferson County could consider the proposed location of the tower and determine whether efficient use of space was being made.

The NAB petition complains that the requirements to rezone for a TV tower are unduly onerous. This characterization is based on a misperception of the regulation. The application requires documentation on the design of the tower to demonstrate its structural integrity and capacity, and demonstration that the NIER level will comply with the standard in OST-65 and ANSI C95.1. Jefferson County requires the applicant to record a Letter of Intent concerning leasing excess space to other potential users. The regulation does not require the tower owner to lease to another party. It simply requires good faith negotiation and rental at a reasonable charge. At the request of the TV broadcast industry, the language in paragraph 1.d.(3) of the NAB Exhibit D was inserted that allows the owner to refuse to lease excess space if reasonable business terms cannot be agreed upon. Applicants for rezoning for new towers must also demonstrate that existing and approved towers cannot accommodate their equipment.

The requirements for rezoning require the applicant to demonstrate that no existing

telecommunications site is available to accommodate the equipment. Lack of structural capacity, interference concerns, and an inability to reach agreement on reasonable business terms are all grounds for finding that no other site is available. The regulation does not create a specific setback requirement. Instead it allows the applicant to demonstrate that the proposed setback is sufficient to prevent ice-fall and debris from tower failure from falling onto occupied buildings. The proposed tower also must be designed to accommodate multiple antennas if that is consistent with the Telecommunications Land Use Plan so that Lookout Mountain and Mt. Morrison are not further cluttered with single user towers.

The NAB petition characterizes these regulations a “complex” and offering “no guarantee of success.” This process is no more complex than the process to rezone for any other use. It is legally impossible to guarantee success on a rezoning application because the Board of County Commissioners is required to consider each case on its merits and make a determination based on the applicable criteria. If the applicant adheres to the recommendations of the Telecommunications Land Use Plan and complies with the application requirements by proposing a tower that makes efficient use of space and is located in an area close to other tower uses, the applicant should have a good chance of success. Federal preemption is not justified simply because local governments have independent concerns that are required to be addressed. TV broadcasters should be required to comply with local safety, visual and compatibility concerns.

THE PROPOSED RULE WOULD EFFECTIVELY PREEMPT ALL LOCAL REGULATION

The NAB petition repeatedly characterizes the proposed rule as “narrowly targeted” and asserts that it respects traditional areas of local land use interests. If local land use authority and building permit processes are properly understood, it is clear that the proposed rule would completely preempt local regulations.

The definition of a “reasonable period of time” to act on a request to place, construct or modify a broadcast transmission facility is not reasonable. The proposed rule would allow twenty-one (21) days to act on a request to modify an existing facility if no change in location or height is proposed. This period of time is not sufficient to review structural drawings if outside expertise is required. More importantly for Jefferson County’s purposes, this would be a de facto repeal of the provisions in the Zoning Resolution that prohibit additional antennas on nonconforming towers. For most jurisdictions, a request to relocate an existing facility or increase the height of an existing tower, and other cases covered by (a)(2) and (3) will require a change in zoning or an amended conditional use permit. The proposed rule requires action within thirty (30) days of the request. This period of time is far too short to allow for normal staff review, review by other affected public agencies, statutorily required public notice, and

other necessary review. In Colorado, rezoning cases must be heard by a Planning Commission and the Board of County Commissioners, and at least fourteen (14) days notice of the hearing is required. For very simple cases that do not require complex analyses or other technical review, it takes approximately four (4) months to process the case to a decision. It is unreasonable to expect review and decision on a request to rezone for telecommunications purposes in a shorter period of time. Moreover, most jurisdictions could not legally act that quickly without violating state law. Effectively, the federal government would be saying that building TV towers for DTV is such an important national goal that the government must strip all local review and eliminate the public notice and opportunity for input that is afforded to even the most benign land use applications.

Although Jefferson County opposes altogether any preemption rule, if such a rule is approved it should simply require local governments to process the request within the time frame and according to the procedures that would normally apply to a request of that nature. It is unworkable to impose federally mandated time limits on diverse local processes.

Local land use authority generally requires governmental entities to enact regulations to protect the health, safety, welfare and prosperity of their residents. Usually, local governments are required to adopt land use plans or master plans to provide long range plans for the layout and development of the area. The objectives of these plans include lessening congestion on roads, planning for orderly growth, protecting environmental amenities, ensuring compatibility among adjacent land uses, and protecting the tax base. Applicable statutory authority for counties in Colorado is attached hereto as **Appendix 2**. Three of the prime criteria for land use plans and decisions are compatibility with surrounding land uses, conformance to general community character, and aesthetic impact.

The NAB petition purports to propose a “careful and circumscribed” rule (page 28). It purports to be sensitive to concerns about the FCC becoming a national zoning board (page 30), and it purports not to eviscerate “traditional” land use regulations (page 30). In fact, the proposed rule preempts all regulation based on any factor other than health and safety, and even within these spheres it preempts regulation based on RF emissions. The preemption set forth in paragraph (b)(2) of the rule preempts any land use, building or similar law that impairs the ability of radio or television operators to construct or modify TV facilities UNLESS the regulation relates to health or safety objectives other than those preempted by paragraph (b)(1) of the rule. It is clear that this would preempt all regulation based on issues of compatibility, long range master plans and aesthetic impact. This would preempt the local zoning regulations, so that if a broadcaster determined that a residential neighborhood provided the optimum coverage or was the least expensive location, local government would be powerless to interfere. There is no way to describe the proposed rule other than as a complete preemption of local regulation.

THE ADR PROVISION VIOLATES THE RIGHT OF ACCESS TO THE COURTS

The requirement for Alternative Dispute Resolution is probably unconstitutional as interfering with the right of access to the courts. See Northern Pipeline Co. v. Marathon Pipe Line Co., 458 U.S. 50, 84 (1982). This provision requires a state or local government to submit to arbitration by an arbitrator selected by the FCC. This arbitrator would have the power to invalidate a local law or regulation that conformed to all local constitutional and statutory requirements. The rule does not provide for any access to the courts to hear such a dispute. It is completely objectionable to allow disputes over the operation and effect of local laws and regulations to be determined by anything other than an Article III court, particularly when the local government has no role in selecting the arbitrator. Recourse to the courts must be allowed.

The Alternative Dispute Resolution provision also contains unreasonable and unrealistic time requirements. It requires the arbitration to be completed within fifteen (15) days of receipt of the applicants' request for arbitration. This period of time does not allow enough time to prepare the record of testimony and evidence that was considered by the decision-making body and it allows no time at all to prepare and present arguments to the arbitrator. It suggests that the arbitrator will make a unilateral determination of whether the decision is supported by substantial evidence and comports with the rule without the benefit of argument from either side. This would violate the most fundamental due process requirements.

The standard set forth in paragraph (d) for an arbitrator to vacate a decision of a state or local government is inconsistent with the provision for preemption. The standard requires the Commission to vacate the local decision if it is "unsupported by the evidence in the record and would, if allowed to stand, frustrate the federal interests set forth ... in paragraph (b)(2)(ii)." This would allow any decision that frustrates construction of a TV tower to be preempted even if the decision was based on non-preempted health and safety concerns.

RESPONSES TO SPECIFIC AREAS UPON WHICH COMMENT WAS REQUESTED

The Notice of Proposed Rulemaking requested comment on several specific issues. The comments of Jefferson County, Colorado are as follows:

1. Should the preemption rule be limited to DTV construction and to radio station transmission facility relocation (§16)? This question assumes there should be a preemption rule, which Jefferson County opposes. If there is a preemption rule, the Commission should carefully craft it so that only proposed towers with a commitment to carry DTV antennae would benefit from preemption. The rule as proposed could allow speculative towers that are ostensibly designed for DTV equipment but who have no firm commitment from TV broadcasters to benefit. Preemption for radio stations should only be allowed if the station is proposed for the same tower

as is proposed for the DTV.

2. Does local zoning regulation stand as an obstacle to implementation of the DTV conversion (§16)? No. Please see above comments that address the absence of need for preemption. No evidence has been offered that TV broadcasters have been or will be unable to implement timely DTV. TV broadcasters should be required to take responsibility for planning such facilities with enough lead time to allow for local regulatory approvals. Developers of every other sort of facility are required to do that as well.
3. What should be the focus of the rule (§18)? If there is preemption, it should focus on areas in which there is an actual conflict, such as requirements to ameliorate interference. The rule as proposed purports to leave land use authority intact but in reality preempts it entirely.
4. What is the nature and scope of broadcast tower siting issues (§19)? The tower siting issues considered by Jefferson County include aesthetics, compatibility of land uses, proximity to residences and exposure to NIER, the availability of sites that serve multiple interests, promotion of co-location to minimize the number of towers, and adequate setbacks to contain ice-fall and debris from tower failure. The evidence of delays is anecdotal only. A rezoning request for a broadcast tower on Mt. Morrison in unincorporated Jefferson County is currently being considered by the Board of County Commissioners. The entire process will be completed in seven (7) months, which corresponds to the typical rezoning case. Jefferson County has reviewed zoning cases during the past nine years for three other facilities. One proposal, Channel 14, took many months because the proposal was revised numerous times, there were significant concerns about interference with public safety radio frequencies, and the extremely large size and location of the proposal created substantial detrimental impacts. In contrast, approval for the current Channel 2 facility was speedy.
5. Is the anecdotal evidence of difficulties representative of difficulties that will be faced in the context of DTV build-out, and will existing laws impede adherence to the accelerated DTV build-out schedule (§20)? It is not representative. In fact, the NAB petition did not cite to a specific case associated with Jefferson County's regulations. Jefferson County will soon be considering a proposal crafted by four of the TV stations in the market for a DTV tower. The proposal has been crafted to conform to Jefferson County regulations. Difficulty adhering to the accelerated DTV build-out schedule will be encountered only if TV broadcasters do not adequately plan for local procedures.
6. What should be the scope of preemption (§21)? This has been previously addressed. An accelerated schedule to convert to DTV was not intended to place federal interests above local zoning interests, and should not become a vehicle to allow TV stations to impose enormous tower structures on the landscape at the location most convenient for them. Preemption should

not single out certain jurisdictions based on the size of their television market. All local governments have the same interest in being able to implement their plans and regulations regardless of the size of the television market.

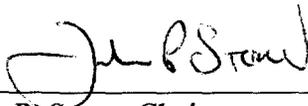
7. Should the Commission preempt state and local RF emissions standards, and should the Commission preempt aesthetic regulations (§22)? There has been no evidence that local RF regulations are interfering with tower or antenna siting. With the adoption of a federal standard, it will be easier for local governments to rely on the federal standard instead of trying to develop their own. Aesthetic regulations should not be preempted. Aesthetic issues include such issues as community character and compatibility. The federal government is not equipped to consider such issues. These are issues that local governments are uniquely suited to consider. They do not create an absolute obstacle to tower construction.

8. Comment on current procedures and what role should the Commission serve (§23)? The comments have already addressed the difficulty with the time frames imposed by the proposed rule. Any federally mandated time frame is unworkable because the time frame would have to be superimposed on an entirely independent local process. The federal government would have to specify nation-wide procedures for processing building permits and zoning cases in order to have uniform time frames. Local governments do not deliberately delay action on permits and land use cases. They act as expeditiously as possible given the complexity of the issues and the need for public comment. The zoning resolution and land use plans are intended to assure that important local issues are addressed. They are not intended to exclude broadcast towers. Jefferson County does not believe the Commission should play a role in local siting issues.

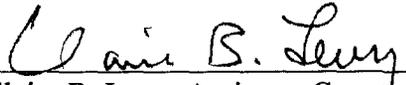
Respectfully submitted this 22 day of October, 1997 by:

THE BOARD OF COUNTY COMMISSIONERS
JEFFERSON COUNTY, COLORADO

JEFFERSON COUNTY ATTORNEY
FRANK P. HUTFLESS, COUNTY
ATTORNEY



John P. Stone, Chairman



Claire B. Levy, Assistant County Attorney
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APPENDIX 1

The Moran-Goodlatte amendment is the only one that specifically prohibits the F.C.C. from preempting local zoning authority.

The Moran-Goodlatte amendment addresses the concerns of the original Klug committee amendment, and specifically denies the F.C.C. the authority to override local zoning authority.

OUTLINE OF THE MORAN-GOODLATTE AMENDMENT.

PART A: Preempts the FCC from regulating the placement, construction, modification, or operation of facilities for the provision of commercial mobile services.

PART B: Leaves the regulation of radio-frequency emissions to the F.C.C.. A concession to the industry's concern that this issue will unreasonably stifle the industry's efforts to establish new antenna sites.

PART C: Comes directly from the original Klug amendment and provides that a state or locality does not perform its zoning functions arbitrarily and does not have the effect of precluding any mobile phone service from being established.

PART D: Gives mobile phone companies recourse in the federal courts if they are unsatisfied with the final decision of a local government on their application for a antenna site.

THE CORE DIFFERENCE BETWEEN THE MORAN-GOODLATTE AMENDMENT AND OTHER AMENDMENTS IS PRIMARILY THIS:

Moran-Goodlatte specifically prohibits the FCC from undertaking the rulemaking that could preempt local government from regulating the place, construction, modification, or operation of cellular towers.

Not only does the original Klug amendment in the bill give the F.C.C. this authorization, but the FCC is now a few weeks away from a proposed rulemaking on the placement of mobile antenna sites **WITHOUT LEGISLATIVE AUTHORITY!** That is why it very important for Congress to specifically deny the F.C.C. this authority and the Moran-Goodlatte amendment does just that.

Issues that concern the construction of antenna towers and communications facilities are properly within the jurisdiction of local zoning law. The Moran-Goodlatte amendment is endorsed by the National Association of Counties, National League of Cities, U.S. Conference of Mayors, and the American Planning Association and many local jurisdictions who have contacted out offices this week.

For more information call Paul Cullen with Rep. Moran (x54376) office or Ben Cline with Rep. Goodlatte (x55431).

MAY 16, 1995 1:05PM P 2
PHONE NO. : 2024676967

FROM : PCIR

Calendar No. 45

104th Congress }
1st Session }

SENATE

S. REP.
104-23

**TELECOMMUNICATIONS COMPETITION
AND DEREGULATION ACT OF 1995**

R E P O R T

OF THE

**COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION**

ON

S. 652



MARCH 30 (legislative day, MARCH 27), 1996.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1996

29-010

FROM : PCIA

Subsection (d) defines those carriers eligible to request infrastructure sharing under this section. Sharing is limited to qualifying carriers. A qualifying carrier is defined as a telecommunications carrier which lacks economies of scale and is a common carrier providing telephone exchange service or exchange access service, as well as any other service included within the definition of universal service to all consumers in the service area where the carrier has been designated as an essential telecommunications carrier under new section 214(d).

TITLE II—REMOVAL OF RESTRICTIONS TO COMPETITION

Subtitle A—Removal of Restrictions

Sec. 201. Removal of entry barriers

Section 201 is intended to remove barriers to competition in the provision of local telephone service. It adds a new section 254 entitled "Removal of Entry Barriers" to the 1934 Act.

Subsection (a) of new section 254 preempts any state and local statutes and regulations, or other state and local legal requirements, that may prohibit or have the effect of prohibiting any entity from providing interstate or intrastate telecommunications services.

Subsection (b) of section 254 preserves a State's authority to impose, on a competitively neutral basis and consistent with the universal service provisions of new section 253, 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. States may not exercise this authority in a way that has the effect of imposing entry barriers or other prohibitions preempted by new section 254(a).

Subsection (c) of new section 254 provides that nothing in new section 254 affects the authority of 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.

New section 254(d) requires the FCC, after notice and an opportunity for public comment, to preempt the enforcement of any state or local statutes, regulations or legal requirements that violate or are inconsistent with the prohibition on entry barriers contained in subsection (a) or the other provisions of section 254.

Subsection (e) of new section 254 simply clarifies that new section 254 does not affect the application of section 332(c)(3) of the 1934 Act to commercial mobile service providers.

Subsection 201(b) of the bill establishes the principles applicable to the provision of telecommunications by a cable operator. Paragraph (1) of this subsection adds a new paragraph 3(A) to section 621(b) of the 1934 Act, which sets forth the jurisdiction of and limitations on franchising authorities over cable operators engaged in the provision of telecommunications services. Specifically, a cable operator or affiliate engaged in the provision of telecommunications services is not required to obtain a franchise under Title VI of the 1934 Act, nor do the provisions of Title VI apply to a cable operator

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FROM : PCIA

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sign communication shall contribute on an equitable and non-discriminatory basis, in a manner that is reasonably necessary to preserve and advance universal service. Any other provider of telecommunications may be required to contribute to the preservation and advancement of universal service, if the public interest so requires.

(d) **ENFORCEMENT.**—In adopting rules to enforce subsection (c), the Commission and the States may impose or require service obligations, financial or other forms of contributions, sharing of equipment and services, discounted rates, or other mechanisms.

(e) **STATE AUTHORITY.**—A State may adopt regulations to implement this section, or to provide for additional definitions, mechanisms, and standards to preserve and advance universal service within that State, to the extent that such regulations do not conflict with the Commission's rules to implement this section.

(f) **ELIGIBILITY FOR UNIVERSAL SERVICE SUPPORT.**—If the Commission adopts rules for the distribution of support payments for the preservation and advancement of universal service, only telecommunications carriers which are designated as essential telecommunications carriers under section 214(d) shall be eligible to receive those support payments. The support payments shall accurately reflect the amount reasonably necessary to preserve and advance universal service.

(g) **AMOUNT OF UNIVERSAL SERVICE SUPPORT.**—The Commission and the States shall base the amount of support payments, if any, on the difference between the actual costs of providing universal service and the revenues from providing that service. The Commission and the States shall have as their goal the need to make any universal support explicit and targeted to those carriers that serve areas for which support is necessary. A carrier that receives any such support shall use that support only for the maintenance and upgrading of facilities and services for which the support is intended.

(h) **INTEREXCHANGE SERVICE.**—The rates charged by providers of interexchange telecommunications service to consumers in rural and high cost areas shall be maintained at levels no higher than those charged by each such provider to its consumers in urban areas.

(i) **SUBSIDY OF COMPETITIVE SERVICES PROHIBITED.**—Telecommunications carriers may not subsidize competitive services with revenues from services that are not competitive. The Commission, with respect to interstate services, and the States, with respect to intrastate services, shall establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in universal service bear no more than a reasonable share (and may, in the public interest, bear less than a reasonable share or no share) of the joint and common costs of facilities used to provide those services.

(j) **EFFECTIVE DATE.**—This section takes effect on the date of enactment of the Telecommunications Act of 1995, except for subsections (c), (e), (f), and (g), which take effect one year after the date of enactment of that Act.

★ **SEC. 254. REMOVAL OF BARRIERS TO ENTRY.**

(a) **IN GENERAL.**—No State or local statute or regulation, or other State or local legal requirements, may prohibit or have the effect of

prohibiting the ability of any entity to provide any interstate or intrastate telecommunications services.

(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 253, 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) LOCAL GOVERNMENT AUTHORITY.—Nothing in this section affects the authority of a local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and non-discriminatory basis, for use of public rights-of-way on a non-discriminatory 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 or is inconsistent with this section, the Commission shall immediately preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.

(e) COMMERCIAL MOBILE SERVICES PROVIDERS.—Nothing in this section shall affect the application of section 332(c)(3) to commercial mobile services providers.

(b) PROVISION OF TELECOMMUNICATIONS SERVICES BY A CABLE OPERATOR.—

(1) JURISDICTION OF FRANCHISING AUTHORITY.—Section 621(b) (47 U.S.C. 541(b)) is amended by adding at the end thereof the following new paragraph:

(3)(A) To the extent that 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; and

(ii) the provisions of this title shall not apply to such cable operator or affiliate.

(B) A franchising authority may not order a cable operator or affiliate thereof to discontinue the provision of a telecommunications service.

(C) A franchising authority may not require a cable operator to provide any telecommunications service or facilities as a condition of the initial grant of a franchise, franchise renewal, or transfer of a franchise.

(D) Nothing in this paragraph affects existing Federal or State authority with respect to telecommunications services.

SEC. 265. INTEREXCHANGE TELECOMMUNICATIONS SERVICES.

(a) IN GENERAL.—Notwithstanding any restriction or obligation imposed before the date of enactment of the Telecommunications Act of 1995 under section II(D) of the Modification of Final Judgment, a Bell operating company, or any subsidiary or affiliate of a Bell operating company, that meets the requirements of this section may provide—

(1) InterLATA telecommunications services originating in any region in which it is the dominant provider of wireline tele-

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[Congressional Record: January 31, 1996 (House)]
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CONFERENCE REPORT ON S. 652, TELECOMMUNICATIONS ACT OF 1996

Mr. BLILEY submitted the following conference report and statement on the Senate bill (S. 652) to provide for a pro-competitive, deregulatory 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:

Conference Report (H. Rept. 104-458)

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.

TITLE I--TELECOMMUNICATION SERVICES

Subtitle A--Telecommunications Services

Sec. 101. Establishment of part II of title II.

``Part II--Development of Competitive Markets

- ``Sec. 251. Interconnection.
- ``Sec. 252. Procedures for negotiation, arbitration, and approval of agreements.
- ``Sec. 253. Removal of barriers to entry.
- ``Sec. 254. Universal service.
- ``Sec. 255. Access by persons with disabilities.
- ``Sec. 256. Coordination for interconnectiv- ity.
- ``Sec. 257. Market entry barriers proceeding.



- ``Sec. 257. Market entry barriers proceeding.
- ``Sec. 258. Illegal changes in subscriber carrier selections.
- ``Sec. 259. Infrastructure sharing.
- ``Sec. 260. Provision of telemessaging service.
- ``Sec. 261. Effect on other requirements.''
- Sec. 102. Eligible telecommunications carriers.
- Sec. 103. Exempt telecommunications companies.
- Sec. 104. Nondiscrimination principle.

Subtitle B--Special Provisions Concerning Bell Operating Companies

- Sec. 151. Bell operating company provisions.

``Part III--Special Provisions Concerning Bell Operating Companies

- ``Sec. 271. Bell operating company entry into interLATA services.
- ``Sec. 272. Separate affiliate; safeguards.
- ``Sec. 273. Manufacturing by Bell operating companies.
- ``Sec. 274. Electronic publishing by Bell operating companies.
- ``Sec. 275. Alarm monitoring services.
- ``Sec. 276. Provision of payphone service.''

TITLE II--BROADCAST SERVICES

- Sec. 201. Broadcast spectrum flexibility.
- ``Sec. 336. Broadcast spectrum flexibility.''
- Sec. 202. Broadcast ownership.
- Sec. 203. Term of licenses.
- Sec. 204. Broadcast license renewal procedures.
- Sec. 205. Direct broadcast satellite service.
- Sec. 206. Automated ship distress and safety systems.
- ``Sec. 365. Automated ship distress and safety systems.''
- Sec. 207. Restrictions on over-the-air reception devices.

TITLE III--CABLE SERVICES

- Sec. 301. Cable Act reform.
- Sec. 302. Cable service provided by telephone companies.

``Part V--Video Programming Services Provided by Telephone Companies

- ``Sec. 651. Regulatory treatment of video programming services.
- ``Sec. 652. Prohibition on buy outs.

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- ``Sec. 653. Establishment of open video systems.''
- Sec. 303. Preemption of franchising authority regulation of telecommunications services.
- Sec. 304. Competitive availability of navigation devices.
- ``Sec. 629. Competitive availability of navigation devices.''
- Sec. 305. Video programming accessibility.
- ``Sec. 713. Video programming accessibility.''

TITLE IV--REGULATORY REFORM

- Sec. 401. Regulatory forbearance.
- ``Sec. 10. Competition in provision of telecommunications service.''
- Sec. 402. Biennial review of regulations; regulatory relief.
- ``Sec. 11. Regulatory reform.''
- Sec. 403. Elimination of unnecessary Commission regulations and functions.

TITLE V--OBSCENITY AND VIOLENCE

Subtitle A--Obscene, Harassing, and Wrongful Utilization of Telecommunications Facilities

- Sec. 501. Short title.
- Sec. 502. Obscene or harassing use of telecommunications facilities

Sec. 502. Obscene or harassing use of telecommunications facilities under the Communications Act of 1934.

Sec. 503. Obscene programming on cable television.

Sec. 504. Scrambling of cable channels for nonsubscribers.

``Sec. 640. Scrambling of cable channels for nonsubscribers.''

Sec. 505. Scrambling of sexually explicit adult video service programming.

``Sec. 641. Scrambling of sexually explicit adult video service programming.''

Sec. 506. Cable operator refusal to carry certain programs.

Sec. 507. Clarification of current laws regarding communication of obscene materials through the use of computers.

Sec. 508. Coercion and enticement of minors.

Sec. 509. Online family empowerment.

``Sec. 230. Protection for private blocking and screening of offensive material.''

Subtitle B--Violence

Sec. 551. Parental choice in television programming.

Sec. 552. Technology fund.

Subtitle C--Judicial Review

Sec. 561. Expedited review.

TITLE VI--EFFECT ON OTHER LAWS

Sec. 601. Applicability of consent decrees and other law.

Sec. 602. Preemption of local taxation with respect to direct-to-home services.

TITLE VII--MISCELLANEOUS PROVISIONS

Sec. 701. Prevention of unfair billing practices for information or services provided over toll-free telephone calls.

Sec. 702. Privacy of customer information.

``Sec. 222. Privacy of customer information.''

Sec. 703. Pole attachments.

Sec. 704. Facilities siting; radio frequency emission standards.

Sec. 705. Mobile services direct access to long distance carriers.

Sec. 706. Advanced telecommunications incentives.

Sec. 707. Telecommunications Development Fund.

``Sec. 714. Telecommunications Development Fund.''

Sec. 708. National Education Technology Funding Corporation.

Sec. 709. Report on the use of advanced telecommunications services for medical purposes.

Sec. 710. Authorization of appropriations.

SEC. 3. DEFINITIONS.

(a) Additional Definitions.--Section 3 (47 U.S.C. 153) is amended--

(1) in subsection (r)--

(A) by inserting ``(A)' ' after ``means''; and

(B) by inserting before the period at the end the following: ``, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service''; and

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

``(33) Affiliate.--The term `affiliate' means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term `own' means to own an equity interest (or the equivalent thereof) of more than 10 percent.

``(34) AT&T consent decree.--The term `AT&T Consent Decree' means the order entered August 24, 1982, in the antitrust action styled United States v. Western Electric, Civil Action

attachment rate prescribed by the Commission pursuant to the fully allocated cost formula.

Finally, the new provision requires that whenever the owner of a conduit or right-of-way intends to modify or to alter such conduit or right-of-way, the owner shall provide written notification of such action to any entity that has obtained an attachment so that such entity may have a reasonable opportunity to add to or modify its existing attachment. Any entity that adds to or modifies its existing attachment after receiving such notification shall bear a proportionate share of the costs incurred by the owner in making such conduit or right-of-way accessible.

Conference agreement

The conference agreement adopts the Senate provision with modifications. The conference agreement section 224 of the Communications Act by adding new subsection (e) (1) to allow parties to negotiate the rates, terms, and conditions for attaching to poles, ducts, conduits, and rights-of-way owned or controlled by utilities. New subsection 224(e) (2) establishes a new rate formula charged to telecommunications carriers for the non-useable space of each pole. Such rate shall be based upon the number of attaching entities. The conferees also agree to three additional provisions from the House amendment. First, subsection (g) requires utilities that engage in the provision of telecommunications services or cable services to impute to its costs of providing such service an equal amount to the pole attachment rate for which such company would be liable under section 224. Second, new subsection 224(h) requires utilities to provide written notification to attaching entities of any plans to modify or alter its poles, ducts, conduit, or rights-of-way. New subsection 224(h) also requires any attaching entity that takes advantage of such opportunity to modify its own attachments shall bear a proportionate share of the costs of such alterations. Third, new subsection 224(i) prevents a utility from imposing the cost of rearrangements to other attaching entities if done solely for the benefit of the utility.

section 704--facilities siting; radio frequency emission standards

Senate bill

No provision.

House amendment

Section 108 of the House amendment required the Commission to issue regulations within 180 days of enactment for siting of CMS. A negotiated rulemaking committee comprised of State and local governments, public safety agencies and the affected industries were to have attempted to develop a uniform policy to propose to the Commission for the siting of wireless tower sites.

The House amendment also required the Commission to complete its pending Radio Frequency (RF) emission exposure standards within 180 days of enactment. The siting of facilities could not be denied on the basis of RF emission levels for facilities that were in compliance with the Commission standard.

The House amendment also required that to the greatest extent possible the Federal government make available to use of Federal property, rights-of-way, easements and any other physical instruments in the siting of wireless telecommunications facilities.

Conference agreement

The conference agreement creates a new section 704 which prevents Commission preemption of local and State land use decisions and preserves the authority of State and local governments over zoning and land use matters except in the limited circumstances set forth in the conference agreement.

The conference agreement also provides a mechanism for judicial relief from zoning decisions that fail to comply with the provisions of this section. It is the intent of the conferees that other than under section 332(c)(7)(B)(iv) of the Communications Act of 1934 as amended by this Act and section 704 of the Telecommunications Act of 1996 the courts shall have exclusive jurisdiction over all other disputes arising under this section. Any pending Commission rulemaking concerning the preemption of local zoning authority over the placement, construction or modification of CMS facilities should be terminated.

When utilizing the term "functionally equivalent services" the conferees are referring only to personal wireless services as defined in this section that directly compete against one another. The intent of the conferees is to ensure that a State or local government does not in making a decision regarding the placement, construction and modification of facilities of personal wireless services described in this section unreasonably favor one competitor over another. The conferees also intend that the phrase "unreasonably discriminate among providers of functionally equivalent services" will provide localities with the flexibility to treat facilities that create different visual, aesthetic, or safety concerns differently to the extent permitted under generally applicable zoning requirements even if those facilities provide functionally equivalent services. For example, the conferees do not intend that if a State or local government grants a permit in a commercial district, it must also grant a permit for a competitor's 50-foot tower in a residential district.

Actions taken by State or local governments shall not prohibit or have the effect of prohibiting the placement, construction or modification of personal wireless services. It is the intent of this section that bans or policies that have the effect of banning personal wireless services or facilities not be allowed and that decisions be made on a case-by-case basis.

Under subsection (c)(7)(B)(ii), decisions are to be rendered in a reasonable period of time, taking into account the nature and scope of each request. If a request for placement of a personal wireless service facility involves a zoning variance or a public hearing or comment process, the time period for rendering a decision will be the usual period under such circumstances. It is not the intent of this provision to give preferential treatment to the personal wireless service industry in the processing of requests, or to subject their requests to any but the generally applicable time frames for zoning decision.

The phrase "substantial evidence contained in a written record" is the traditional standard used for judicial review of agency actions.

The conferees intend section 332(c)(7)(B)(iv) to prevent a State or local government or its instrumentalities from basing the regulation of the placement, construction or modification of CMS facilities directly or indirectly on the environmental effects of radio frequency emissions if those facilities comply with the Commission's regulations adopted pursuant to section 704(b) concerning such emissions.

The limitations on the role and powers of the Commission under this subparagraph relate to local land use regulations and are not intended to limit or affect the Commission's general authority over radio telecommunications, including the authority to regulate the construction, modification and operation of radio facilities.

The conferees intend that the court to which a party appeals a decision under section 332(c)(7)(B)(v) may be the Federal district court in which the facilities are located or a State court of competent jurisdiction, at the option of the party making the appeal, and that the courts act

expeditiously in deciding such cases. The term ``final action'' of that new subparagraph means final administrative action at the State or local government level so that a party can commence action under the subparagraph rather than waiting for the exhaustion of any independent State court remedy otherwise required.

With respect to the availability of Federal property for the use of wireless telecommunications infrastructure sites under section 704(c), the conferees generally adopt the House provisions, but substitute the President or his designee for the Commission.

It should be noted that the provisions relating to telecommunications facilities are not limited to commercial mobile radio licensees, but also will include other Commission licensed wireless common carriers such as point to point microwave in the extremely high frequency portion of the electromagnetic spectrum which rely on line of sight for transmitting communication services.

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section 705--mobile service direct access to long distance carriers

Senate bill

Subsection (b) of section 221 of the Senate bill, as passed, states that notwithstanding the MFJ or any other consent decree, no CMS provider will be required by court order or otherwise to provide long distance equal access. The Commission may only order equal access if a CMS provider is subject to the interconnection obligations of section 251 and if the Commission finds that such a requirement is in the public interest. CMS providers shall ensure that its subscribers can obtain unblocked access to the interexchange carrier of their choice through the use of interexchange carrier identification codes, except that the unblocking requirement shall not apply to mobile satellite services unless the Commission finds it is in the public interest.

House amendment

Under section 109 of the House amendment, the Commission shall require providers of two-way switched voice CMS to allow their subscribers to access the telephone toll services provider of their choice through the use of carrier identification codes. The Commission rules will supersede the equal access, balloting and prescription requirements imposed by the MFJ and the AT&T-McCaw consent decree. The Commission may exempt carriers or classes of carriers from the requirements of this section if it is consistent with the public interest, convenience, and necessity, and the provision of mobile services by satellite is specifically exempt from this section.

Conference agreement

The conference agreement adopts the House provision with modifications as a new paragraph (8) of section 332 of the Communications Act. Specifically, no CMS provider is required to provide equal access to common carriers providing telephone toll services. However, the Commission may impose rules to require unblocked access through the use of mechanisms such as carrier identification codes or toll-free numbers, if it determines that customers are being denied access to the telephone toll service provider of their choice, and such denial is contrary to the public interest, convenience, and necessity. The requirements for unblocked access to providers of telephone toll service shall not apply to mobile satellite services unless the Commission finds it to be in the public interest.

over-the-air broadcasting, they have to pay for it like everybody else. That is what the bill currently says.

One final point: The issue of a broadcast spectrum is tied up with something called the public interest standard. It has to do with the trade we made a long time ago to licensed broadcasters who operate under a public interest standard, a relicensing by the FCC, and a review of that licensing over time.

If my colleagues want to change that policy, and some do, they ought not make it in a budget meeting; they ought to make it in the committee of jurisdiction where we examine what happens on television and what broadcasters do with the license they get to operate in the public interest standard. I urge my colleagues to pass this bill and let us debate that issue in the committee of jurisdiction where it belongs.

Mr. MARKEY. Mr. Speaker, I yield 1 minute to the gentleman from New York [Mr. TOWNS].

Mr. TOWNS. Mr. Speaker, I would like to thank the gentleman from Virginia [Mr. BLILEY], chairman, and the gentleman from Michigan [Mr. DINGELL], ranking member, and of course the gentleman from Texas [Mr. FIELDS], the chairman of the subcommittee, and the gentleman from Massachusetts [Mr. MARKEY], the ranking member of the subcommittee.

I am pleased that this conference report contains a new initiative to assist in the development of capital funds for small businesses. This telecommunications development fund will provide low-interest loans to small businesses with \$50 million or less through upfront spectrum auction payments. I would like to thank the leadership of the committee for bringing this momentous legislation forward and for supporting my efforts to assist small businesses.

Mr. CONYERS. Mr. Speaker, I yield 30 seconds to the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK of Massachusetts. Mr. Speaker, the argument we hear against auctioning off the spectrum to the broadcasters, as we have just heard from my friend from Louisiana, after all, they operate with public interest obligations. I have been here with him 15 years, and that is the nicest I have ever heard him talk about public interest obligations.

The broadcasters successfully work to reduce those public interest obligations to mean virtually nothing. The only time they raise them is when they can use them as an excuse to get the superhighway, as the gentleman from North Carolina said, for free. I do not think that my friend from Louisiana believes that that public interest standard will ever be amounting to much. It is simply a flag they wave so they can get this for free.

Mr. BLILEY. Mr. Speaker, how much time do I have remaining?

The SPEAKER pro tempore (Mr. HAYWORTH). The gentleman from Vir-

ginia [Mr. BLILEY] has 6 minutes remaining, and the gentleman from Massachusetts [Mr. MARKEY] has 6 minutes remaining.

Mr. BLILEY. Mr. Speaker, I yield 1 minute to the gentleman from Virginia [Mr. GOODLATTE].

(Mr. GOODLATTE asked and was given permission to revise and extend his remarks.)

Mr. GOODLATTE. Mr. Speaker, I rise in strong support of this very, very important bill that is going to provide deregulation in an industry that is badly needed. We are going to finally bring the telecommunication policy of this country into the last half of the 20th century before we enter the 21st century.

Mr. Speaker, this bill is going to create millions of jobs, estimated over 3 million jobs due to the new competition and the new technologies that are going to be made available.

I would also like to thank the gentleman from Illinois [Mr. HYDE], the chairman, and the gentleman from Virginia [Mr. BLILEY], the chairman of the conference, for making it possible for me to play a key role in working out an agreement that protects the rights of local governments to see that their regulations are carried forward in making sure that, when new cell towers are located, they have the ability to determine in each locality where they are placed while fairly making sure that those locations do not interfere with interstate commerce and with the opportunity to advance this new technology.

I strongly support this legislation and urge my colleagues to vote for the conference report.

Mr. BLILEY. Mr. Speaker, I yield 1 minute to the gentleman from Washington [Mr. WHITE], a member of the committee.

(Mr. WHITE asked and was given permission to revise and extend his remarks.)

Mr. WHITE. Mr. Speaker, I thank the gentleman from Virginia [Mr. BLILEY] and the gentleman from Texas [Mr. FIELDS] for giving me the opportunity to be part of this bill.

This is a good bill. It is an important bill. I would like to point out what sometimes gets lost when we talk about all the details. The main accomplishment of this bill is that it takes us from our current situation of regulated monopolies in many, many industries and takes us to an era of competition. That is the huge accomplishment of this bill. It is a very important accomplishment, and I think it is something we can all be proud of.

There are several other issues this bill deals with. Like many good bills, this is not a perfect bill. I think we have a ways to go making sure that the Internet is protected under this bill. I think we ended up with the wrong standard for indecency. I think we have to make sure that the FCC does not have a role in regulating the Internet. I think that the gentleman from Texas

[Mr. FIELDS] has 6 minutes remaining, and the gentleman from Massachusetts [Mr. MARKEY] has 6 minutes remaining. But on balance, I think this is important, and I ask the gentleman from Texas if he has seen the bill and agrees with it.

Mr. FIELDS of Texas. Mr. Speaker, the gentleman will yield; I have viewed that. He is accurate and I am supportive.

Mr. WHITE. Mr. Speaker, reclaiming my time, I appreciate that. I thank the gentleman from Virginia [Mr. BLILEY] and the gentleman from Texas [Mr. FIELDS] for letting me be part of this bill. It is a great bill, and I hope we adopt it.

Mr. BLILEY. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, in reviewing section 602 of the bill, as modified by the conference agreement, which deals with the preemption of local taxation for direct-to-home services, I wonder whether this provision should also include any present or future wireless service providers who transmit video programs to subscribers without using traditional wire-based distribution equipment as the new local multipoint distribution services, of LMDS.

I yield to the gentleman from Illinois [Mr. HYDE], chairman of the Committee on Commerce.

Mr. Speaker, it sounds like we are in the same factual situation. I would like the gentleman that we are talking to hold hearings in the Committee on the Judiciary of that committee later this Congress.

Mr. BLILEY. Mr. Speaker, I reclaim the balance of my time.

Mr. MARKEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this is a historic day. The legislation which we are considering has been constructed over a 4-year period. Much deliberation has been given to this legislation. Many issues so complex that they could not be resolved in brief periods of time had to be deliberated after much expert opinion over month-long periods.

The product that we have out here of the floor is not perfect, but it is the blueprint for the information superhighway of the 21st century. Its most important component is that it uses competition as its core, as its soul.

Everything in this bill is not perfect. The bill, in fact, guarantees that no company in any industry will any longer be able to rest comfortably knowing that they have a monopoly and that telecommunications or computer or long distance or software or whatever high technology industry that they seek to make their fortune in.

In addition, we ensure diversity. We ensure that consumers are going to have choices. There will be two wires at a minimum to almost every single home in the country, each wire able to perform every single one of the services. If you throw in the electric companies, which also have the capability to do so, we are going to have a revolution which the smallest companies, the