HEINONLINE

Citation: 4 Bernard D. Reams Jr. & William H. Manz Federal Law A Legislative History of the Telecommunications of 1996 Pub. L. No. 104-104 110 Stat. 56 1996 the Communications Decency Act 1 1997

Content downloaded/printed from HeinOnline (http://heinonline.org) Wed Mar 20 17:28:17 2013

-- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at http://heinonline.org/HOL/License

-- The search text of this PDF is generated from uncorrected OCR text.

Calendar No. 45

104TH CONGRESS
1ST SESSION

S. 652

[Report No. 104–23]

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.

IN THE SENATE OF THE UNITED STATES

MARCH 30 (legislative day, MARCH 27), 1995

Mr. PRESSLER, from the Committee on Commerce, Science, and Transportation, reported the following original bill; which was read twice and placed on the calendar

---

A BILL

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.

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

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 1 1997

BEST COPY AVAILABLE

SECTION 1. SHORT TITLE.

This Act may be cited as the "Telecommunications Competition and Deregulation Act of 1995".

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

	Page
Sec. 1. Short title	2
Sec. 2. Table of contents	2
Sec. 3. Purpose	3
Sec. 4. Goals	3
Sec. 5. Findings	4
Sec. 6. Amendment of Communications Act of 1934	8
Sec. 7. Effect on other laws	8
Sec. 8. Definitions	9
TITLE I—TRANSITION TO COMPETITION	
Sec. 101. Interconnection requirements	14
Sec. 102. Separate subsidiary and safeguard requirements	28
Sec. 103. Universal service	36
Sec. 104. Essential telecommunications carriers	43
Sec. 105. Foreign investment and ownership reform	48
Sec. 106. Infrastructure sharing	50
TITLE II—REMOVAL OF RESTRICTIONS TO COMPETITION	
Subtitle A—Removal of Restrictions	
Sec. 201. Removal of entry barriers	54
Sec. 202. Limitation on State and local taxation of direct-to-home satellite services	57
Sec. 203. Elimination of cable and telephone company cross-ownership restriction	63
Sec. 204. Cable Act reform	69
Sec. 205. Pole attachments	71
Sec. 206. Entry by utility companies	73
Sec. 207. Broadcast reform	76
Subtitle B—Termination of Modification of Final Judgment	
Sec. 221. Removal of long distance restrictions	82
Sec. 222. Removal of manufacturing restrictions	99
Sec. 223. Existing activities	105
Sec. 224. Enforcement	106
Sec. 225. Alarm monitoring services	108
TITLE III—AN END TO REGULATION	
Sec. 301. Transition to competitive pricing	113
Sec. 302. Biennial review of regulations	117
Sec. 303. Regulatory forbearance	118
Sec. 304. Advanced telecommunications incentives	120

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 2 1997

Page

Sec. 305. Regulatory parity 122
Sec. 306. Automated ship distress and safety systems 123
Sec. 307. Telecommunications numbering administration 123
Sec. 308. Access by persons with disabilities 124
Sec. 309. Rural markets 129
Sec. 310. Telecommunications services for health care providers for rural areas, educational providers, and libraries 131
Sec. 311. Provision of payphone service and telemessaging service 135

TITLE IV—OBSCENE, HARASSING, AND WRONGFUL UTILIZATION OF TELECOMMUNICATIONS FACILITIES

Sec. 401. Short title 137
Sec. 402. Obscene or harassing use of telecommunications facilities under the Communications Act of 1934 137
Sec. 403. Obscene programming on cable television 143
Sec. 404. Broadcasting obscene language on radio 143
Sec. 405. Interception and disclosure of electronic communications 144
Sec. 406. Additional prohibition on billing for toll-free telephone calls 144
Sec. 407. Scrambling of cable channels for nonsubscribers 145
Sec. 408. Cable operator refusal to carry certain programs 146

SEC. 3. PURPOSE.

It is the purpose of this Act to increase competition in all telecommunications markets and provide for an orderly transition from regulated markets to competitive and deregulated telecommunications markets consistent with the public interest, convenience, and necessity.

SEC. 4. GOALS.

This Act is intended to establish a national policy framework designed to accelerate rapidly the private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition, and to meet the following goals:

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 3 1997

(1) To promote and encourage advanced telecommunications networks, capable of enabling users to originate and receive affordable, high-quality voice, data, image, graphic, and video telecommunications services.

(2) To improve international competitiveness markedly.

(3) To spur economic growth, create jobs, and increase productivity.

(4) To deliver a better quality of life through the preservation and advancement of universal service to allow the more efficient delivery of educational, health care, and other social services.

SEC. 5. FINDINGS.

The Congress makes the following findings:

(1) Competition, not regulation, is the best way to spur innovation and the development of new services. A competitive market place is the most efficient way to lower prices and increase value for consumers. In furthering the principle of open and full competition in all telecommunications markets, however, it must be recognized that some markets are more open than others.

(2) Local telephone service is predominantly a monopoly service. Although business customers in

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 4 1997

metropolitan areas may have alternative providers for exchange access service, consumers do not have a choice of local telephone service. Some States have begun to open local telephone markets to competition. A national policy framework is needed to accelerate the process.

(3) Because of their monopoly status, local telephone companies and the Bell operating companies have been prevented from competing in certain markets. It is time to eliminate these restrictions. Nonetheless, transition rules designed to open monopoly markets to competition must be in place before certain restrictions are lifted.

(4) Transition rules must be truly transitional, not protectionism for certain industry segments or artificial impediments to increased competition in all markets. Where possible, transition rules should create investment incentives through increased competition. Regulatory safeguards should be adopted only where competitive conditions would not prevent anticompetitive behavior.

(5) More competitive American telecommunications markets will promote United States technological advances, domestic job and investment opportunities, national competitiveness, sustained eco-

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 5 1997

BEST COPY AVAILABLE

nomic development, and improved quality of American life more effectively than regulation.

(6) Congress should establish clear statutory guidelines, standards, and time frames to facilitate more effective communications competition and, by so doing, will reduce business and customer uncertainty, lessen regulatory processes, court appeals, and litigation, and thus encourage the business community to focus more on competing in the domestic and international communications marketplace.

(7) Where competitive markets are demonstrably inadequate to safeguard important public policy goals, such as the continued universal availability of telecommunications services at reasonable and affordable prices, particularly in rural America, Congress should establish workable regulatory procedures to advance those goals, provided that in any proceeding undertaken to ensure universal availability, regulators shall seek to choose the most procompetitive and least burdensome alternative.

(8) Competitive communications markets, safeguarded by effective Federal and State antitrust enforcement, and [illegible] economic growth in the United States which such markets will foster are the most effective means of assuring that all segments

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 6 1997

of the American public command access to advanced telecommunications technologies.

(9) Achieving full and fair competition requires strict parity of marketplace opportunities and responsibilities on the part of incumbent telecommunications service providers as well as new entrants into the telecommunications marketplace, provided that any responsibilities placed on providers should be the minimum required to advance a clearly defined public policy goal.

(10) Congress should not cede its constitutional responsibility regarding interstate and foreign commerce in communications to the Judiciary through the establishment of procedures which will encourage or necessitate judicial interpretation or intervention into the communications marketplace.

(11) Ensuring that all Americans, regardless of where they may work, live, or visit, ultimately have comparable access to the full benefits of competitive communications markets requires Federal and State authorities to work together affirmatively to minimize and remove unnecessary institutional and regulatory barriers to new entry and competition.

(12) Effectively competitive communications markets will ensure customers the widest possible

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 7 1997

choice of services and equipment, tailored to individual desires and needs, and at prices they are willing to pay.

(13) Investment in and deployment of existing and future advanced, multipurpose technologies will best be fostered by minimizing government limitations on the commercial use of those technologies.

(14) The efficient development of competitive United States communications markets will be furthered by policies which aim at ensuring reciprocal opening of international investment opportunities.

SEC. 6. AMENDMENT OF COMMUNICATIONS ACT OF 1934.

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. 7. EFFECT ON OTHER LAW.

(a) ANTITRUST LAWS.—Except as provided in subsections (b) and (c), nothing in this Act shall be construed to modify, impair, or supersede the applicability of any antitrust law.

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 8 1997

(b) MODIFICATION OF FINAL JUDGMENT.—This Act shall supersede the Modification of Final Judgment to the extent that it is inconsistent with this Act.

(c) TRANSFER OF MFJ AND GTE CONSENT DECREES.—After the date of enactment of this Act, the Commission shall administer the GTE Consent Decree and any provision of the Modification of Final Judgment not overridden or superseded by this Act. The District Court for the District of Columbia shall have no further jurisdiction over any provision of the Modification of Final Judgment, or the GTE Consent Decree, administered by the Commission under this Act.

SEC. 8. DEFINITIONS.

(a) TERMS USED IN THIS ACT.—As used in this Act—

(1) COMMISSION.—The term 'Commission' means the Federal Communications Commission.

(2) MODIFICATION OF FINAL JUDGMENT.—The term 'Modification of Final Judgment' means the decree entered on August 24, 1982, in United States v. Western Electric Civil Action No. 82-0192 (United States District Court, District of Columbia), and includes any judgment or order with respect to such action entered on or after August 24, 1982, and before the date of enactment of this Act.

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 9 1997

(3) GTE CONSENT DECREE.—The term "GTE Consent Decree" means the order entered on December 21, 1984, as restated January 11, 1985, in United States v. GTE Corporation, Civil Action No. 83-1298 (United States District Court, District of Columbia), and includes any judgment or order with respect to such action entered on or after January 11, 1985, and before the date of enactment of this Act.

(4) INTEGRATED TELECOMMUNICATIONS SERVICE PROVIDER.—The term "integrated telecommunications service provider" means any person engaged in the provision of multiple services, such as voice, data, image, graphics, and video services, which make common use of all or part of the same transmission facilities, switches, signalling, or control devices.

(b) TERMS USED IN THE COMMUNICATIONS ACT OF 1934.—Section 3 (47 U.S.C. 153) is amended by adding at the end thereof the following:

"(gg) 'Modification of Final Judgment' means the decree entered on August 24, 1982, in United States v. Western Electric Civil Action No. 82-0192 (United States District Court, District of Columbia), and includes any judgment or order with respect to such action entered on

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 10 1997

or after August 24, 1982, and before the date of enactment of the Telecommunications Competition and Deregulation Act of 1995.

"(hh) 'Bell operating company' means those companies listed in appendix A of the Modification of Final Judgment, and includes any successor or assign of any such company, but does not include any affiliate of such company.

"(ii) '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.

"(jj) 'Telecommunications Act of 1995' means the Telecommunications Competition and Deregulation Act of 1995.

"(kk) 'Local exchange carrier' means a provider of telephone exchange service or exchange access service.

"(ll) 'Telecommunications' means the transmission, between or among points specified by the user, of information of the user's choosing, including voice, data, image, graphics, and video, without change in the form or content of the information, as sent and received, with or without benefit of any closed transmission medium.

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 11 1997

"(mm) 'Telecommunications service' means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available to the public, regardless of the facilities used to transmit the telecommunications service. The term includes the transmission, without change in the form or content, of information services and cable services, but does not include the offering of those services.

"(nn) 'Telecommunications carrier' means any provider of telecommunications services, except that such term does not include hotels, motels, hospitals, and other aggregators of telecommunications services (as defined in section 226). A telecommunications carrier shall be treated as a common carrier under this Act to the extent that it is engaged in providing telecommunications services.

"(oo) 'Telecommunications number portability' means the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.

"(pp) 'Information service' means the offering of services that—

"(1) employ computer processing applications that act on the format, content, code, protocol, or

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 12 1997

similar aspects of the subscriber's transmitted information;

"(2) provide the subscriber additional, different, or restructured information; or

"(3) involve subscriber interaction with stored information.

"(qq) 'Cable service' means cable service as defined in section 602.

"(rr) 'Rural telephone company' means a telecommunications carrier operating entity to the extent that such entity provides telephone exchange service, including access service subject to part 69 of the Commission's rules (47 C.F.R. 69.1 et seq.), to—

"(1) any service area that does not include either—

"(A) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recent population statistics of the Bureau of the Census; or

"(B) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of January 1, 1995; or

"(2) fewer than 100,000 access lines within a State.

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 13 1997

"(ss) 'Service area' means a geographic area established by the Commission and the States for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, 'service area' means such company's 'study area' unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.".

TITLE I—TRANSITION TO COMPETITION

SEC. 101. INTERCONNECTION REQUIREMENTS.

(a) REQUIRED INTERCONNECTION.—Title II (47 U.S.C. 201 et seq.) is amended by inserting after section 228 the following:

"Part II—Competition in Telecommunications

"SEC. 251. INTERCONNECTION.

"(a) DUTY TO PROVIDE INTERCONNECTION.—

"(1) IN GENERAL.—A local exchange carrier, or class of local exchange carriers, determined by the Commission to have market power in providing telephone exchange service or exchange access service has a duty under this Act, upon request—

"(A) to enter into good faith negotiations with any telecommunications carrier requesting

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 14 1997

interconnection between the facilities and equipment of the requesting telecommunications carrier and the carrier, or class of carriers, of which the request was made for the purpose of permitting the telecommunications carrier to provide telephone exchange or exchange access service; and

"(B) to provide such interconnection, at rates that are reasonable and nondiscriminatory, according to the terms of the agreement and in accordance with the requirements of this section.

"(2) INITIATION.—A local exchange carrier, or class of carriers, described in paragraph (1) shall commence good faith negotiations to conclude an agreement, whether through negotiation under subsection (c) or arbitration or intervention under subsection (d), within 15 days after receiving a request from any telecommunications carrier seeking to provide telephone exchange or exchange access service. Nothing in this Act shall prohibit multilateral negotiations between or among a local exchange carrier or class of carriers and a telecommunications carrier or class of carriers seeking interconnection under subsection (c) or subsection (d). At the request of

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 15 1997

any of the parties to a negotiation, a State may participate in the negotiation of any portion of an agreement under subsection (c).

"(3) MARKET POWER.—For the purpose of determining whether a carrier has market power under paragraph (1), the relevant market shall include all providers of telephone exchange or exchange access services in a local area, regardless of the technology used by any such provider.

"(b) MINIMUM STANDARDS.—An interconnection agreement entered into under this section shall, if requested by a telecommunications carrier requesting interconnection, provide for—

"(1) nondiscriminatory access on an unbundled basis to the network functions and services of the local exchange carrier's telecommunications network (including switching software);

"(2) nondiscriminatory access on an unbundled basis to any of the local exchange carrier's telecommunications facilities and information, including databases and signaling, necessary to the transmission and routing of any telephone exchange service or exchange access service and the interoperability of both carriers' networks;

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 16 1997

"(3) interconnection to the local exchange carrier's telecommunications facilities and services at any technically feasible point within the carrier's network;

"(4) interconnection that is at least equal in type, quality, and price (on a per unit basis or otherwise) to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection;

"(5) nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the local exchange carrier;

"(6) the local exchange carrier to take whatever action under its control is necessary, as soon as is technically feasible, to provide telecommunications number portability and local dialing parity in a manner that—

"(A) permits consumers to be able to dial the same number of digits when using any telecommunications carrier providing telephone exchange service or exchange access service in the market served by the local exchange carrier;

"(B) permits all such carriers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and direc-

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 17 1997

tory listing with no unreasonable dialing delays; and

"(C) provides for a reasonable allocation of costs among the parties to the agreement;

"(7) telecommunications services and network functions of the local exchange carrier to be available to the telecommunications carrier on an unbundled basis without any unreasonable conditions on the resale or sharing of those services or functions, including the origination, transport, and termination of such telecommunications services, other than reasonable conditions required by a State; and for purposes of this paragraph, it is not an unreasonable condition for a State to limit the resale—

"(A) of services included in the definition of universal service to a telecommunications carrier who resells that service to a category of customers different from the category of customers being offered that universal service by such carrier if the State orders a carrier to provide the same service to different categories of customers at different prices necessary to promote universal service; or

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 18 1997

"(B) of subsidized universal service in a manner that allows companies to charge another carrier rates which reflect the actual cost of such services, exclusive of any universal service support received for providing such services;

"(8) reciprocal compensation arrangements for the origination and termination of telecommunications;

"(9) reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks; and

"(10) a schedule of itemized charges and conditions for each service, facility, or function provided under the agreement.

"(c) AGREEMENTS ARRIVED AT THROUGH NEGOTIATION.—Upon receiving a request for interconnection, a local exchange carrier may meet its interconnection obligations under this section by negotiating and entering into a binding agreement with the telecommunications carrier seeking interconnection without regard to the standards set forth in subsection (b). The agreement shall include a schedule of itemized charges for each service, facility,

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 19 1997

or function included in the agreement. The agreement, including any interconnection agreement negotiated before the date of enactment of the Telecommunications Act of 1995, shall be submitted to the State under subsection (e).

"(d) AGREEMENTS ARRIVED AT THROUGH ARBITRATION OR INTERVENTION.—

"(1) IN GENERAL.—Any party negotiating an interconnection agreement under this section may, at any point in the negotiation, ask a State to participate in the negotiation and to arbitrate any differences arising in the course of the negotiation. The refusal of any other party to the negotiation to participate further in the negotiations, to cooperate with the State in carrying out its function as a arbitrator, or to continue to negotiate in good faith in the presence, or with the assistance, of the State shall be considered a failure to negotiate in good faith.

"(2) INTERVENTION.—If any issues remain open in a negotiation commenced under this section more than 135 days after the date upon which the local exchange carrier received the request for such negotiation, then the carrier or any other party to the negotiation may petition a State to intervene in the negotiations for purposes of resolving any such

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 20 1997

remaining open issues. Any such request must be made during the 25-day period that begins 135 days after the carrier receives the request for such negotiation and ends 160 days after that date.

"(3) DUTY OF PETITIONER.—

"(A) A party that petitions a State under paragraph (2) shall, within 15 days after the State receives the petition, provide the State all relevant documentation concerning the negotiations necessary to understand—

"(i) the unresolved issues;

"(ii) the position of each of the parties with respect to those issues; and

"(iii) any other issue discussed and resolved by the parties.

"(B) A party petitioning a State under paragraph (2) shall notify the other party of its petition not later than the day on which the State receives the petition.

"(4) OPPORTUNITY TO RESPOND.—A party to a negotiation under this section with respect to which the other party has petitioned a State under paragraph (2) may respond to the other party's petition and provide such additional information as it wishes within 25 days after the State receives the petition.

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 21 1997

"(5) ACTION BY STATE.—

"(A) A State proceeding to consider a petition under this subsection shall be conducted in accordance with the rules promulgated by the Commission under subsection (i). The State shall limit its consideration of any petition under paragraph (2) (and any response thereto) to the issues set forth in the petition and in the response, if any, filed under paragraph (4).

"(B) The State may require the petitioning party and the responding party to provide such information as may be necessary for the State to reach a decision on the unresolved issues. If either party refuses or fails unreasonably to respond on a timely basis to any reasonable request from the State, then the State may proceed on the basis of the best information available to it from whatever source derived.

"(C) The State shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions upon the parties to the agreement, and shall conduct the review of the agreement (including the issues resolved by the State) not later than 10 months after the date on which the local exchange car-

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 22 1997

rier received the request for interconnection under this section.

"(D) In resolving any open issues and imposing conditions upon the parties to the agreement, a State shall ensure that the requirements of this section are met by the solution imposed by the State and are consistent with the Commission's rules defining minimum standards.

"(6) CHARGES.—If the amount charged by a local exchange carrier, or class of local exchange carriers, for an unbundled element of the interconnection provided under subsection (b) is determined by arbitration or intervention under this subsection, then the charge—

"(A) shall be

"(i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the unbundled element,

"(ii) nondiscriminatory, and

"(iii) individually priced to the smallest element that is technically and economically reasonable to provide; and

"(B) may include a reasonable profit.

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 23 1997

"(e) APPROVAL BY STATE.—Any interconnection agreement under this section shall be submitted for approval to the State. A State to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies. The State may only reject—

"(1) an agreement under subsection (c) if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement; and

"(2) an agreement under subsection (d) if it finds that—

"(B) the agreement does not meet the standards set forth in subsection (b), or

"(B) the implementation of the agreement is not in the public interest.

If the State does not act to approve or reject the agreement within 90 days after receiving the agreement, or 30 days in the case of an agreement negotiated under subsection (c), the agreement shall be deemed approved. No State court shall have jurisdiction to review the action of a State in approving or rejecting an agreement under this section.

"(f) FILING REQUIRED.—A State shall make a copy of each agreement approved under subsection (e) available

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 24 1997

for public inspection and copying within 10 days after the agreement is approved. The State may charge a reasonable and nondiscriminatory fee to the parties to the agreement to cover the costs of approving and filing such agreement.

"(g) AVAILABILITY TO OTHER TELECOMMUNICATIONS CARRIERS.—A local exchange carrier shall make available any service, facility, or function provided under an interconnection agreement to which it is a party to any other telecommunications carrier that requests such interconnection upon the same terms and conditions as those provided in the agreement.

"(h) COLLOCATION.—A State may require telecommunications carriers to provide for actual collocation of equipment necessary for interconnection at the premises of the carrier at reasonable charges, if the State finds actual collocation to be in the public interest.

"(i) IMPLEMENTATION.—

"(1) RULES AND STANDARDS.—The Commission shall promulgate rules to implement the requirements of this section within 6 months after the date of enactment of the Telecommunications Act of 1995. In establishing the standards for determining what facilities and information are necessary for

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 25 1997

purposes of subsection (b)(2), the Commission shall consider, at a minimum, whether—

"(A) access to such facilities and information that are proprietary in nature is necessary; and

"(B) the failure to provide access to such facilities and information would impair the ability of the telecommunications carrier seeking interconnection to provide the services that it seeks to offer.

"(2) COMMISSION TO ACT IF STATE WILL NOT ACT.—If a State, through action or inaction, fails to carry out its responsibility under this section in accordance with the rules prescribed by the Commission under paragraph (1) in any proceeding or other matter under this section, then the Commission shall issue an order preempting the State's jurisdiction of that proceeding or matter within 90 days after being notified (or taking notice) of such failure, and shall assume the responsibility of the State under this section with respect to the proceeding or matter and act for the State.

"(3) WAIVERS AND MODIFICATIONS FOR RURAL CARRIERS.—The Commission or a State shall, upon petition or on its own initiative, waive or modify the

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 26 1997

requirements of subsection (b) for a rural telephone company or companies, and may waive or modify the requirements of subsection (b) for local exchange carriers with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide, to the extent that the Commission or a State determines that such requirements would result in unfair competition, impose a significant adverse economic impact on users of telecommunications services, be technically infeasible, or otherwise not be in the public interest. The Commission or a State shall act upon any petition filed under this paragraph within 180 days of receiving such petition. Pending such action, the Commission or a State may suspend enforcement of the requirement or requirements to which the petition applies with respect to the petitioning carrier or carriers.

"(j) STATE REQUIREMENTS.—Nothing in this section precludes a State from imposing requirements on a telecommunications carrier for intrastate services that are necessary to further competition in the provision of telephone exchange service or exchange access service, as long as the State's requirements are not inconsistent with the Commission's regulations to implement this section.

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 27 1997

"(h) ACCESS CHARGE RULES.—Nothing in this section shall affect the Commission's interexchange-to-local exchange access charge rules for local exchange carriers or interexchange carriers in effect on the date of enactment of the Telecommunications Act of 1995.".

(c) TECHNICAL AMENDMENTS.—

(1) Title II (47 U.S.C. 201 et seq.) is amended by inserting before section 201 the following:

"PART I—GENERAL PROVISIONS".

(2) Section 2(b) (47 U.S.C. 152(b)) is amended by striking "sections 223 through 227, inclusive, and section 332," and inserting "section 214(d), sections 223 through 227, part II of title II, and section 332,".

SEC. 102. SEPARATE SUBSIDIARY AND SAFEGUARD REQUIREMENTS.

(a) IN GENERAL.—Part II of title II (47 U.S.C. 251 et seq.), as added by section 101 of this Act, is amended by inserting after section 251 the following new section:

"SEC. 252. SEPARATE SUBSIDIARY; SAFEGUARDS.

"(a) SEPARATE SUBSIDIARY REQUIRED FOR COMPETITIVE ACTIVITIES.—

"(1) IN GENERAL.—A Bell operating company (including its subsidiaries and affiliates) which provides telephone exchange service may not provide

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 28 1997

any service described in paragraph (2) unless it provides that service through a subsidiary that—

"(A) is separate from any operating company entity that provides telephone exchange service; and

"(B) meets the requirements of subsection (b).

"(2) SERVICES FOR WHICH A SEPARATE SUBSIDIARY IS REQUIRED.—The services for which a separate subsidiary is required by paragraph (1) are:

"(A) Information services, including cable services and alarm monitoring services, other than any information service a Bell operating company was authorized to provide before July 24, 1991.

"(B) Manufacturing services.

"(C) InterLATA services other than—

"(i) incidental services, not including information services;

"(ii) out-of-region services; or

"(iii) services authorized under an order entered by the United States District Court for the District of Columbia pursuant to the Modification of Final Judgment

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 29 1997

before the date of enactment of the Telecommunications Act of 1995.

"(b) STRUCTURAL AND TRANSACTIONAL REQUIREMENTS.—The separate subsidiary required by this section—

"(1) shall maintain books, records, and accounts in the manner prescribed by the Commission which shall be separate from the books, records, and accounts maintained by the Bell operating company of which it is a subsidiary and any other subsidiary or affiliate of such company;

"(2) shall have separate officers, directors, and employees from the Bell operating company of which it is a subsidiary or any other subsidiary or affiliate of such company;

"(3) may not obtain credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of the Bell operating company entity that provides telephone exchange service; and

"(4) shall conduct all transactions with the Bell operating company of which it is a subsidiary and any other subsidiary or affiliate of such company on an arm's length basis with any such transactions reduced to writing and available for public inspection.

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 30 1997

"(e) NONDISCRIMINATION SAFEGUARDS.—In its dealings with its subsidiary described in subsection (a) a Bell operating company, and any other subsidiary or affiliate of such company—

"(1) may not discriminate between that company, its subsidiaries or affiliates, and any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards;

"(2) may not provide any goods, services, facilities, or information to such company, its subsidiaries or affiliates, unless the goods, services, facilities, or information are made available to other persons on reasonable and nondiscriminatory terms and conditions; and

"(3) shall account for all transactions with a subsidiary described in subsection (a) in accordance with generally accepted accounting principles.

"(d) JOINT MARKETING.—

"(1) A Bell operating company subsidiary required by this section may not market or sell telephone exchange services provided by the Bell operating company unless that company permits other entities offering the same or similar service to market and sell its telephone exchange services.

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 31 1997

"(2) A Bell operating company may not market or sell any service provided by a subsidiary required by this section until that company has been authorized to provide interLATA services under section 255.

"(3) The joint marketing and sale of services permitted under this subsection shall not be considered to violate the nondiscrimination provisions of subsection (c).

"(e) ADDITIONAL REQUIREMENTS FOR PROVISION OF INTERLATA SERVICES.—A Bell operating company—

"(1) shall fulfill any requests from an unaffiliated entity for exchange access service within a period no longer than that in which it provides such exchange access service to itself or to its affiliates;

"(2) shall fulfill any such requests with exchange access service of a quality that meets or exceeds the quality of exchange access service provided by the Bell operating company or its affiliates to itself or its affiliate;

"(3) shall provide exchange access service to all carriers at rates that are just, reasonable, not unreasonably discriminatory, and based on costs;

"(4) shall not provide any facilities, services, or information concerning its provision of exchange ac-

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 32 1997

cess service to the subsidiary described in subsection (a) unless such facilities, services, or information are made available to other providers of interLATA services in that market on the same terms and conditions; and

"(5) shall charge the subsidiary described in subsection (a), and impute to itself or any intraLATA interexchange affiliate, the same rates for access to its telephone exchange service and exchange access service that it charges unaffiliated interexchange carriers for such service.

"(f) PROPRIETARY INFORMATION.—

"(1) IN GENERAL.—In complying with the requirements of this section, each Bell operating company and any subsidiary or affiliate of such company has a duty to protect the confidentiality of propriety information relating to other common carriers, to equipment manufacturers, and to customers. A Bell operating company may not share customer proprietary information in aggregate form with its subsidiaries and affiliates unless such aggregate information is available to other carriers or persons under the same terms and conditions. Individually identifiable customer proprietary information and other proprietary information may be—

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 33 1997

"(A) shared only with the consent of the person to which such information relates or from which it was obtained (including other carriers); or

"(B) disclosed to appropriate authorities pursuant to court order.

"(2) EXCEPTIONS.—Paragraph (1) does not limit the disclosure of individually identifiable customer proprietary information by each Bell operating company as necessary—

"(A) to initiate, render, bill, and collect for telephone exchange service, interexchange service, or telecommunications service requested by a customer; or

"(B) to protect the rights or property of the carrier, or to protect users of any of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, any such service.

"(g) COMMISSION MAY GRANT EXCEPTIONS.—The Commission may grant an exception from compliance with any requirement of this section upon a showing that the exception is necessary for the public interest, convenience, and necessity.

"(h) APPLICATION TO UTILITY COMPANIES.—

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 34 1997

"(1) PUBLIC UTILITY HOLDING COMPANIES.—For purposes of this section, a public utility company which is a registered holding company (as defined in section 2 of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79b)) that provides telecommunications service shall provide that service through a separate subsidiary. The provisions of subsection (b)(4) and (c)(1) apply to the provision of telecommunications service by such a company through a separate subsidiary as if such company were a Bell operating company.

"(2) OTHER UTILITY COMPANIES.—Each State shall determine whether a public utility company subject to its jurisdiction that—

"(A) is not a registered holding company (as so defined), and

"(B) provides telecommunications service,

is required to provide that service through a separate subsidiary.

"(3) SAVINGS PROVISION.—Nothing in this paragraph prohibits a public utility company from engaging in any activity in which it is legally engaged on the date of enactment of the Telecommunications Act of 1995.

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 35 1997

"(i) SEPARATE SUBSIDIARY MAY BE SUBSIDIARY OF HOLDING COMPANY.—For purposes of meeting the requirements of this section, and of any other provision of this Act that requires a separate subsidiary that meets the requirements of this section, a company (other than the Bell operating company) that is a subsidiary of the same company of which a Bell operating company is a subsidiary shall be considered to meet the separate subsidiary requirement.".

(b) IMPLEMENTATION.—The Commission shall promulgate any regulations necessary to implement section 252 of the Communications Act of 1934 (as added by subsection (a)) within 9 months after the date of enactment of this Act. Any separate subsidiary established or designated for purposes of section 252(a) of the Communications Act of 1934 before the regulations have been issued in final form shall be restructured or otherwise modified, if necessary, to meet the requirements of those regulations.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of enactment of this Act.

SEC. 103. UNIVERSAL SERVICE.

(a) FEDERAL-STATE JOINT BOARD ON UNIVERSAL SERVICE.—

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 36 1997

(1) Within one month after the date of enactment of this Act, the Commission shall institute and refer to a Federal-State Joint Board under section 410(c) of the Communications Act of 1934 a proceeding to recommend rules regarding the implementation of section 253 of that Act, including the definition of universal service. The Joint Board shall, after notice and public comment, make its recommendations to the Commission no later than 9 months after the date of enactment of this Act.

(2) The Commission may periodically, but no less than once every 4 years, institute and refer to the Joint Board a proceeding to review the implementation of section 253 of that Act and to make new recommendations, as necessary, with respect to any modifications or additions that may be needed. As part of any such proceeding the Joint Board shall review the definition of, and adequacy of support for, universal service and shall evaluate the extent to which universal service has been protected and advanced.

(b) COMMISSION ACTION.—The Commission shall initiate a single proceeding to implement recommendations from the initial Joint Board required by subsection (a) and shall complete such proceeding within 1 year after the

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 37 1997

date of enactment of this Act. Thereafter, the Commission shall complete any proceeding to implement recommendations from any further Joint Board required under subsection (a) within one year after receiving such recommendations.

(c) SEPARATIONS RULES.—Nothing in the amendments made by this Act to the Communications Act of 1934 shall affect the Commission's separations rules for local exchange carriers or interexchange carriers in effect on the date of enactment of this Act.

(d) AMENDMENT OF COMMUNICATIONS ACT.—Part II of title II (47 U.S.C. 251 et seq.), as added by this Act, is amended by inserting after section 252 the following new section:

"SEC. 253. UNIVERSAL SERVICE.

"(a) UNIVERSAL SERVICE PRINCIPLES.—The Joint Board and the Commission shall base policies for the preservation and advancement of universal service on the following principles:

"(1) Quality services are to be provided at just, reasonable, and affordable rates.

"(2) Access to advanced telecommunications and information services should be provided in all regions of the Nation.

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 38 1997

"(3) Consumers in rural and high cost areas should have access to telecommunications and information services, including interexchange services, reasonably comparable to those services provided in urban areas.

"(4) Consumers in rural and high cost areas should have access to telecommunications and information services at rates that are reasonably comparable to rates charged for similar services in urban areas.

"(5) Citizens in rural and high cost areas should have access to the benefits of advanced telecommunications and information services for health care, education, economic development, and other public purposes.

"(6) There should be a coordinated Federal-State universal service system to preserve and advance universal service using specific and predictable Federal and State mechanisms administered by independent, non-governmental entities.

"(7) Elementary and secondary schools and classrooms should have access to advanced telecommunications services.

"(b) DEFINITION.—Universal service is an evolving level of intrastate and interstate telecommunications serv-

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 39 1997

ices that the Commission, based on recommendations from the public, Congress, and the Federal-State Joint Board periodically convened under section 103 of the Telecommunications Act of 1995, and taking into account advances in telecommunications and information technologies and services, determines should be provided at just, reasonable, and affordable rates to all Americans, including those in rural and high-cost areas and those with disabilities, to enable them to participate effectively in the economic, academic, medical, and democratic processes of the Nation. At a minimum, universal service shall include any telecommunications services that the Commission determines have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers.

"(c) ALL TELECOMMUNICATIONS PROVIDERS CONTRIBUTE.—Every telecommunications carrier engaged in intrastate, interstate, or foreign communication shall contribute on an equitable and nondiscriminatory 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.

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 40 1997

"(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

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 41 1997

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

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 42 1997

take effect one year after the date of enactment of that Act.".

SEC. 104. ESSENTIAL TELECOMMUNICATIONS CARRIERS.

(a) IN GENERAL.—Section 214(d) (47 U.S.C. 214(d)) is amended—

(1) by inserting "(1) ADEQUATE FACILITIES REQUIRED.—" before "The Commission"; and

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

"(2) DESIGNATION OF ESSENTIAL CARRIER.— If one or more common carriers provide telecommunications service to a geographic area, and no common carrier will provide universal service to an unserved community or any portion thereof that requests such service within such area, then the Commission, with respect to interstate services, or a State, with respect to intrastate services, shall determine which common carrier serving that area is best able to provide universal service to the requesting unserved community or portion thereof, and shall designate that common carrier as an essential telecommunications carrier for that unserved community or portion thereof.

"(3) ESSENTIAL CARRIER OBLIGATIONS.—A common carrier may be designated by the Commission, or by a State, as appropriate, as an essential telecommunications carrier for a specific service area and become eligible to receive any universal support payments the Commission

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 43 1997

may allow under section 253. A carrier designated as an essential telecommunications carrier shall—

"(A) provide through its own facilities or through a combination of its own facilities and resale of services using another carrier's facilities, universal service and any additional service (such as 911 service) required by the Commission or the State, to any community or portion thereof which requests such service;

"(B) offer such services at nondiscriminatory rates established by the Commission, for interstate services, and the State, for intrastate services, throughout the service area; and

"(C) advertise throughout the service area the availability of such services and the rates for such services using media of general distribution.

"(4) MULTIPLE ESSENTIAL CARRIERS.—If the Commission, with respect to interstate services, or a State, with respect to intrastate services, designates more than one common carrier as an essential telecommunications carrier for a specific service area, such carrier shall meet the service, rate, and advertising requirements imposed by the Commission or State on any other essential telecommunications carrier for that service area. A State may require that, before designating an additional essential

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 44 1997

telecommunications carrier, the State agency authorized to make the designation shall find that—

"(A) the designation of an additional essential telecommunications carrier is in the public interest and that there will not be a significant adverse impact on users of telecommunications services or on the provision of universal service;

"(B) the designation encourages the development and deployment of advanced telecommunications infrastructure and services in rural areas; and

"(C) the designation protects the public safety and welfare, ensures the continued quality of telecommunications services, or safeguards the rights of consumers.

"(5) RESALE OF UNIVERSAL SERVICE.—The Commission, for interstate services, and the States, for intrastate services, shall establish rules to govern the resale of universal service to allocate any support received for the provision of such service in a manner that ensures that the carrier whose facilities are being resold is adequately compensated for their use, taking into account the impact of the resale on that carrier's ability to maintain and deploy its network as a whole. The Commission shall also establish, based on the recommendations of the Federal-

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 45 1997

State Joint Board instituted to implement this section, rules to permit a carrier designated as an essential telecommunications carrier to relinquish that designation for a specific service area if another telecommunications carrier is also designated as an essential telecommunications carrier for that area. The rules—

"(A) shall ensure that all customers served by the relinquishing carrier continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining essential telecommunications carrier if such remaining carrier provided universal service through resale of the facilities of the relinquishing carrier; and

"(B) shall establish criteria for determining when a carrier which intends to utilize resale to meet the requirements for designation under this subsection has adequate resources to purchase, construct, or otherwise obtain the facilities necessary to meet its obligation if the reselling carrier is no longer able or obligated to resell the service.

"(6) ENFORCEMENT.—A common carrier designated by the Commission or a State as an essential telecommunications carrier that refuses to provide universal service within a reasonable period to an unserved community or

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 46 1997

portion thereof which requests such service shall forfeit to the United States, in the case of interstate services, or the State, in the case of intrastate services, a fine of up to $10,000 for each day that such carrier refuses to provide such service. In establishing a reasonable period the Commission or the State, as appropriate, shall consider the nature of any construction required to serve such requesting unserved community or portion thereof, as well as the construction intervals normally attending such construction, and shall allow adequate time for regulatory approvals and acquisition of necessary financing.

"(7) INTEREXCHANGE SERVICES.—The Commission, for interstate services, or a State, for intrastate services, shall designate an essential telecommunications carrier for interexchange services for any unserved community or portion thereof requesting such services. Any common carrier designated as an essential telecommunications carrier for interexchange services under this paragraph shall provide interexchange services included in universal service to any unserved community or portion thereof which requests such service. The service shall be provided at nationwide geographically averaged rates for interstate interexchange services and at geographically averaged rates for intrastate interexchange services, and shall be just and reasonable and not unjustly or unreasonably discriminatory. A

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 47 1997

common carrier designated as an essential telecommunications carrier for interexchange services under this paragraph that refuses to provide interexchange service in accordance with this paragraph to an unserved community or portion thereof that requests such service within 180 days of such request shall forfeit to the United States a fine of $50,000 for each day that such carrier refuses to provide such service. The Commission or the State, as appropriate, may extend the 180-day period for providing interexchange service upon a showing by the common carrier of good faith efforts to comply within such period.

"(8) IMPLEMENTATION.—The Commission may, by regulation, establish guidelines by which States may implement the provisions of this section.".

(b) CONFORMING AMENDMENT.—The heading for section 214 is amended by inserting a semicolon and "essential telecommunications carriers" after "lines".

SEC. 105. FOREIGN INVESTMENT AND OWNERSHIP REFORM.

(a) IN GENERAL.—Section 310 (47 U.S.C. 310) is amended by adding at the end thereof the following new subsection:

"(f) TERMINATION OF FOREIGN OWNERSHIP RESTRICTIONS.—

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 48 1997

"(1) RESTRICTION NOT TO APPLY WHERE RECIPROCITY FOUND.—Subsection (b) shall not apply to any common carrier license held, or for which application is made, after the date of enactment of the Telecommunications Act of 1995 with respect to any alien (or representative thereof), corporation, or foreign government (or representative thereof) if the Commission determines that the foreign country of which such alien is a citizen, in which such corporation is organized, or in which such foreign government is in control provides equivalent market opportunities for common carriers to citizens of the United States (or their representatives), corporations organized in the United States, and the United States Government (or its representative). The determination of whether market opportunities are equivalent shall be made on a market segment specific basis.

"(2) SNAPBACK FOR RECIPROCITY FAILURE.—If the Commission determines that any foreign country with respect to which it has made a determination under paragraph (1) ceases to meet the requirements for that determination, then—

"(A) subsection (b) shall apply with respect to such aliens, corporations, and government (or their representatives) on the date on

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 49 1997

which the Commission publishes notice of its determination under this paragraph, and

"(B) any license held, or application filed, which could not be held or granted under subsection (b) shall be withdrawn, or denied, as the case may be, by the Commission under the provisions of subsection (b).".

(b) CONFORMING AMENDMENT.—Section 332(c)(6) (47 U.S.C. 332(c)(6)) is amended by adding at the end thereof the following:

"This paragraph does not apply to any foreign ownership interest or transfer of ownership to which section 310(b) does not apply because of section 310(f).".

SEC. 106. INFRASTRUCTURE SHARING.

(a) REGULATIONS REQUIRED.—The Commission shall prescribe, within one year after the date of enactment of this Act, regulations that require local exchange carriers that were subject to Part 69 of the Commission's rules on or before that date to make available to any qualifying carrier such public switched network infrastructure, technology, information, and telecommunications facilities and functions as may be requested by such qualifying carrier for the purpose of enabling such qualifying carrier to provide telecommunications services, or to provide access

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 50 1997

to information services, in the service area in which such qualifying carrier has requested and obtained designation as an essential telecommunications carrier under section 214(d).

(b) TERMS AND CONDITIONS OF REGULATIONS.—The regulations prescribed by the Commission pursuant to this section shall—

(1) not require a local exchange carrier to which this section applies to take any action that is economically unreasonable or that is contrary to the public interest;

(2) permit, but shall not require, the joint ownership or operation of public switched network infrastructure and services by or among such local exchange carrier and a qualifying carrier;

(3) ensure that such local exchange carrier will not be treated by the Commission or any State as a common carrier for hire or as offering common carrier services with respect to any infrastructure, technology, information, facilities, or functions made available to a qualifying carrier in accordance with regulations issued pursuant to this section;

(4) ensure that such local exchange carrier makes such infrastructure, technology, information, facilities, or functions available to a qualifying car-

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 51 1997

rier on just and reasonable terms and conditions that permit such qualifying carrier to fully benefit from the economies of scale and scope of such local exchange carrier, as determined in accordance with guidelines prescribed by the Commission in regulations issued pursuant to this section;

(5) establish conditions that promote cooperation between local exchange carriers to which this section applies and qualifying carriers;

(6) not require a local exchange carrier to which this section applies to engage in any infrastructure sharing agreement for any services or access which are to be provided or offered to consumers by the qualifying carrier in such local exchange carrier's telephone exchange area; and

"(7) require that such local exchange carrier file with the Commission or State for public inspection, any tariffs, contracts, or other arrangements showing the rates, terms, and conditions under which such carrier is making available public switched network infrastructure and functions under this section.

(c) INFORMATION CONCERNING DEPLOYMENT OF NEW SERVICES AND EQUIPMENT.—A local exchange carrier to which this section applies that has entered into an

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 52 1997

infrastructure sharing agreement under this section shall provide to each party to such agreement timely information on the planned deployment of telecommunications services and equipment, including any software or upgrades of software integral to the use or operation of such telecommunications equipment.

(d) DEFINITIONS.—For purposes of this section—

(1) QUALIFYING CARRIER.—The term "qualifying carrier" means a telecommunications carrier that—

(A) lacks economies of scale or scope, as determined in accordance with regulations prescribed by the Commission pursuant to this section; and

(B) is a common carrier which offers telephone exchange service, exchange access service, and any other service that is included in universal service, to all consumers without preference throughout the service area for which such carrier has been designated as an essential telecommunications carrier under section 214(d) of the Communications Act of 1934.

(2) OTHER TERMS.—Any term used in this section that is defined in the Communications Act of 1934 has the same meaning as it has in that Act.

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 53 1997

TITLE II—REMOVAL OF RESTRICTIONS TO COMPETITION

Subtitle A—Removal of Restrictions

SEC. 201. REMOVAL OF ENTRY BARRIERS.

(a) PREEMPTION OF STATE RULES.—Part II of title II (47 U.S.C. 251 et seq.), as added by this Act, is amended by inserting after section 253 the following:

"SEC. 254. 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 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 nondiscriminatory basis,

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 54 1997

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 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—

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 55 1997

"(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.".

(2) 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.

(c) STATE AND LOCAL TAX LAWS.—Except as provided in section 202, nothing in this Act (or in the Communications Act of 1934 as amended by this Act) shall be construed to modify, impair, or supersede, or authorize the modification, impairment, or supersession of, any

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 56 1997

State or local law pertaining to taxation that is consistent with the requirements of the Constitution of the United States, this Act, the Communications Act of 19. 4, or any other applicable Federal law.

(d) EFFECTIVE DATE.—The amendments made by this section take effect on the date of enactment of this Act.

SEC. 202. LIMITATION ON STATE AND LOCAL TAXATION OF DIRECT-TO-HOME SATELLITE SERVICES.

(a) AUTHORITY TO IMPOSE TAXES AND FEES ON DIRECT-TO-HOME SATELLITE SERVICES.—

(1) IN GENERAL.—A State may require a direct-to-home satellite service provider who is subject to the personal jurisdiction of the State to collect and remit a State sales tax, a local sales tax, or both, with respect to direct-to-home satellite services, if—

(A) the destination of such services is in the State, and

(B) in a State in which both State and local sales taxes are imposed, the State, in accordance with the requirements of this section—

(i) requires the collection and remittance of any applicable local sales taxes

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 57 1997

with respect to direct-to-home satellite services, and

(ii) collects and administers the local sales taxes with respect to direct-to-home satellite services, except in those local taxing jurisdictions described in paragraph (2)(A).

(2) LOCAL TAXING JURISDICTION.—

(A) A State that exercises authority under this section may require a direct-to-home satellite service provider to collect and remit local sales taxes to the local taxing jurisdiction if—

(i) as of the effective date of this section, the local taxing jurisdiction imposes and administers a local sales tax separate from the sales tax imposed by the State, or

(ii) after the effective date of this section, a local jurisdiction that does not impose any local sales taxes as of the effective date of this section is authorized to impose a local sales tax.

(B) If, after the effective date of this section, a local jurisdiction is authorized to administer a local sales tax that the State is administering as of that date, the State shall continue

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 58 1997

to collect and remit the local sales tax authorized under this section in accordance with paragraph (1)(B)(ii).

(3) DISTRIBUTION OF LOCAL SALES TAXES.—A State shall distribute the local sales tax collected under the authority granted by this section to local jurisdictions in accordance with the requirements of State law governing the distribution of local sales taxes.

(b) STATE AND LOCAL LAW; NONDISCRIMINATION.—

(1) STATE AND LOCAL LAW.—A State may require a direct-to-home satellite service provider to collect and remit State and local sales taxes with respect to direct-to-home satellite services only where the applicable law of the State or local taxing jurisdiction imposes a sales tax.

(2) NONDISCRIMINATION.—Except as otherwise provided in this section, a State that exercises authority under this section shall allow to direct-to-home satellite service providers exemptions or other exceptions to State and local sales taxes that the State or local taxing jurisdiction allows under similar circumstances to persons located within the State or local taxing jurisdiction.

(c) EXEMPTION.—

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 59 1997

(1) EXEMPTION OF OTHER LOCAL TAX OR FEE FOR SERVICES.—A direct-to-home satellite service provider and its representatives for the sale or distribution of direct-to-home satellite services shall be exempt from collecting and remitting any other local tax or fee (as defined by subsection (d)(9)) imposed on direct-to-home satellite services in any local taxing jurisdiction in which, during the 1-year period ending on September 30 of the calendar year preceding the calendar year in which the provision of direct-to-home satellite services occurs, the direct-to-home satellite service provider does not own or hold any interest in property or maintain an office, and limits its business activities to no more than—

(A) providing direct-to-home satellite services to subscribers in the local taxing jurisdiction, and the billing for and collection of the fees for such services occur outside the local taxing jurisdiction; and

(B) soliciting and placing orders for the sale of direct-to-home satellite services through contractual arrangements with, and on the premises of, retail outlets and establishments, which orders are filled and billed for from a point outside the local taxing jurisdiction, re-

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 60 1997

gardless of where the subscriber makes an initial payment for an initial subscription.

(2) NO OTHER EFFECT.—Except as provided herein, this section does not affect the authority of any State or local taxing jurisdiction of any State otherwise to adopt, apply, and administer any tax or method of taxation.

(d) DEFINITIONS.—For purposes of this section—

(1) COMPENSATING USE TAX.—The term "compensating use tax" means a tax imposed on or incident to the use or consumption of direct-to-home satellite services within a State or a local jurisdiction or other area of a State.

(2) DESTINATION.—The term "destination" means the State or local jurisdiction to which the direct-to-home satellite service is delivered for viewing or other activity to which the service is directed.

(3) DIRECT-TO-HOME SATELLITE SERVICE PROVIDER.—The term "direct-to-home satellite service provider" means a person who provides direct-to-home satellite services.

(4) DIRECT-TO-HOME SATELLITE SERVICES.—The term "direct-to-home satellite services" means the distribution or broadcasting of programming or services by satellite directly to the subscriber's prem-

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 61 1997

ises without the use of ground receiving or distribution equipment, except at the subscriber's premises, or used in the initial uplink process to the direct-to-home satellite.

(5) LOCAL TAXING JURISDICTION.—The term "local taxing jurisdiction" means any municipality, city, county, township, parish, transportation district, or assessment jurisdiction, or any other political subdivision with the authority to impose a tax or fee.

(6) LOCAL SALES TAX.—The term "local sales tax" means a sales or compensating use tax imposed by a local taxing jurisdiction, whether administered by the State or the local taxing jurisdiction.

(7) SALES TAX.—The term "sales tax" means a tax, including a compensating use tax, that is—

(A) imposed on or incident to the sale, purchase, consumption, distribution, or other use of direct-to-home satellite services as may be defined or specified under the law imposing such tax, and

(B) measured by the amount of the sales price, cost, charge, or gross receipts, or other value of or for the services.

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 62 1997

BEST COPY AVAILABLE

(8) STATE.—Notwithstanding any provision to the contrary in this section, the term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(9) OTHER LOCAL TAX OR FEE.—The term "other local tax or fee" means any local tax or fee that is not a sales tax, as defined in paragraph (6) or (7), including such locally imposed taxes and fees as an intangible tax, income tax, business license tax, utility tax, privilege tax, gross receipts tax, excise tax, franchise fees, telecommunications tax, or other tax, license, or fee.

(e) EFFECTIVE DATE.—This section shall take effect on the date of enactment of this Act.

SEC. 203. ELIMINATION OF CABLE AND TELEPHONE COMPANY CROSS-OWNERSHIP RESTRICTION.

(a) IN GENERAL.—Section 613(b) (47 U.S.C. 533(b)) is amended to read as follows:

"(b) VIDEO PROGRAMMING AND CABLE SERVICES.—

"(1) DISTINCTION BETWEEN VIDEO PLATFORM AND CABLE SERVICE.—To the extent that any telecommunications carrier carries video programming provided by others, or provides video programming

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 63 1997

directly to subscribers, through a common carrier video platform, neither the telecommunications carrier nor any video programming provider making use of such platform shall be deemed to be a cable operator providing cable service. To the extent that any telecommunications carrier provides video programming directly to subscribers through a cable system, the carrier shall be deemed to be a cable operator providing cable service.

"(2) BELL OPERATING COMPANY ACTIVITIES.—

"(A) Notwithstanding the provisions of section 252, to the extent that a Bell operating company carries or provides video programming over a common carrier video platform, it need not use a separate subsidiary if—

"(i) the carrier provides facilities, services, or information to all programmers on the same terms and conditions as it provides such facilities, services, or information to its own video programming operations, and

"(ii) the carrier does not subsidize its provision of video programming with revenues from its telecommunications services.

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 64 1997

"(B) To the extent that a Bell operating company provides cable service as a cable operator, it shall provide such service through a subsidiary that meets the requirements of section 252, and shall meet the requirements of clauses (i) and (ii) of subparagraph (A).

"(C) Upon a finding by the Commission that the requirement of a separate subsidiary under the preceding subparagraph is no longer necessary to protect consumers, competition, or the public interest, the Commission shall exempt a Bell operating company from that requirement.

"(3) COMMON CARRIER VIDEO PLATFORM.—Nothing in this Act precludes a telecommunications carrier from carrying video programming provided by others directly to subscribers over a common carrier video platform.

"(4) RATES; ACCESS.—Notwithstanding paragraph (2)(A)(i), a provider of common carrier video platform services shall provide local broadcast stations, and to those public, educational, and governmental entities required by local franchise authorities to be given access to cable systems operating in the same market as the video platform, with access

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 65 1997

to the video platform for the transmission of television broadcast programming at rates no higher than the incremental-cost-based rates of providing such access. Local broadcast stations shall be entitled to obtain access on the first tier of programming on the video platform.

"(5) COMPETITIVE NEUTRALITY.—A provider of video programming may be required to pay fees in lieu of franchise fees (as defined in section 622(g)(1)) if the fees—

"(A) are competitively neutral; and

"(B) are separately identified in consumer billing.".

(b) NO PERMIT REQUIRED FOR VIDEO PROGRAMMING SERVICES.—Section 214 (47 U.S.C. 214) is amended by adding at the end thereof the following:

"(e) SPECIAL RULE.—No certificate is required under this section for a carrier to construct facilities to provide video programming services.".

(c) SAFEGUARDS.—Within one year after the date of enactment of this Act, the Commission shall prescribe regulations that—

(1) require a telecommunications carrier that provides video programming directly to subscribers to ensure that subscribers are offered the means to

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 66 1997

obtain access to the signals of broadcast television stations as readily as they are today;

(2) require such a carrier to display clearly and prominently at the beginning of any program guide or menu of program offerings the identity of any signal of any television broadcast station that is carried by the carrier;

(3) require such a carrier to ensure that viewers are able to access the signal of any television broadcast station that is carried by that carrier without first having to view advertising or promotional material, or a navigational device, guide, or menu that omits broadcasting services as an available option;

(4) except as required by paragraphs (1) through (3), prohibit such carrier and a multichannel video programming distributor using the facilities of such carrier from discriminating among video programming providers with respect to material or information provided by the carrier to subscribers for the purposes of selecting programming, or in the way such material or information is presented to subscribers;

(5) require such carrier and a multichannel video programming distributor using the facilities of such carrier to ensure that video programming pro-

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 67 1997

viders or copyright holders (or both) are able suitably and uniquely to identify their programming services to subscribers;

(6) if such identification is transmitted as part of the programming signal, require a telecommunications carrier that provides video programming directly to subscribers and a multichannel video programming distributor using the facilities of such carrier to transmit such identification without change or alteration;

(7) consistent with the other provisions of title VI of the Communications Act of 1934 (47 U.S.C. 521 et seq.) prohibit such carrier from discriminating among video programming providers with regard to carriage and ensure that the rates, terms, and conditions for such carriage are just, reasonable, and nondiscriminatory;

(8) extend to such carriers and multichannel video programming distributors using the facilities of such carrier the Commission's regulations concerning network nonduplication (47 C.F.R. 76.92 et seq.) and syndicated exclusivity (47 C.F.R. 76.171 et seq.); and

(9) extend to such carriers and multichannel video programming distributors using the facilities

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 68 1997

BEST COPY AVAILABLE

of such carrier the protections afforded to local broadcast signals in section 614(b)(3), 614(b)(4)(A), and 615(g)(1) and (2) of such Act (47 U.S.C. 534(b)(3), 534(b)(4)(A), and 535(g)(1) and (2)).

(d) ENFORCEMENT.—The Commission shall resolve disputes under subsection (c) and the regulations prescribed under that subsection. Any such dispute shall be resolved with 180 days after notice of the dispute is submitted to the Commission. At that time, or subsequently in a separate proceeding, the Commission may award damages sustained in consequence of any violation of this section to any person denied carriage, or require carriage, or both. Any aggrieved party may also seek any other remedy available under the law.

(e) EFFECTIVE DATES.—The amendment made by subsection (a) takes effect on the date of enactment of this Act. The amendment made by subsection (b) takes effect 1 year after that date.

SEC. 204. CABLE ACT REFORMS.

(a) RATE DEREGULATION.—

(1) Section 623(c) (47 U.S.C. 543(c)) is amended—

(A) by striking "subscriber," and the comma after "authority" in paragraph (1)(B);

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 69 1997

 BEST COPY AVAILABLE

(B) by striking paragraph (2) and inserting the following:

"(2) STANDARD FOR UNREASONABLE RATES.—The Commission may only consider a rate for cable programming services to be unreasonable if it substantially exceeds the national average rate for comparable cable programming services.".

(2) Section 623(l)(1) (47 U.S.C. 543(l)(1)) is amended—

(A) by striking "or" at the end of subparagraph (B);

(B) by striking the period at the end of subparagraph (C) and inserting a semicolon and "or"; and

(C) by adding at the end the following:

"(D) a local exchange carrier offers video programming services directly to subscribers, either over a common carrier video platform or as a cable operator, in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area.".

(b) DISCRIMINATORY PROGRAMMING RATES.—Section 628(c)(2)(B)(iii) (47 U.S.C. 548(c)(2)(B)(iii)) is amended by striking "scale, cost savings, or other direct

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 70 1997

and legitimate economic benefits" and inserting "scale or cost savings".

(c) EFFECTIVE DATE.—The amendments made by this section take effect on the date of enactment of this Act.

SEC. 205. POLE ATTACHMENTS.

(a) IN GENERAL.—Section 224 (47 U.S.C. 224) is amended—

(1) by inserting after "utility" in subsection (a)(4) a comma and the following: "which attachment may be used by that cable television system to provide cable service or any other telecommunications service"; and

(2) by redesignating subsections (b), (c), and (d) as (c), (d), and (e), respectively, and inserting the following after subsection (a):

"(b)(1) A utility shall provide a cable television system with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.

"(2) For purposes of paragraph (1), the Commission shall, not later than 1 year after the date of enactment of the Telecommunications Act of 1995, prescribe regulations for ensuring that utilities charge just, reasonable, and nondiscriminatory rates for pole attachments provided to all telecommunications carriers and cable operators, in-

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 71 1997

cluding such attachments used by cable television systems to provide telecommunications services. The regulations—

"(A) shall recognize that the entire pole, duct, conduit, or right-of-way other than the usable space is of equal benefit to all attachments of entities that hold an ownership interest in the pole, duct, conduit, or right-of-way and therefore apportion the cost of the space other than the usable space equally among all such attachments; and

"(B) shall recognize that an entity that obtains an attachment through a license or other similar arrangement benefits from the entire pole, duct, conduit, or right-of-way other than the usable space in the same proportion as it benefits from the usable space and therefore apportion to such entity a portion of the cost of the space other than the usable space in the same manner as the cost of usable space is apportioned to such entity.".

(b) CONFORMING AMENDMENTS.—Section 224 (47 U.S.C. 224), as amended by subsection (a), is amended—

(1) by striking "subsection (c)" in subsection (e), as redesignated by subsection (a)(3), and inserting "subsection (d)"; and

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 72 1997

 BEST COPY AVAILABLE

(2) by striking "subsection (b)" in subsection (e), as so redesignated, and inserting "subsection (e)".

SEC. 204. ENTRY BY UTILITY COMPANIES.

(a) IN GENERAL.—

(1) AUTHORIZED ACTIVITIES OF UTILITIES.—Notwithstanding any other provision of law to the contrary (including the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a et seq.)), an electric, gas, water, or steam utility, and any subsidiary company, affiliate, or associate company of such a utility, other than a public utility holding company that is an associate company of a registered holding company, may engage, directly or indirectly, in any activity whatsoever, wherever located, necessary or appropriate to the provision of—

(A) telecommunications services,

(B) information services,

(C) other services or products subject to the jurisdiction of the Federal Communications Commission under the Communications Act of 1934 (47 U.S.C. 151 et seq.), or

(D) products or services that are related or incidental to a product or service described in subparagraph (A), (B), or (C).

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 73 1997

 BEST COPY AVAILABLE

(2) SEC JURISDICTION LIMITED.—The Securities and Exchange Commission has no jurisdiction under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a et seq.) over a holding company, or a subsidiary company, affiliate, or associate company of a holding company, engaged in any activity described in paragraph (1) to enforce any requirement with respect to that Act, or approve or otherwise review any such activity, including financing, investing in, acquiring, or maintaining any interest in, or entering into affiliate transactions or contracts.

(b) PROHIBITION OF CROSS-SUBSIDIZATION.—Nothing in this section precludes the Federal Energy Regulatory Commission or a State commission from exercising its jurisdiction to the extent otherwise authorized under applicable law with respect to prohibiting cross-subsidization of any activity described in subsection (a)(1) by a public-utility company which is an associate company of a registered holding company.

(c) SEPARATE BOOKS REQUIRED.—Any subsidiary company, affiliate, or associate company that is an associate company of a registered holding company engaged in any activity described in subsection (a)(1)—

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 74 1997

(1) shall maintain separate books, records, and accounts that identify all transactions involving such activity; and

(2) shall provide access to those books, records, and accounts to State commissions and the Federal Energy Regulatory Commission.

(d) INDEPENDENT AUDIT AUTHORITY FOR STATE COMMISSIONS.—

(1) STATE MAY REQUEST AUDIT.—Any State commission with jurisdiction over a public-utility company that—

(A) is an associate company of a registered holding company, and

(B) transacts business with a subsidiary company, affiliate, or associate company of that holding company engaged in any activity described in subsection (a)(1),

may request that it have an independent audit performed, no more frequently than on an annual basis, of transactions between the public-utility company and the subsidiary company, affiliate, or associate company engaged in that activity.

(2) COMPLIANCE BY COMPANY REQUIRED.—If a State commission makes such a request, the company engaged in the activity shall select an inde-

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 75 1997

pendent auditor and bear the costs of having the audit performed.

(3) AVAILABILITY OF AUDITOR'S REPORT.—The auditor's report shall be provided to the State commission within 6 months after the request for the audit was made by the State commission.

(e) DEFINITIONS.—Any term used in this section that is defined in the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a et seq.) has the same meaning as it has in that Act.

(f) EFFECTIVE DATE.—This section takes effect on the date of enactment of this Act.

SEC. 207. BROADCAST REFORM.

(a) SPECTRUM REFORM.—

(1) ADVANCED TELEVISION SPECTRUM SERVICES.—If the Commission by rule permits licensees to provide advanced television services, then—

(A) it shall adopt regulations that allow such licensees to make use of the advanced television spectrum for the transmission of ancillary or supplementary services if the licensees provide without charge to the public at least one advanced television program service as prescribed by the Commission that is intended for

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 76 1997

and available to the general public on the advanced television spectrum; and

(B) it shall apply similar rules to use of existing television spectrum.

(2) COMMISSION TO COLLECT FEES.—To the extent that a television broadcast licensee provides ancillary or supplementary services using existing or advanced television spectrum—

(A) for which payment of a subscription fee is required in order to receive such services, or

(B) for which the licensee directly or indirectly receives compensation from a third party in return for transmitting material furnished by such third party, other than payments to broadcast stations by third parties for transmission of program material or commercial advertising,

the Commission may collect from each such licensee an annual fee to the extent the existing or advanced television spectrum is used for such ancillary or supplementary services. In determining the amount of such fees, the Commission shall take into account the portion of the licensee's total existing or advanced television spectrum which is used for such services and the amount of time such services are

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 77 1997

provided. The amount of such fees to be collected for any such service shall not, in any event, exceed an amount equivalent on an annualized basis to the amount paid by providers of a competing service on spectrum subject to auction under section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)).

(3) PUBLIC INTEREST REQUIREMENT.—Nothing in this section shall be construed as relieving a television broadcasting station from its obligation to serve the public interest, convenience, and necessity. In the Commission's review of any application for renewal of a broadcast license for a television station that provides ancillary or supplementary services, the television licensee shall establish that its program service which is intended for and available to the general public on the existing or advanced television spectrum is in the public interest. Any violation of the Commission rules applicable to ancillary or supplementary services may reflect upon the licensee's qualifications for renewal of its license.

(4) DEFINITIONS.—As used in this subsection—

(A) The term "advanced television services" means television services provided using

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 78 1997

digital or other advanced technology to enhance audio quality and video resolution.

(B) The term "existing" means spectrum generally in use for television broadcast purposes on the date of enactment of this Act.

(b) OWNERSHIP REFORM.—

(1) IN GENERAL.—The Commission shall modify its rules for multiple ownership set forth in 47 CFR 73.3555 by changing the percentage set forth in subdivision (e)(2)(ii) from 25 percent to 35 percent.

(2) STATUTORY RESTRICTIONS.—Section 613 (47 U.S.C. 533) is amended by striking subsection (a) and inserting the following:

"(a) The Commission shall review its ownership rules biennially as part of its regulatory reform review under section 259.".

(3) CONFORMING CHANGES.—The Commission shall amend its rules to make any changes necessary to reflect the effect of this section on its rules.

(4) EFFECTIVE DATE.—The Commission shall make the modification required by paragraph (1) effective on the date of enactment of this Act.

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 79 1997

(c) TERM OF LICENSES.—Section 307(c) (47 U.S.C. 307(c)) is amended by striking the first four sentences and inserting the following:

"No license shall be granted for a term longer than 10 years. Upon application, a renewal of such license may be granted from time to time for a term of not to exceed 10 years, if the Commission finds that the public interest, convenience, and necessity would be served thereby.".

(d) BROADCAST LICENSE RENEWAL PROCEDURES.—

(1) Section 309 (47 U.S.C. 309) is amended by adding at the end thereof the following:

"(k)(1)(A) Notwithstanding subsections (c) and (d), if the licensee of a broadcast station submits an application to the Commission for renewal of such license, the Commission shall grant the application if it finds, after notice and opportunity for comment (and a hearing on the record if it finds that there are credible allegations of serious violations by the licensee of this Act or the Commission's rules or regulations), with respect to that station during the preceding term of its license, that—

"(i) the station has served the public interest, convenience, and necessity;

"(ii) there have been no serious violations by the licensee of this Act or the rules and regulations of the Commission; and

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 80 1997

"(iii) there have been no other violations by the licensee of this Act or the rules and regulations of the Commission which, taken together, would constitute a pattern of abuse.

"(B) If any licensee of a broadcast station fails to meet the requirements of this subsection, the Commission may deny the application for renewal in accordance with paragraph (2), or grant such application on appropriate terms and conditions, including renewal for a term less than the maximum otherwise permitted.

"(2) If the Commission determines that a licensee has failed to meet the requirements specified in paragraph (1)(A) and that no mitigating factors justify the imposition of lesser sanctions, the Commission shall—

"(A) issue an order denying the renewal application filed by such licensee under section 308; and

"(B) only thereafter accept and consider such applications for a construction permit as may be filed under section 308 specifying the channel or broadcasting facilities of the former licensee.

"(3) In making the determinations specified in paragraphs (1) or (2)(A), the Commission shall not consider whether the public interest, convenience, and necessity might be served by the grant of a license to a person other than the renewal applicant.".

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 81 1997

(2) Section 309(d) (47 U.S.C. 309(d)) is amended by inserting "(or subsection (k) in the case of renewal of any broadcast station license)" after "with subsection (a)" each place it appears.

Subtitle B—Termination of Modification of Final Judgment

SEC. 121. REMOVAL OF LONG DISTANCE RESTRICTIONS.

(a) IN GENERAL.—Part II of title II (47 U.S.C. 251 et seq.), as added by this Act, is amended by inserting after section 254 the following new section:

"SEC. 255. 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 telephone exchange service or exchange access service after the Commission determines that it has fully implemented the competitive checklist found in subsection (b)(2) in the area in

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 82 1997

which it seeks to provide interLATA telecommunications services, in accordance with the provisions of subsection (c);

"(2) interLATA telecommunications services originating in any area where that company is not the dominant provider of wireline telephone exchange service or exchange access service in accordance with the provisions of subsection (d); and

"(3) interLATA services that are incidental services in accordance with the provisions of subsection (e).

"(b) SPECIFIC INTERLATA INTERCONNECTION REQUIREMENTS.—

"(1) IN GENERAL.—A Bell operating company may provide interLATA services in accordance with this section only if that company has reached an interconnection agreement under section 251 and that agreement provides, at a minimum, for interconnection that meets the competitive checklist requirements of paragraph (2).

"(2) COMPETITIVE CHECKLIST.—Interconnection provided by a Bell operating company to other telecommunications carriers under section 251 shall include:

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 83 1997

"(A) Nondiscriminatory access on an unbundled basis to the network functions and services of the Bell operating company's telecommunications network that is at least equal in type, quality, and price to the access the Bell operating company affords to itself or any other entity.

"(B) The capability to exchange telecommunications between customers of the Bell operating company and the telecommunications carrier seeking interconnection.

"(C) Nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the Bell operating company where it has the legal authority to permit such access.

"(D) Local loop transmission from the central office to the customer's premises, unbundled from local switching or other services.

"(E) Local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services.

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 84 1997

"(F) Local switching unbundled from transport, local loop transmission, or other services.

"(G) Nondiscriminatory access to—

"(i) 911 and E911 services;

"(ii) directory assistance services to allow the other carrier's customers to obtain telephone numbers; and

"(iii) operator call completion services.

"(H) White pages directory listings for customers of the other carrier's telephone exchange service.

"(I) Until the date by which neutral telephone number administration guidelines, plan, or rules are established, nondiscriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers. After that date, compliance with such guidelines, plan, or rules.

"(J) Nondiscriminatory access to databases and associated signaling, including signaling links, signaling service control points, and signaling service transfer points, necessary for call routing and completion.

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 85 1997

"(K) Until the date by which the Commission determines that final telecommunications number portability is technically feasible and must be made available, interim telecommunications number portability through remote call forwarding, direct inward dialing trunks, or other comparable arrangements, with as little impairment of functioning, quality, reliability, and convenience as possible. After that date, full compliance with final telecommunications number portability.

"(L) Nondiscriminatory access to whatever services or information may be necessary to allow the requesting carrier to implement local dialing parity in a manner that permits consumers to be able to dial the same number of digits when using any telecommunications carrier providing telephone exchange service or exchange access service.

"(M) Reciprocal compensation arrangements on a nondiscriminatory basis for the origination and termination of telecommunications.

"(N) Telecommunications services and network functions provided on an unbundled basis

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 86 1997

without any conditions or restrictions on the resale or sharing of those services or functions, including both origination and termination of telecommunications services, other than reasonable conditions required by the Commission or a State. For purposes of this subparagraph, it is not an unreasonable condition for the Commission or a State to limit the resale—

"(i) of services included in the definition of universal service to a telecommunications carrier who intends to resell that service to a category of customers different from the category of customers being offered that universal service by such carrier if the Commission or State orders a carrier to provide the same service to different categories of customers at different prices necessary to promote universal service; or

"(ii) of subsidized universal service in a manner that allows companies to charge another carrier rates which reflect the actual cost of such services, exclusive of any universal service support received for providing such services.

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 87 1997

"(3) JOINT MARKETING OF LOCAL AND LONG DISTANCE SERVICES.—Until a Bell operating company is authorized to provide interLATA services in a telephone exchange area, a telecommunications carrier may not jointly market telephone exchange service or exchange access service purchased from such company with interexchange services offered by that telecommunications carrier.

"(4) COMMISSION MAY NOT EXPAND COMPETITIVE CHECKLIST.—The Commission may not, by rule or otherwise, limit or extend the terms used in the competitive checklist.

"(c) IN-REGION SERVICES.—

"(1) APPLICATION.—Upon the enactment of the Telecommunications Act of 1995, a Bell operating company or its subsidiary or affiliate may apply to the Commission for authorization notwithstanding the Modification of Final Judgment to provide interLATA telecommunications service originating in any area where such Bell operating company is the dominant provider of wireline telephone exchange service or exchange access service. The application shall describe with particularity the nature and scope of the activity and of each product market or

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 88 1997

service market, and each geographic market for which authorization is sought.

"(2) DETERMINATION BY COMMISSION.—

"(A) DETERMINATION.—Not later than 90 days after receiving an application under paragraph (1), the Commission shall issue a written determination, on the record after a hearing and opportunity for comment, granting or denying the application in whole or in part. Before making any determination under this subparagraph, the Commission shall consult with the Attorney General regarding the application. In consulting with the Commission under this subparagraph, the Attorney General may apply any appropriate standard.

"(B) APPROVAL.—The Commission may only approve the authorization requested in an application submitted under paragraph (1) if it finds that—

"(i) the petitioning Bell operating company has fully implemented the competitive checklist found in subsection (b)(2); and

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 89 1997

"(ii) the requested authority will be carried out in accordance with the requirements of section 252,

and if the Commission determines that the requested authorization is consistent with the public interest, convenience, and necessity. If the Commission does not approve an application under this subparagraph, it shall state the basis for its denial of the application.

"(3) PUBLICATION.—Not later than 10 days after issuing a determination under paragraph (2), the Commission shall publish in the Federal Register a brief description of the determination.

"(4) JUDICIAL REVIEW.—

"(A) COMMENCEMENT OF ACTION.—Not later than 45 days after a determination by the Commission is published under paragraph (3), the Bell operating company or its subsidiary or affiliate that applied to the Commission under paragraph (1), or any person who would be threatened with loss or damage as a result of the determination regarding such company's engaging in the activity described in its application, may commence an action in any United States Court of Appeals against the Commis-

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 90 1997

sion for judicial review of the determination regarding the application.

"(B) JUDGMENT.—

"(i) The Court shall enter a judgment after reviewing the determination in accordance with section 706 of title 5 of the United State Code.

"(ii) A judgment—

"(I) affirming any part of the determination that approves granting all or part of the requested authorization, or

"(II) reversing any part of the determination that denies all or part of the requested authorization,

shall describe with particularity the nature and scope of the activity, and of each product market or service market, and each geographic market, to which the affirmance or reversal applies.

"(5) REQUIREMENTS RELATING TO SEPARATE SUBSIDIARY; SAFEGUARDS; AND INTRALATA TOLL DIALING PARITY.—

"(A) SEPARATE SUBSIDIARY; SAFEGUARDS.—Other than interLATA services au-

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 91 1997

thorized by an order entered by the United States District Court for the District of Columbia pursuant to the Modification of Final Judgment before the date of enactment of the Telecommunications Act of 1995, a Bell operating company, or any subsidiary or affiliate of such a company, providing interLATA services authorized under this subsection may provide such interLATA services in that market only in accordance with the requirements of section 252.

"(B) INTRALATA TOLL DIALING PARITY.—

"(i) A Bell operating company granted authority to provide interLATA services under this subsection shall provide intraLATA toll dialing parity throughout that market coincident with its exercise of that authority. If the Commission finds that such a Bell operating company has provided interLATA service authorized under this clause before its implementation of intraLATA toll dialing parity throughout that market, or fails to maintain intraLATA toll dialing parity throughout that market, the Commission, except in cases of inadvertent interruptions or other

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 92 1997

events beyond the control of the Bell operating company, shall suspend the authority to provide interLATA service for that market until the Commission determines that intraLATA toll dialing parity is implemented or reinstated.

"(ii) A State may not order the implementation of toll dialing parity in an intraLATA area before a Bell operating company has been granted authority under this subsection to provide interLATA services in that area.

"(d) OUT-OF-REGION SERVICES.—A Bell operating company or its subsidiary or affiliate may provide interLATA telecommunications services originating in any area where such company is not the dominant provider of wireline telephone exchange service or exchange access service upon the date of enactment of the Telecommunications Act of 1995.

"(e) INCIDENTAL SERVICES.—

"(1) IN GENERAL.—A Bell operating company may provide interLATA services that are incidental to the purposes of—

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 93 1997

"(A)(i) providing audio programming, video programming, or other programming services to subscribers of such company,

"(ii) providing the capability for interaction by such subscribers to select or respond to such audio programming, video programming, or other programming services, to order, or control transmission of the programming, polling or balloting, and ordering other goods or services, or

"(iii) providing to distributors audio programming or video programming that such company owns, controls, or is licensed by the copyright owner of such programming, or by an assignee of such owner, to distribute,

"(B) providing a telecommunications service, using the transmission facilities of a cable system that is an affiliate of such company, between LATAs within a cable system franchise area in which such company is not, on the date of enactment of the Telecommunications Act of 1995, a provider of wireline telephone exchange service,

"(C) providing a commercial mobile service except where such service is a replacement for

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 94 1997

land line telephone exchange service for a substantial portion of the land line telephone exchange service in a State in accordance with section 332(c) of this Act and with the regulations prescribed by the Commission,

"(D) providing a service that permits a customer that is located in one LATA to retrieve stored information from, or file information for storage in, information storage facilities of such company that are located in another LATA area, so long as the customer acts affirmatively to initiate the storage or retrieval of information, except that—

"(i) such service shall not cover any service that establishes a direct connection between end users or any real-time voice and data transmission,

"(ii) such service shall not include voice, data, or facsimile distribution services in which the Bell operating company or affiliate forwards customer-supplied information to customer- or carrier-selected recipients;

"(iii) such service shall not include any service in which the Bell operating

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 95 1997

company or affiliate searches for and connects with the intended recipient of information, or any service in which the Bell operating company or affiliate automatically forwards stored voicemail or other information to the intended recipient; and

"(iv) customers of such service shall not be billed a separate charge for the interLATA telecommunications furnished in conjunction with the provision of such service;

"(E) providing signaling information used in connection with the provision of telephone exchange service or exchange access service to another local exchange carrier; or

"(F) providing network control signaling information to, and receiving such signaling information from, interexchange carriers at any location within the area in which such company provides telephone exchange service or exchange access service.

"(2) LIMITATIONS.—The provisions of paragraph (1) are intended to be narrowly construed. The transmission facilities used by a Bell operating company or affiliate thereof to provide interLATA

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 96 1997

telecommunications under subparagraphs (C) and (D) of paragraph (1) shall be leased by that company from unaffiliated entities on terms and conditions (including price) no more favorable than those available to the competitors of that company until that Bell operating company receives authority to provide interLATA services under subsection (c). The interLATA services provided under paragraph (1)(A) are limited to those interLATA transmissions incidental to the provision by a Bell operating company or its affiliate of video, audio, and other programming services that the company or its affiliate is engaged in providing to the public. A Bell operating company may not provide telecommunications services not described in paragraph (1) without receiving the approvals required by subsection (c). The provision of services authorized under this subsection by a Bell operating company or its affiliate shall not adversely affect telephone exchange ratepayers or competition in any telecommunications market.

"(f) DEFINITIONS.—As used in this section—

"(1) LATA.—The term 'LATA' means a local access and transport area as defined in United States v. Western Electric Co., 569 F. Supp. 990

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 97 1997

(United States District Court, District of Columbia) and subsequent judicial orders relating thereto.

"(2) AUDIO PROGRAMMING SERVICES.—The term 'audio programming services' means programming provided by, or generally considered to be comparable to programming provided by, a radio broadcast station.

"(3) VIDEO PROGRAMMING SERVICES; OTHER PROGRAMMING SERVICES.—The terms 'video programming service' and 'other programming services' have the same meanings as such terms have under section 602 of this Act.".

(b) LONG DISTANCE ACCESS FOR COMMERCIAL MOBILE SERVICES.—Notwithstanding any restriction or obligation imposed pursuant to the Modification of Final Judgment prior to the date of enactment of this Act, a person engaged in the provision of commercial mobile services, insofar as such person is so engaged, shall not be required to provide equal access to interexchange telecommunications carriers unless required to do so under the Communications Act of 1934. In connection with the provision of two-way switched voice service, such a person shall not block a subscriber from obtaining access to the provider of interexchange services of the subscriber's

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 98 1997

BEST COPY AVAILABLE

choice through the use of the access code assigned by the Commission to each such provider.

SEC. 222. REMOVAL OF MANUFACTURING RESTRICTIONS.

(a) IN GENERAL.—Part II of title II (47 U.S.C. 251 et seq.), as added by this Act, is amended by inserting after section 255 the following new section:

"SEC. 224. REGULATION OF MANUFACTURING BY BELL OPERATING COMPANIES.

"(a) AUTHORIZATION.—

"(1) IN GENERAL.—Notwithstanding any restriction or obligation imposed before the date of enactment of the Telecommunications Act of 1995 pursuant to the Modification of Final Judgment on the lines of business in which a Bell operating company may engage, if the Commission authorizes a Bell operating company to provide interLATA services under section 255, then that company may be authorized by the Commission to manufacture and provide telecommunications equipment, and to manufacture customer premises equipment, at any time after that determination is made, subject to the requirements of this section and the regulations prescribed thereunder.

"(2) CERTAIN RESEARCH AND DESIGN ARRANGEMENTS; ROYALTY AGREEMENTS.—Upon the

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 99 1997

enactment of the Telecommunications Act of 1995, a Bell operating company may—

"(A) engage in research and design activities related to manufacturing, and

"(B) enter into royalty agreements with manufacturers of telecommunications equipment.

"(b) SEPARATE SUBSIDIARY; SAFEGUARDS.—Any manufacturing or provision of equipment authorized under subsection (a) shall be conducted in accordance with the requirements of section 252.

"(c) PROTECTION OF SMALL TELEPHONE COMPANY INTERESTS.—

"(1) EQUIPMENT TO BE MADE AVAILABLE TO OTHERS.—A manufacturing subsidiary of a Bell operating company shall make available, without discrimination or self-preference as to price, delivery, terms, or conditions, to all local exchange carriers, for use with the public telecommunications network, any telecommunications equipment, including software integral to such telecommunications equipment, including upgrades, manufactured by such subsidiary if each such purchasing carrier—

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 100 1997

"(A) does not manufacture telecommunications equipment or have a subsidiary which manufactures telecommunications equipment; or

"(B) agrees to make available, to the Bell operating company that is the parent of the manufacturing subsidiary or any of the local exchange carrier affiliates of such Bell company, any telecommunications equipment, including software integral to such telecommunications equipment, including upgrades, manufactured for use with the public telecommunications network by such purchasing carrier or by any entity or organization with which such purchasing carrier is affiliated.

"(2) SALES TO OTHER LOCAL EXCHANGE CARRIERS.—

"(A) A Bell operating company and any entity acting on its behalf shall make procurement decisions and award all supply contracts for equipment, services, and software on the basis of open, competitive bidding, and an objective assessment of price, quality, delivery, and other commercial factors.

"(B) A Bell operating company and any entity it owns or otherwise controls shall permit

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 101 1997

any person to participate fully on a non-discriminatory basis in the process of establishing standards and certifying equipment used in or interconnected to the public telecommunications network.

"(C) A manufacturing subsidiary of a Bell operating company may not restrict sales to any local exchange carrier of telecommunications equipment, including software integral to the operation of such equipment and related upgrades.

"(D) A Bell operating company and any entity it owns or otherwise controls shall protect the proprietary information submitted with contract bids and in the standards and certification processes from release not specifically authorized by the owner of such information.

"(d) COLLABORATION WITH OTHER MANUFACTURERS.—A Bell operating company and its subsidiaries or affiliates may engage in close collaboration with any manufacturer of customer premises equipment or telecommunications equipment not affiliated with a Bell operating company during the design and development of hardware, software, or combinations thereof relating to such equipment.

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 102 1997

"(e) ADDITIONAL RULES AND REGULATIONS.—The Commission may prescribe such additional rules and regulations as the Commission determines are necessary to carry out the provisions of this section.

"(f) ADMINISTRATION AND ENFORCEMENT.—

"(1) COMMISSION AUTHORITY.—For the purposes of administering and enforcing the provisions of this section and the regulations prescribed under this section, the Commission shall have the same authority, power, and functions with respect to any Bell operating company as the Commission has in administering and enforcing the provisions of this title with respect to any common carrier subject to this Act.

"(2) CIVIL ACTIONS BY INJURED CARRIERS.—Any local exchange carrier injured by an act or omission of a Bell operating company or its manufacturing subsidiary or affiliate which violates the requirements of paragraph (1) or (2) of subsection (c), or the Commission's regulations implementing such paragraphs, may initiate an action in a district court of the United States to recover the full amount of damages sustained in consequence of any such violation and obtain such orders from the court as are necessary to terminate existing violations and to

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 103 1997

prevent future violations; or such local exchange carrier may seek relief from the Commission pursuant to sections 206 through 209.

"(g) APPLICATION TO BELL COMMUNICATIONS RESEARCH.—Nothing in this section—

"(1) provides any authority for Bell Communications Research, or any successor entity, to manufacture or provide telecommunications equipment or to manufacture customer premises equipment; or

"(2) prohibits Bell Communications Research, or any successor entity, from engaging in any activity in which it is lawfully engaged on the date of enactment of the Telecommunications Act of 1995, including providing a centralized organization for the provision of engineering, administrative, and other services (including serving as a single point of contact for coordination of the Bell operating companies to meet national security and emergency preparedness requirements).

"(h) DEFINITIONS.—As used in this section—

"(1) The term 'customer premises equipment' means equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications.

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 104 1997

"(2) The term 'manufacturing' has the same meaning as such term has in the Modification of Final Judgment.

"(3) The term 'telecommunications equipment' means equipment, othe than customer premises equipment, used by a carrier to provide telecommunications services.".

(b) EFFECT ON PRE-EXISTING MANUFACTURING AUTHORITY.—Nothing in this section, or in section 256 of the Communications Act of 1934 as added by this section, prohibits any Bell operating company from engaging, directly or through any subsidiary or affiliate, in any manufacturing activity in which any Bell operating company, subsidiary, or affiliate was authorized to engage on the date of enactment of this Act.

SEC. 223. EXISTING ACTIVITIES.

Nothing in this Act, or any amendment made by this Act, prohibits a Bell operating company from engaging, at any time after the date of enactment of this Act, in any activity authorized by an order entered by the United States District Court for the District of Columbia pursuant to section VII or VIII(C) of the Modification of Final Judgment, if such order was entered on or before the date of enactment of this Act.

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 105 1997

BEST COPY AVAILABLE

SEC. 224. ENFORCEMENT.

(a) IN GENERAL.—Part II of title II (47 U.S.C. 251 et seq.), as added by this Act, is amended by inserting after section 256 the following:

"SEC. 257. ENFORCEMENT.

"(a) IN GENERAL.—In addition to any penalty, fine, or other enforcement remedy under this Act, the failure by a telecommunications carrier to implement the requirements of section 251 or 255, including a failure to comply with the terms of an interconnection agreement approved under section 251, is punishable by a civil penalty of not to exceed $1,000,000 per offense. Each day of a continuing offense shall be treated as a separate violation for purposes of levying any penalty under this subsection.

"(b) NONCOMPLIANCE WITH INTERCONNECTION OR SEPARATE SUBSIDIARY REQUIREMENTS.—

"(1) A Bell operating company that repeatedly, knowingly, and without reasonable cause fails to implement an interconnection agreement approved under section 251, to comply with the requirements of such agreement after implementing them, or to comply with the separate subsidiary requirements of this part may be fined up to $500,000,000 by a district court of the United States of competent jurisdiction.

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 106 1997

"(2) A Bell operating company that repeatedly, knowingly, and without reasonable cause fails to meet its obligations under section 255 for the provision of interLATA service may have its authority to provide any service the right to provide which is conditioned upon meeting such obligations suspended.".

"(c) ENFORCEMENT BY PRIVATE RIGHT OF ACTION.—

"(1) DAMAGES.—Any person who is injured in its business or property by reason of a violation of this section may bring a civil action in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy.

"(2) INTEREST.—The court may award under this section, pursuant to a motion by such person promptly made, simple interest on actual damages for the period beginning on the date of service of such person's pleading setting forth a claim under this title and ending on the date of judgment, or for any shorter period therein, if the court finds that the award of such interest for such period is just in the circumstances.".

(b) CERTAIN BROADCASTS.—Section 1307(a)(2) of title 18, United States Code, is amended—

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 107 1997

(1) by striking "or" after the semicolon at the end of subparagraph (A);

(2) by striking the period at the end of subparagraph (B) and inserting a semicolon and "or"; and

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

"(C) conducted by a commercial organization and is contained in a publication published in a State in which such activities or the publication of such activities are authorized or not otherwise prohibited, or broadcast by a radio or television station licensed in a State in which such activities or the broadcast of such activities are authorized or not otherwise prohibited.".

SEC. 225. ALARM MONITORING SERVICES.

Part II of title II (47 U.S.C. 251 et seq.), as added by this Act, is amended by inserting after section 257 the following new section:

"SEC. 258. REGULATION OF ENTRY INTO ALARM MONITORING SERVICES.

"(a) IN GENERAL.—Except as provided in this section, a Bell operating company, or any subsidiary or affiliate of that company, may not provide alarm monitoring services for the protection of life, safety, or property. A

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 108 1997

Bell operating company may transport alarm monitoring service signals on a common carrier basis only.

"(b) AUTHORITY TO PROVIDE ALARM MONITORING SERVICES.—Beginning 3 years after the date of enactment of the Telecommunications Act of 1995, a Bell operating company may provide alarm monitoring services for the protection of life, safety, or property if it has been authorized to provide interLATA services under section 255 unless the Commission finds that the provision of alarm monitoring services by such company is not in the public interest. The Commission may not find that provision of alarm monitoring services by a Bell operating company is in the public interest until it finds that it has the capability effectively to enforce any requirements, limitations, or conditions that may be placed upon a Bell operating company in the provision of alarm monitoring services, including the regulations prescribed under subsection (c).

"(c) REGULATIONS REQUIRED.—

"(1) Not later than 1 year after the date of enactment of the Telecommunications Act of 1995, the Commission shall prescribe regulations—

"(A) to establish such requirements, limitations, or conditions as are—

"(i) necessary and appropriate in the public interest with respect to the provision

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 109 1997

of alarm monitoring services by Bell operating companies and their subsidiaries and affiliates, and

"(ii) effective at such time as a Bell operating company or any of its subsidiaries or affiliates is authorized to provide alarm monitoring services; and

"(B) to establish procedures for the receipt and review of complaints concerning violations by such companies of such regulations, or of any other provision of this Act or the regulations thereunder, that result in material financial harm to a provider of alarm monitoring services.

"(2) A Bell operating company, its subsidiaries and affiliates, and any local exchange carrier are prohibited from recording or using in any fashion the occurrence or contents of calls received by providers of alarm monitoring services for the purposes of marketing such services on behalf of the Bell operating company, any of its subsidiaries or affiliates, the local exchange carrier, or any other entity. Any regulations necessary to enforce this paragraph shall be issued initially within 6 months after the date of enactment of the Telecommunications Act of 1995.

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 110 1997

"(d) EXPEDITED CONSIDERATION OF COMPLAINTS.—The procedures established under subsection (c) shall ensure that the Commission will make a final determination with respect to any complaint described in such subsection within 120 days after receipt of the complaint. If the complaint contains an appropriate showing that the alleged violation occurred, as determined by the Commission in accordance with such regulations, the Commission shall, within 60 days after receipt of the complaint, issue a cease and desist order to prevent the Bell operating company and its subsidiaries and affiliates from continuing to engage in such violation pending such final determination.

"(e) REMEDIES.—The Commission may use any remedy available under title V of this Act to terminate and punish violations described in subsection (c). Such remedies may include, if the Commission determines that such violation was willful or repeated, ordering the Bell operating company or its subsidiary or affiliate to cease offering alarm monitoring services.

"(f) SAVINGS PROVISION.—Subsections (a) and (b) do not prohibit or limit the provision of alarm monitoring services by a Bell operating company that was engaged

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 111 1997

in providing those services as of December 31, 1994, to the extent that such company—

"(1) continues to provide those services through the subsidiary or affiliate through which it was providing them on that date; and

"(2) does not acquire, directly or indirectly, an equity interest in another entity engaged in providing alarm monitoring services, and does not acquire, or enter into an agreement to provide, the alarm monitoring service activities of another entity.

"(g) ALARM MONITORING SERVICES DEFINED.—As used in this section, the term 'alarm monitoring services' means services that detect threats to life, safety, or property by burglary, fire, vandalism, bodily injury, or other emergency through the use of devices that transmit signals to a central point in a customer's residence, place of business, or other fixed premises which—

"(1) retransmits such signals to a remote monitoring center by means of telecommunications facilities of the Bell operating company and any subsidiary or affiliate; and

"(2) serves to alert persons at the monitoring center of the need to inform customers, other persons, or police, fire, rescue, or other security or public safety personnel of the threat at such premises.

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 112 1997

Such term does not include medical monitoring devices attached to individuals for the automatic surveillance of ongoing medical conditions.".

TITLE III—AN END TO REGULATION

SEC. 301. TRANSITION TO COMPETITIVE PRICING.

(a) PRICING FLEXIBILITY.—

(1) IN GENERAL.—The Commission and the States shall provide to telecommunications carriers price flexibility in the rates charged consumers for the provision of telecommunications services within one year after the date of enactment of this Act. The Commission or a State may establish the rate consumers may be charged for services included in the definition of universal service, as well as the contribution, if any, that all carriers must contribute for the preservation and advancement of universal service.

(2) CONSUMER PROTECTION.—The Commission and the States shall ensure that rates for residential telephone service remain just, reasonable, and affordable as competition develops for telephone exchange service and telephone exchange access service. Where only a single carrier provides a service in a market, the Commission or a State may establish the rate that a carrier may charge for any such serv-

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 113 1997

ice if such rate is necessary for the protection of consumers. Any such rate shall cease to be regulated whenever the Commission or a State determines that it is no longer necessary for the protection of consumers. The Commission shall establish cost allocation guidelines for facilities owned by an essential telecommunications carrier that are used for the provision of both services included in the definition of universal service and video programming sold by such carrier directly to subscribers, if such allocation is necessary for the protection of consumers.

(3) RATE-OF-RETURN REGULATION ELIMINATED.—

(A) In instituting the price flexibility required under paragraph (1) the Commission and the States shall establish alternative forms of regulation for Tier 1 telecommunications carriers that do not include regulation of the rate of return earned by such carrier as part of a plan that provides for any or all of the following—

(i) the advancement of competition in the provision of telecommunications services;

(ii) improvements in productivity;

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 114 1997

(iii) improvements in service quality;

(iv) measures to ensure customers of non-competitive services do not bear the risks associated with the provision of competitive services;

(v) enhanced telecommunications services for educational institutions; or

(vi) any other measures Commission or a State, as appropriate, determines to be in the public interest.

(B) The Commission or a State, as appropriate, may apply such alternative forms of regulation to any other telecommunications carrier that is subject to rate of return regulation under this Act.

(C) Any such alternative form of regulation—

(i) shall be consistent with the objectives of preserving and advancing universal service, guaranteeing high quality service, ensuring just, reasonable, and affordable rates, and encouraging economic efficiency; and

(ii) shall meet such other criteria as the Commission or a State, as appropriate,

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 115 1997

finds to be consistent with the public interest, convenience, and necessity.

(b) TRANSITION PLAN REQUIRED.—If the Commission or a State adopts rules for the distribution of support payments under section 253 of the Communications Act of 1934, as amended by this Act, such rules shall include a transition plan to allow essential telecommunications carriers to provide for an orderly transition from the universal service support mechanisms in existence upon the date of enactment of this Act and the support mechanisms established by the Commission and the States under this Act or the Communications Act of 1934 as amended by this Act. Any such transition plan shall—

(1) provide a phase-in of the price flexibility requirements under subsection (a) for an essential telecommunications carrier that is also a rural telephone company; and

(2) require the United States Government and the States, where permitted by law, to modify any regulatory requirements (including conditions for the repayment of loans and the depreciation of assets) applicable to carriers designated as essential telecommunications carriers in order to more accurately reflect the conditions that would be imposed in a competitive market for similar assets or services.

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 116 1997

BEST COPY AVAILABLE

(e) DUTY TO PROVIDE SUBSCRIBER LIST INFORMATION.—

(1) IN GENERAL.—A carrier that provides local exchange telephone service shall provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request.

(2) SUBSCRIBER LIST INFORMATION DEFINED.—As used in this subsection, the term "subscriber list information" means any information—

(A) identifying the listed names of subscribers of a carrier and such subscribers' listed telephone numbers, addresses, or primary advertising classifications, as such classifications are assigned at the time of the establishment of service, or any combination of such names, numbers, addresses, or classifications; and

(B) that the carrier or an affiliate has published, caused to be published, or accepted for publication in a directory in any format.

SEC. 258. BIENNIAL REVIEW OF REGULATIONS.

Part II of title II (47 U.S.C. 251 et seq.), as added by this Act, is amended by inserting after section 258 the following new section:

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 117 1997

"SEC. 259. REGULATORY REFORM.

"(a) BIENNIAL REVIEW OF REGULATIONS.—In every odd-numbered year (beginning with 1997), the Commission, with respect to its regulations under this Act, and a Federal-State Joint Board established under section 410, for State regulations—

"(1) shall review all regulations issued under this Act, or under State law, in effect at the time of the review that apply to operations or activities of providers of any telecommunications services; and

"(2) shall determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between the providers of such service.

"(b) EFFECT OF DETERMINATION.—The Commission shall repeal any regulation it determines to be no longer necessary in the public interest. The Joint Board shall notify the Governor of any State of any State regulation it determines to be no longer necessary in the public interest.".

SEC. 303. REGULATORY FORBEARANCE.

Part II of title II (47 U.S.C. 251 et seq.), as added by this Act, is amended by inserting after section 259 the following new section:

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 118 1997

BEST COPY AVAILABLE

"SEC. 260. COMPETITION IN PROVISION OF TELECOMMUNICATIONS SERVICE.

"(a) REGULATORY FLEXIBILITY.—The Commission may forbear from applying any regulation or any provision of this Act to a telecommunications carrier or service, or class of carriers or services, in any or some of its or their geographic markets if the Commission determines that—

"(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that carrier or service are just and reasonable and are not unjustly or unreasonably discriminatory;

"(2) enforcement of such regulation or provision is not necessary for the protection of consumers; and

"(3) forbearance from applying such regulation or provision is consistent with the public interest.

"(b) COMPETITIVE EFFECT TO BE WEIGHED.—In making the determination under subsection (a)(3), the Commission shall consider whether forbearance from enforcing the regulation or provision will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services. If the Commission determines that such forbearance will promote competition

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 119 1997

among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest.

"(c) LIMITATION.—Except as provided in section 251(i)(3), the Commission may not waive the unbundling requirements of section 251(b) or 255(b)(2) under subsection (a) until it determines that those requirements have been fully implemented.".

SEC. 304. ADVANCED TELECOMMUNICATIONS INCENTIVES.

(a) IN GENERAL.—The Commission and each State commission with regulatory jurisdiction over telecommunications services shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, or other regulating methods that remove barriers to infrastructure investment.

(b) INQUIRY.—The Commission shall, within 2 years after the date of enactment of this Act, and regularly thereafter, initiate a notice of inquiry concerning the availability of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) and shall complete the in-

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 120 1997

quiry within 180 days after its initiation. In the inquiry, the Commission shall determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion. If the Commission's determination is negative, it shall take immediate action under this section, and it may preempt State commissions that fail to act to ensure such availability.

(c) DEFINITIONS.—For purposes of this section—

(1) COMMUNICATIONS ACT TERMS.—Any term used in this section which is defined in the Communications Act of 1934 shall have the same meaning as it has in that Act.

(2) ADVANCED TELECOMMUNICATIONS CAPABILITY.—The term "advanced telecommunications capability" means high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications.

(3) ELEMENTARY AND SECONDARY SCHOOLS.—The term "elementary and secondary schools" means elementary schools and secondary schools, as defined in paragraphs (14) and (25), respectively, of section 10401 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 121 1997

SEC. 305. REGULATORY PARITY.

Within 3 years after the date of enactment of this Act, and periodically thereafter, the Commission shall—

(1) issue such modifications or terminations of the regulations applicable to persons offering telecommunications or information services under title II, III, or VI of the Communications Act of 1934 as are necessary to implement the changes in such Act made by this Act;

(2) in the regulations that apply to integrated telecommunications service providers, take into account the unique and disparate histories associated with the development and relative market power of such providers, making such modifications and adjustments as are necessary in the regulation of such providers as are appropriate to enhance competition between such providers in light of that history; and

(3) provide for periodic reconsideration of any modifications or terminations made to such regulations, with the goal of applying the same set of regulatory requirements to all integrated telecommunications service providers, regardless of which particular telecommunications or information service may have been each provider's original line of business.

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 122 1997

SEC. 306. AUTOMATED SHIP DISTRESS AND SAFETY SYSTEMS.

Notwithstanding any provision of the Communications Act of 1934 or any other provision of law or regulation, a 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 shall not be required to be equipped with a radio telegraphy station operated by one or more radio officers or operators.

SEC. 307. TELECOMMUNICATIONS NUMBERING ADMINISTRATION.

Part II of title II (47 U.S.C. 251 et seq.), as added by this Act, is amended by inserting after section 260 the following new section:

"SEC. 261. TELECOMMUNICATIONS NUMBERING ADMINISTRATION.

"(a) INTERIM NUMBER PORTABILITY.—In connection with any interconnection agreement reached under section 251 of this Act, a local exchange carrier shall make available interim telecommunications number portability, upon request, beginning on the date of enactment of the Telecommunications Act of 1995.

"(b) FINAL NUMBER PORTABILITY.—In connection with any interconnection agreement reached under section 251 of this Act, a local exchange carrier shall make avail-

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 123 1997

able final telecommunications number portability, upon request, when the Commission determines that final telecommunications number portability is technically feasible.

"(c) NEUTRAL ADMINISTRATION OF NUMBERING PLANS.—

"(1) NATIONWIDE NEUTRAL NUMBER SYSTEM COMPLIANCE.— A telecommunications carrier providing telephone exchange service shall comply with the guidelines, plan, or rules established by an impartial entity designated by the Commission for the administration of a nationwide neutral number system.

"(2) OVERLAY OF AREA CODES NOT PERMITTED.—All telecommunications carriers providing telephone exchange service in the same telephone service area shall be assigned the same numbering plan area code under such guideline, plan, or rules.

"(d) COSTS.—The cost of establishing neutral number administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis.".

SEC. 256. ACCESS BY PERSONS WITH DISABILITIES.

(a) IN GENERAL.—Part II of title II (47 U.S.C. 251 et seq.), as added by this Act, is amended by inserting after section 261 the following new section:

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 124 1997

"SEC. 202. ACCESS BY PERSONS WITH DISABILITIES.

"(a) DEFINITIONS.—As used in this section—

"(1) DISABILITY.—The term 'disability' has the meaning given to it by section 3(2)(A) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(2)(A)).

"(2) READILY ACHIEVABLE.—The term 'readily achievable' has the meaning given to it by section 301(9) of that Act (42 U.S.C. 12181(9)).

"(b) MANUFACTURING.—A manufacturer of telecommunications equipment and customer premises equipment shall ensure that the equipment is designed, developed, and fabricated to be accessible to and usable by individuals with disabilities, if readily achievable.

"(c) TELECOMMUNICATIONS SERVICES.—A provider of telecommunications service shall ensure that the service is accessible to and usable by individuals with disabilities, if readily achievable.

"(d) COMPATIBILITY.—Whenever the requirements of subsections (b) and (c) are not readily achievable, such a manufacturer or provider shall ensure that the equipment or service is compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, if readily achievable.

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 125 1997

"(e) STANDARDS.—Within 1 year after the date of enactment of the Telecommunications Act of 1995, the Architectural and Transportation Barriers Compliance Board described in section 504 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12204) shall develop standards for accessibility of telecommunications equipment, customer premises equipment, and telecommunications services, in conjunction with the National Telecommunications and Information Administration and the National Institute of Standards and Technology. The Board shall review and update the standards periodically.

"(f) CLOSED CAPTIONING.—

"(1) IN GENERAL.—The Commission shall ensure that—

"(A) video programming is accessible through closed captions, if readily achievable, except as provided in paragraph (2); and

"(B) video programming providers or owners maximize the accessibility of video programming previously published or exhibited through the provision of closed captions, if readily achievable, except as provided in paragraph (2).

"(2) EXEMPTIONS.—Notwithstanding paragraph (1)—

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 126 1997

"(A) the Commission may exempt programs, classes of programs, locally produced programs, providers, classes of providers, or services for which the Commission has determined that the provision of closed captioning would not be readily achievable to the provider or owner of such programming;

"(B) a provider of video programming or the owner of any program carried by the provider shall not be obligated to supply closed captions if such action would be inconsistent with a binding contract in effect on the date of enactment of the Telecommunications Act of 1995 for the remaining term of that contract (determined without regard to any extension of such term), except that nothing in this subparagraph relieves a video programming provider its obligation to provide services otherwise required by Federal law; and

"(C) a provider of video programming or a program owner may petition the Commission for an exemption from the requirements of this section, and the Commission may grant such a petition upon a showing that the requirements

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 127 1997

contained in this section would not be readily achievable.

"(3) STUDIES.—The Commission shall undertake studies of the current extent (as of the date of enactment of the Telecommunications Act of 1995) of—

"(A) closed captioning of video programming and of previously published video programming;

"(B) providers of video programming;

"(C) the cost and market for closed captioning;

"(D) strategies to improve competition and innovation in the provision of closed captioning; and

"(E) such other matters as the Commission considers relevant.

"(g) REGULATIONS.—The Commission shall, not later than 18 months after the date of enactment of the Telecommunications Act of 1995, prescribe regulations to implement this section. The regulations shall be consistent with the standards developed by the Architectural and Transportation Barriers Compliance Board in accordance with subsection (e).

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 128 1997

"(h) ENFORCEMENT.—The Commission shall enforce this section. The Commission shall resolve, by final order, a complaint alleging a violation of this section within 180 days after the date on which the complaint is filed with the Commission.".

(b) VIDEO DESCRIPTION.—Within 6 months after the date of enactment of this Act, the Commission shall undertake a study of the feasibility of requiring the use of video descriptions on video programming in order to ensure the accessibility of video programming to individuals with visual impairments. For purposes of this subsection, the term "video description" means the insertion of audio narrative descriptions of a television program's key visual elements into natural pauses between the program's dialogue.

SEC. 309. RURAL MARKETS.

Part II of title II (47 U.S.C. 251 et seq.), as added by this Act, is amended by inserting after section 262 the following new section:

"SEC. 263. RURAL MARKETS.

"(a) STATE AUTHORITY IN RURAL MARKETS.—Except as provided in section 251(i)(3), a State may not waive or modify any requirements of section 251, but may adopt statutes or regulations that are no more restrictive than—

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 129 1997

"(1) to require an enforceable commitment by each competing provider of telecommunications service to offer universal service comparable to that offered by the rural telephone company currently providing service in that service area, and to make such service available within 24 months of the approval date to all consumers throughout that service area on a common carrier basis, either using the applicant's facilities or through its own facilities and resale of services using another carrier's facilities (including the facilities of the rural telephone company), and subject to the same terms, conditions, and rate structure requirements as those applicable to the rural telephone company currently providing universal service;

"(2) to require that the State must approve an application by a competing telecommunications carrier to provide services in a market served by a rural telephone company and that approval be based on sufficient written public findings and conclusions to demonstrate that such approval is in the public interest and that there will not be a significant adverse impact on users of telecommunications services or on the provision of universal service;

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 130 1997

BEST COPY AVAILABLE

"(3) to encourage the development and deployment of advanced telecommunications and information infrastructure and services in rural areas; or

"(4) to protect the public safety and welfare, ensure the continued quality of telecommunications and information services, or safeguard the rights of consumers.

"(b) PREEMPTION.—Upon a proper showing, the Commission may preempt any State statute or regulation that the Commission finds to be inconsistent with the Commission's regulations implementing this section, or an arbitrary or unreasonably discriminatory application of such statute or regulation. The Commission shall act upon any bona fide petition filed under this subsection within 180 days of receiving such petition. Pending such action, the Commission may, in the public interest, suspend or modify application of any statute or regulation to which the petition applies.".

SEC. 218. TELECOMMUNICATIONS SERVICES FOR HEALTH CARE PROVIDERS FOR RURAL AREAS, EDUCATIONAL PROVIDERS, AND LIBRARIES.

Part II of title II (47 U.S.C. 251 et seq.), as added by this Act, is amended by inserting after section 263 the following:

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 131 1997

"SEC. 254. TELECOMMUNICATIONS SERVICES FOR CERTAIN PROVIDERS.

"(a) IN GENERAL.—

"(1) HEALTH CARE PROVIDERS FOR RURAL AREAS.—A telecommunications carrier designated as an essential telecommunications carrier under section 214(d) shall, upon receiving a bona fide request, provide telecommunications services which are necessary for the provision of health care services, including instruction relating to such service, at rates that are reasonably comparable to rates charged for similar services in urban areas to any public or nonprofit health care provider that serves persons who reside in rural areas.

"(2) EDUCATIONAL PROVIDERS AND LIBRARIES.—Any telecommunications carrier shall, upon receiving a bona fide request, provide universal service (as defined under section 253) at rates that are affordable and not higher than the incremental cost thereof to elementary schools, secondary schools, and libraries for telecommunications services that permit such schools and libraries to provide or receive educational services.

"(b) SUPPORT PAYMENTS.—If the Commission adopts rules for the distribution of support payments for the preservation and advancement of universal service, the

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 132 1997

Commission shall include the amount of the support payments reasonably necessary to provide universal service (including any costs related to the provision of comparable rates under subsection (a)(1)) to public institutional telecommunications users in any universal service support mechanism it may establish under section 253.

"(c) ADVANCED SERVICES.—The Commission shall establish rules—

"(1) to enhance, to the extent technically feasible and economically reasonable, the availability of advanced telecommunications and information services to all public and nonprofit elementary and secondary school classrooms, health care providers, and libraries;

"(2) to ensure that appropriate functional requirements or performance standards, or both, including interconnection standards, are established for telecommunications carriers that connect such public institutional telecommunications users with the public switched network;

"(3) to define the circumstances under which a telecommunications carrier may be required to connect its network to such public institutional telecommunications users; and

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 133 1997

"(4) to address other matters as the Commission may determine.

"(d) DEFINITIONS.—

"(1) ELEMENTARY AND SECONDARY SCHOOLS.—The term 'elementary and secondary schools' means elementary schools and secondary schools, as defined in paragraphs (14) and (25), respectively, of section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

"(2) UNIVERSAL SERVICE.—The Commission may in the public interest provide a separate definition of universal service under section 253(b) for application only to public institutional telecommunications users.

"(3) HEALTH CARE PROVIDER.—The term 'health care provider' means—

"(A) Post-secondary educational institutions, teaching hospitals, and medical schools.

"(B) Community health centers or health centers providing health care to migrants.

"(C) Local health departments or agencies.

"(D) Community mental health centers.

"(E) Not-for-profit hospitals.

"(F) Rural health clinics.

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 134 1997

 BEST COPY AVAILABLE

"(G) Consortia of health care providers consisting of one or more entities described in subparagraphs (A) through (F).

"(4) PUBLIC INSTITUTIONAL TELECOMMUNICATIONS USER.—The term 'public institutional telecommunications user' means an elementary or secondary school, a library, or a health care provider as those terms are defined in this subsection.".

SEC. 311. PROVISION OF PAYPHONE SERVICE AND TELEMESSAGING SERVICE.

Part II of title II (47 U.S.C. 251 et seq.), as added by this Act, is amended by adding after section 264 the following new section:

"SEC. 265. PROVISION OF PAYPHONE SERVICE AND TELEMESSAGING SERVICE.

"(a) NONDISCRIMINATION SAFEGUARDS.—Any Bell operating company that provides payphone service or telemessaging service—

"(1) shall not subsidize its payphone service or telemessaging service directly or indirectly with revenue from its telephone exchange service or its exchange access service; and

"(2) shall not prefer or discriminate in favor of its payphone service or telemessaging service.

"(b) DEFINITIONS.—As used in this section—

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 135 1997

"(1) The term 'payphone service' means the provision of telecommunications service through public or semi-public pay telephones, and includes the provision of service to inmates in correctional institutions.

"(2) The term 'telemessaging service' means voice mail and voice storage and retrieval services, any live operator services used to record, transcribe, or relay messages (other than telecommunications relay services), and any ancillary services offered in combination with these services.

"(c) REGULATIONS.—Not later than 18 months after the date of enactment of the Telecommunications Act of 1995, the Commission shall complete a rulemaking proceeding to prescribe regulations to carry out this section. In that rulemaking proceeding, the Commission shall determine whether, in order to enforce the requirements of this section, it is appropriate to require the Bell operating companies to provide payphone service or telemessaging service through a separate subsidiary that meets the requirements of section 252.".

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 136 1997

TITLE IV—OBSCENE, HARRASSING, AND WRONGFUL UTILIZATION OF TELECOMMUNICATIONS FACILITIES

SEC. 401. SHORT TITLE.

This title may be cited as the "Communications Decency Act of 1995".

SEC. 402. OBSCENE OR HARASSING USE OF TELECOMMUNICATIONS FACILITIES UNDER THE COMMUNICATIONS ACT OF 1934.

(a) OFFENSES.—Section 223 (47 U.S.C. 223) is amended—

(1) in subsection (a)(1)—

(A) by striking out "telephone" in the matter above subparagraph (A) and inserting "telecommunications device";

(B) by striking out subparagraph (A) and inserting the following:

"(A) knowingly—

"(i) makes, creates, or solicits, and

"(ii) initiates the transmission of,

any comment, request, suggestion, proposal, image, or other communication which is obscene, lewd, lascivious, filthy, or indecent;";

(C) by striking out subparagraph (B) and inserting the following:

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 137 1997

"(B) makes a telephone call or utilizes a telecommunications device, whether or not conversation or communications ensues, without disclosing his identity and with intent to annoy, abuse, threaten, or harass any person at the called number or who receives the communication;" and

(D) by striking out subparagraph (D) and inserting the following:

"(D) makes repeated telephone calls or repeatedly initiates communication with a telecommunications device, during which conversation or communication ensues, solely to harass any person at the called number or who receives the communication; or";

(2) in subsection (a)(2), by striking "telephone" and inserting "telecommunications" and by striking "section" and inserting "subsection";

(3) in subsection (b)(1)—

(A) by striking subparagraph (A) and inserting the following:

"(A) within the United States, by means of a telecommunications device—

"(i) makes, creates, or solicits, and

"(ii) purposefully makes available,

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 138 1997

BEST COPY AVAILABLE

any obscene communication for commercial purposes to any person, regardless of whether the maker of such communication placed the call or initiated the communication; or"; and

(B) in subparagraph (B), by striking "telephone facility" and inserting "telecommunications facility"; and

(4) in subsection (b)(2)—

(A) by striking subparagraph (A) and inserting the following:

"(A) within the United States, by means of telephone or telecommunications device,

"(i) makes, creates, or solicits, and

"(ii) purposefully makes available (directly or by recording device),

any indecent communication for commercial purposes which is available to any person under 18 years of age or to any other person without that person's consent, regardless of whether the maker of such communication placed the call; or"; and

(B) in subparagraph (B), by striking "telephone facility" and inserting in lieu thereof "telecommunications facility".

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 139 1997

(b) PENALTIES.—Section 223 (47 U.S.C. 223) is amended—

(1) by striking out "$50,000" each place it appears and inserting "$100,000"; and

(2) by striking "six months" each place it appears and inserting "2 years".

(c) PROHIBITION ON PROVISION OF ACCESS.—Section 223(c)(1) (47 U.S.C. 223(c)(1)) is amended by striking "telephone" and inserting "telecommunications device".

(d) ADDITIONAL DEFENSES.—Section 223 (47 U.S.C. 223) is amended by adding at the end the following:

"(d) ADDITIONAL DEFENSES; RESTRICTIONS ON ACCESS; JUDICIAL REMEDIES RESPECTING RESTRICTIONS.—

"(1) No person shall be held to have violated this section with respect to any action by that person or a system under his control that is limited solely to the provision of access, including transmission, downloading, intermediate storage, navigational tools, and related capabilities not involving the creation or alteration of the content of the communications, for another person's communications to or

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 140 1997

from a service, facility, system, or network not under that person's control.

"(2) It is a defense to prosecution under subsections (a)(2), (b)(1)(B), and (b)(2)(B) that a defendant lacked editorial control over the communication specified in this section.

"(3) It is a defense to prosecution under subsections (a)(2), (b)(1)(B), and (b)(2)(B) that a defendant has taken good faith, reasonable steps, as appropriate—

"(A) to provide users with the means to restrict access to communications described in this section;

"(B) provide users with warnings concerning the potential for access to such communications;

"(C) to respond to complaints from those who are subjected to such communications;

"(D) to provide mechanisms to enforce a provider's terms of service governing such communications; or

"(E) to implement such other measures as the Commission may prescribe to carry out the purposes of this paragraph. Nothing in this section in and of itself shall be construed to treat

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 141 1997

BEST COPY AVAILABLE

enhanced information services as common carriage.

"(4) In addition to other defenses authorized under this section, it shall be a defense to prosecution under subsection (b) that a defendant is not engaged in a commercial activity that has as a predominant purpose an activity specified in that subsection.

"(5) No cause of action may be brought in any court or administrative agency against any person on account of any action which the person has taken in good faith to implement a defense authorized under this section or otherwise to restrict or prevent the transmission of, or access to, a communication specified in this section. The preceding sentence shall not apply where the good faith defenses under subsection (e)(2) apply.

"(6) No State or local government may impose any liability in connection with a violation described in subsection (a)(2), (b)(1)(B), (b)(2)(B) that is inconsistent with the treatment of those violations under this section provided, however, that nothing herein shall preclude any State or local government from enacting and enforcing complementary oversight, liability, and regulatory systems, procedures,

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 142 1997

and requirements, so long as such systems, procedures, and requirements govern only intrastate services and do not result in the imposition of inconsistent obligations on the provision of interstate services.

"(e) KNOWINGLY DEFINED.—For purposes of subsections (a) and (b), the term 'knowingly' means an intentional act with actual knowledge of the specific content of the communication specified in this section to another person.".

(e) CONFORMING AMENDMENT.—The section heading for section 223 is amended to read as follows:

"SEC. 223. OBSCENE OR HARASSING UTILIZATION OF TELECOMMUNICATIONS DEVICES AND FACILITIES IN THE DISTRICT OF COLUMBIA OR IN INTERSTATE OR FOREIGN COMMUNICATIONS".

SEC. 403. OBSCENE PROGRAMMING ON CABLE TELEVISION.

Section 639 (47 U.S.C. 559) is amended by striking "$10,000" and inserting "$100,000".

SEC. 404. BROADCASTING OBSCENE LANGUAGE ON RADIO.

Section 1464 of title 18, United States Code, is amended by striking out "$10,000" and inserting "$100,000".

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 143 1997

SEC. 405. INTERCEPTION AND DISCLOSURE OF ELECTRONIC COMMUNICATIONS.

Section 2511 of title 18, United States Code, is amended—

(1) in paragraph (1)—

(A) by striking "wire, oral, or electronic communication" each place it appears and inserting "wire, oral, electronic, or digital communication", and

(B) in subdivision (b), by striking "oral communication" in the matter above clause (i) and inserting "communication"; and

(2) in paragraph (2)(a), by striking "wire or electronic communication service" each place it appears (other than in the second sentence) and inserting "wire, electronic, or digital communication service".

SEC. 406. ADDITIONAL PROHIBITION ON BILLING FOR TOLL-FREE TELEPHONE CALLS.

Section 228(c)(7) (47 U.S.C. 228(c)(7)) is amended—

(1) by striking "or" at the end of subparagraph (C);

(2) by striking the period at the end of subparagraph (D) and inserting a semicolon and "or"; and

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 144 1997

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

"(E) the calling party being assessed, by virtue of being asked to connect or otherwise transfer to a pay-per-call service, a charge for the call.".

SEC. 407. SCRAMBLING OF CABLE CHANNELS FOR NONSUBSCRIBERS.

Part IV of title VI (47 U.S. C. 551 et seq.) is amended by adding at the end the following:

"SEC. 640. SCRAMBLING OF CABLE CHANNELS FOR NONSUBSCRIBERS.

"(a) REQUIREMENT.—In providing video programming unsuitable for children to any subscriber through a cable system, a cable operator shall fully scramble or otherwise fully block the video and audio portion of each channel carrying such programming upon subscriber request and without any charge so that one not a subscriber does not receive it.

"(b) DEFINITION.—As used in this section, the term 'scramble' means to rearrange the content of the signal of the programming so that the programming cannot be received by persons unauthorized to receive the programming.".

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 145 1997

SEC. 408. CABLE OPERATOR REFUSAL TO CARRY CERTAIN PROGRAMS.

(a) PUBLIC, EDUCATIONAL, AND GOVERNMENTAL CHANNELS.—Section 611(e) (47 U.S.C. 531(e)) is amended by inserting before the period the following: ", except a cable operator may refuse to transmit any public access program or portion of a public access program which contains obscenity, indecency, or nudity".

(b) CABLE CHANNELS FOR COMMERCIAL USE.—Section 612(c)(2) (47 U.S.C. 532(c)(2)) is amended by striking "an operator" and inserting "a cable operator may refuse to transmit any leased access program or portion of a leased access program which contains obscenity, indecency, or nudity".

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act 146 1997

Document No. 97

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act [iii] 1997

HeinOnline -- 4 Bernard D. Reams, Jr. & William H. Manz, Federal Telecommunications Law: A Legislative History of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) including the Communications Decency Act [iv] 1997