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SUMMARY OF THE TELECOMMUNICATIONS ACT OF 1996

GARDNER, CARTON & DOUGLAS

FEBRUARY 7, 1996

TITLE I - TELECOMMUNICATIONS SERVICES

Overall Summary

The bill removes Modification of Final Judgment (MFJ”) barriers to BOC entry into long distance services and eliminates existing state law barriers to competition in the local telecommunications market by establishing ground rules for carrier interconnection and universal service; preempting state and local entry barriers for local exchange telephone service; removing the remaining line-of-business restrictions in the MFJ; and removing existing restrictions on electric utility entry into the telecommunications market.

Section 101 - Establishment of Part II of Title II (New Sections 251-261)

Section 251 - Interconnection

All telecommunications carriers have the duty to interconnect, directly or indirectly, with the facilities and equipment of other telecommunications carriers and to ensure that all network features, functions or capabilities are fully compatible with other carriers. Local exchange carriers (“LECs”) must ensure the following:

1) that no unreasonable or discriminatory conditions or limitations are placed on the resale of their telecommunications services;

2) number portability, to the extent required by the FCC;

3) dialing parity of telephone exchange service and telephone toll service, without discriminatory practices as to access to telephone numbers, operator services, directory assistance, and directory listing;

4) access to poles, ducts, conduits, and any other rights of way to all competing telecommunications providers of services, with equal rates, terms and conditions; and

5) reciprocal compensation with other telecommunications carriers for the transport and termination of telecommunications.

In addition to the obligations articulated above for all LECs, incumbent LECs that seek to provide long distance service within their existing service area must ensure the following:
1) to negotiate in good faith with any telecommunications carrier requesting service or assistance in completing any of the items listed in 1-5 above;

2) interconnection with the facilities and equipment of any requesting telecommunications carrier for the transmission and routing of telephone and exchange service and exchange access with a quality that is at least equivalent to that provided by the LEC, pursuant to the same rates, terms and conditions as offered to all telecommunications carriers;

3) the provision of telecommunications service on an unbundled basis;

4) the resale of its telecommunications services without discrimination and at the same rates, terms, and conditions as those offered to all subscribers or telecommunications carriers;

5) the provision of reasonable public notice of any changes in the information necessary for the transmission or routing of services, or any other changes which affect the interoperability of the facilities and networks; and

6) access and physical collocation or connection for facilities, at the same rates, terms, and conditions as those offered to other telecommunications carriers.

Within six (6) months after enactment of the Act, the FCC shall implement regulations necessary to enforce the provisions of this Section. The FCC’s regulations, as implemented, shall not pre-empt any state provision or regulation that establishes interconnection obligations of LECs and which is consistent with the provisions of this Section or does not substantially contradict the provisions of this Section. The Commission shall also establish a “Numbering Administration,” an impartial entity to administer numbering and to distribute numbers on an impartial basis.

Exemptions to the Section: Rural telephone companies¹ shall be exempted from the requirements of this Section until: 1) the rural telephone company receives a *bona fide* request for interconnection; and 2) the state commission for that rural telephone company determines that such a request is not unduly economic burdensome or technically infeasible. In the event that an entity makes a *bona fide* request for interconnection to a rural telephone company, the state commission shall determine within 120 days whether such a request can be granted, and if so, shall implement a schedule for doing so. A rural telephone company that provides video programming may not seek exemption, however, if a cable operator seeks to provide telecommunications services in the same area. A LEC that serves fewer than two (2) percent of

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¹ Rural telephone company is defined under the Act to mean a LEC that: (A) provides common carrier service to any study area that does not include either -- (i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or (ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993; or, (B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines; or (C) provides telephone exchange service to any study area with fewer than 100,000 access lines; or, (D) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Act.
the nation’s subscriber lines installed nationwide in the aggregate may petition to its state commission for suspension or modification of any the obligations imposed by this Section. The state commission must respond to the petition within 180 days of its filing.

A LEC subject to interconnection and access requirements prior to enactment of the Act, whether pursuant to court order or consent decree, shall continue to honor those requirements until they are explicitly superseded by FCC regulations.

Section 252 - Procedures for Negotiations, Arbitration and Approval of Agreements

Upon receipt of a bona fide request for interconnection, the LEC and the requesting party shall enter into a period of voluntary negotiation to enter into a binding agreement for the provision of interconnection, resale or any of the items specified in Section 251. At any time during the period of voluntary negotiation, either party may seek impartial mediation from the state commission. During the period after the 135th day but prior to the 160th day following the request for services pursuant to Section 251, either party may petition to the state commission, requesting arbitration. The opposing party shall have the opportunity to respond to the petition. The state shall then resolve any open issue within nine (9) months.

All agreements reached between a LEC and a requesting party must be submitted to the state commission for approval. States must review agreements reached through voluntary negotiation within ninety (90) days. States must review agreements reached through mandatory arbitration within thirty (30) days. In the event that a state fails to carry out its obligations pursuant to this Section, the FCC shall assume responsibility for that proceeding within ninety (90) days. Both FCC and state decisions pursuant to this Section are appealable to Federal district court.

Section 253 - Removal of Barriers to Entry

No state, local statute, or regulation shall prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. States may preserve competitively neutral requirements necessary to preserve universal service; protect public safety; ensure telecommunications quality; and safeguard rights of consumers. States may also impose regulations which impose restrictions on the competitive provision of telecommunications services in areas served by rural telephone companies. Specifically, a State may require a competitor seeking to provide service to a rural market to meet the requirements for recognition as an “eligible” telecommunications carrier (i.e., require the competitor to offer service and advertise throughout the service area served by the rural telephone company). State and local municipalities retain authority with respect to compensation for use or public rights of way by telecommunications providers (including cable operators to the extent that they provide telecommunications services). Nothing in this Section shall affect the provisions already in the Communications Act with respect to preemption of state regulation for commercial mobile radio service (“CMRS”) providers.
Section 254 - Universal Service

Section 254 establishes a joint federal and state controlled board to oversee the mechanisms to ensure universal service to all regions and economic sectors of the public. Universal service is defined as basic interexchange service, advanced telecommunications services, and information services reasonably comparable to services provided elsewhere. The definition is intended to be an evolving one which the FCC shall update as technology introduces new levels of service and capabilities. The FCC will establish mechanisms through which all telecommunications service providers must make a financial contribution to preserve and advance universal service. State commissions or the FCC will designate telecommunications carriers as eligible for universal service contributions, with the public interest as the standard justification. The determining factor of eligibility to receive universal service funds is whether the actual cost to that entity of providing universal service is greater than the associated revenues. Non-profit health care facilities and educational institutions will have a presumption of eligibility for universal service funding.

A state may adopt regulations to provide additional standards and definitions to preserve universal service, but only to the extent that they do not contradict the FCC’s rules.

Within six months following enactment of this law, the FCC shall adopt regulations which require that rates charged by providers of interexchange services to subscribers in rural and high cost areas shall be no higher than rates charged by each such provider in its urban areas. Such rules shall also provide that a carrier must charge similar rates to all customers in all states in which it provides service.

Section 255 - Access by Persons with Disabilities

Section 255 requires that manufacturers of telecommunications and customer premises equipment ensure that the equipment and services are accessible to, and usable by, individuals with disabilities. If accessibility is not readily achievable, a manufacturer or provider shall ensure that the equipment or service is compatible with existing devices or equipment. “Disabilities” and “readily achievable” shall have the same meaning as that given in the Americans with Disabilities Act of 1990.

Section 256 - Coordination with Interconnectivity

Section 256 mandates that the FCC establish procedures over the oversight of network planning by telecommunications providers for the effective and efficient interconnection of public telecommunications services.

Section 257 - Small Business Market Barriers

Within fifteen (15) months after enactment, the FCC must complete a proceeding that identifies and removes barriers for small businesses to own and operate telecommunications service providers.
Section 258 - Illegal Changes in Subscriber Carrier Selections, a.k.a. “Slamming”

No telecommunications carrier may submit or execute a change in the subscriber’s selection of local or long distance telephone service without complying with the FCC’s prescribed verification process.

Section 259 - Infrastructure Sharing

Within one (1) year of enactment, the FCC shall promulgate rules that require incumbent LECs to make available to any carrier that “lacks economies of scale or scope,” or is a provider of universal service, the technology, information, or telecommunications facilities and functions as may be requested by such qualifying carrier for the purpose of enabling such carrier to provide telecommunications services, or to provide access to information services, in the services are in which such qualifying carrier has requested and obtained designation as an eligible telecommunications carrier under Section 214(e).

Section 260 - Provision of Telemessaging Service

A LEC may not discriminate in its provision of telemessaging services and may not subsidize telemessaging services directly or indirectly through the provision of basic telecommunications services.

Section 261 - Effect on Other Requirements

The FCC and states may fulfill the obligations of this Act by enforcing regulations already in effect. A state may impose additional regulations to the extent necessary to promote competition, as long as those regulations do not contradict the Act or the FCC’s regulations.

Section 102 - Eligible Telecommunications Carriers

A state may designate one or more providers of telecommunications services as an “eligible telecommunications carrier” for purposes of receiving universal service funds. Such designation shall be based on the determination of which carrier is best able to serve an unserved area or community that requests service. The state may thus order a carrier to provide service to an unserved area or community.

Section 103 - Exempt Telecommunications Companies (Provision of Telecommunications Services by Public Utilities)

Subject to the Public Utility Holding Company Act of 1935, a utility may establish an “exempt telecommunications company,” a single-purpose subsidiary that provides only telecommunications services, information services, other services or products subject to regulation by the FCC. Within twelve (12) months following the date of enactment, the FCC shall promulgate rules consistent with this Section which shall have the effect of retaining the
FCC’s ultimate jurisdiction to determine whether the entity qualifies as an “exempt telecommunications company.” An electric energy or natural gas utility may not sell any of its assets in its retail rates as of December 19, 1995 to an “exempt telecommunications company” without approval by the relevant state commission.

**Section 104 - Nondiscrimination Principle**

The Communications Act of 1934 is amended to state that the FCC’s purpose is to make communications services available to all people of the United States “without discrimination on the basis of race, color, religion, national origin, or sex.”

**Section 151 - Bell Operating Company Provisions (New Sections 271-276)**

**Section 271 - Bell Operating Company Entry Into InterLATA Services**

Immediately upon enactment of the Act, BOCs may apply to the FCC to provide in-region long distance telephone service provided that: they meet the requirements of Section 251 to ensure that the BOC has sufficient facilities-based competition for business and residential local telephone services within its market; and, they satisfy the requirements of a 14-point “checklist” to be administered by the FCC in consultation with the Department of Justice. With certain service-specific exceptions, BOCs will be able to provide long distance service which originates outside their incumbent territory (out-of-region service) at once. In the event an incumbent BOC has no competition or requests for interconnection for local telephone service, a BOC may petition to the FCC to provide long distance service within its existing territory within seven (7) months following the date of enactment of the Act.

In addition to providing traditional long distance telephone services, BOCs may now enter into interLATA auxiliary communications subscription services such as audio, video or other programming to the home; distribution of copyrighted programming services to licensees; alarm monitoring services; cellular, PCS and other CMRS services; a service that enables customers to gather or store electronic information; and signaling services to local exchange carriers (“LECs”). The provision of such auxiliary services by the BOCs will be limited to those which are incidental to the provision of InterLATA services.

**Section 272 - Separate Affiliate; Safeguards**

The Act removes previous barriers established by the MFJ and permits BOCs to conduct manufacturing activities and information services within its incumbent region, but only through a separate affiliate. To ensure compliance with the “separate affiliate” provisions, the BOC shall provide and pay for an audit, on a biennial basis, to verify sufficient separation.

**Section 273 - Manufacturing By Bell Operating Companies**

BOCs may engage in manufacturing activities which include research and design, royalty agreements, or “close collaboration” with another manufacturing entity. In addition, a BOC
authorized by the FCC to provide long distance services may manufacture and provide telecommunications network and customer premises equipment. A BOC must establish an open procurement process, permitting any entity to participate in the establishment of standards and the certification of equipment for use in the public network.

**Section 274 - Electronic Publishing By Bell Operating Companies**

BOCs may, through a separate affiliate or an independently operated joint venture, engage in electronic publishing activities. Electronic publishing is defined as the dissemination, provision, publication or sale to an unaffiliated entity or person of any of the following: news (including sports); entertainment (other than interactive games); business; financial; legal, consumer or credit materials; editorials; columns or feature; advertising; photos or images; archival or research material; legal notices or public records; scientific, educational, instructional, technical, professional, trade or other literary materials; or other like or similar materials. The BOC may participate in the joint marketing of the electronic publishing services with its affiliate or partner, only within certain drawn exceptions.

**Section 275 - Alarm Monitoring Services**

BOCs or their affiliates may not engage in alarm monitoring services until five (5) years following enactment of the law unless the alarm monitoring services were offered directly by the BOC or through an affiliate, as of November 30, 1995.

**Section 276 - Provision of Payphone Service**

BOCs may not discriminate in favor of payphone services or subsidize payphone services with rates on interexchange services. Within nine (9) months following date of enactment, the FCC must enact regulations which will require fair per-call compensation; fair negotiations by locations providers to all providers of payphone service; and discontinue intrastate and interstate access charges for payphone services.

**TITLE II - BROADCAST PROVISIONS**

**Section 201 - Broadcast Spectrum Flexibility (New Section 336)**

The Act gives the Commission authority to adopt rules for the allocation of additional licenses for advanced television services to holders of broadcast licensees or permittees and requires that the Commission recover either the additional license or the original license in accordance with Commission regulations. If the ancillary or supplemental ATV service is provided for a subscription fee or if the licensee receives compensation from a third party in return for transmitting material (other than paid advertisements), the Commission may require and collect an annual fee or other method of payment which compensates the public for the value of
the ATV spectrum. The Act specifies that this section does not confer must-carry status on ATV or other video services offered on this spectrum.

**Section 202 - Broadcast Ownership**

The provisions restricting the number of radio stations one entity may own nationally have been eliminated. The number of local commercial stations one entity may own, operate or control depends on the market size. The Commission may waive the limitations if it determines that doing so would increase the number of radio broadcast stations in operation. Following are the local limitations:

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<td>45 or more commercial stations</td>
<td>up to 8 (no more than 5 in the same service; AM or FM)</td>
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<tr>
<td>Between 30-44 (inclusive)</td>
<td>up to 7 (no more than 4 in the same service)</td>
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<tr>
<td>Between 15-29 (inclusive)</td>
<td>up to 6 (no more than 4 in the same service)</td>
</tr>
<tr>
<td>14 or fewer</td>
<td>up to 5 (no more than 3 in the same service and no more than 50% ownership of stations in the same market)</td>
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The restrictions on the number of television stations that any one entity may directly or indirectly own, operate, control or have an interest in have been eliminated. Additionally, the restrictions on cable cross-ownership have also been eliminated and the national audience reach limitation has been increased from 25% to 35%.

The Act directs the Commission to conduct a rulemaking proceeding to determine whether changes to broadcast ownership in the same market should be modified or eliminated and directs the FCC to extend its waiver authority of the one-to-a-market rule in any of the top fifty markets.

A television broadcast station may now affiliate with a person or entity that maintains two or more networks of television stations unless the dual or multiple networks include two or more of either (1) ABC, NBC, CBS or FOX or (2) include one of the above networks and WBTN or UPN.

**Section 203 - Term of Licenses**

The Act changes the initial and renewal license term of broadcast licenses to a term not to exceed eight years. During the renewal process, a renewal applicant no longer has to supply information previously given to the Commission or information which is not germane to the grant or denial of such application.
Section 204 - Broadcast Renewal Procedures

For renewal applications filed after May 1, 1995, the Act requires that the Commission determine whether a licensee has met the standards for renewal. The Commission shall grant the renewal application without considering competing applications, if it makes a finding that: (A) the station has served the public interest, convenience and necessity; (B) there have been no serious violations by the licensee of [the] Act or the rules and regulations of the Commission; and (C) there have been no other violations by the licensee of [the] Act or the rules and regulations of the Commission which, taken together, would constitute a pattern of abuse. If an applicant does not meet the renewal criteria, the Commission may deny the renewal application or grant it subject to certain conditions, which might include a grant for a lesser term. Only after the Commission has denied a renewal request, after notice and hearing, may it consider applications for construction permits from competing broadcast applicants.

As part of the newly created provisions regarding obscenity and violence, an applicant for renewal must now include, as an exhibit to the application, a summary of the letters and communication it has received from the public regarding the content of the station’s programming which would be considered violent.

Section 205 - Direct Broadcast Satellite Service

Direct-to-Home satellite service is now protected from signal piracy. Direct-to-Home satellite service is defined to mean “the distribution or broadcast of programming or services by satellite directly to the subscriber’s premises without the use of ground receiving or distribution equipment, except at the subscriber’s premises or in the uplink process to the satellite.” The Act grants exclusive jurisdiction to the FCC to regulate Direct-to-Home satellite service.

Section 206 - Automated Ship Distress and Safety Systems (New Section 365)

Notwithstanding any other provisions of the Act, a U.S. ship operating in accordance with the Global Maritime Distress and Safety System provisions of the Safety of Life at Sea Convention, as determined by the U.S. Coast Guard, is exempt from the requirement to be equipped with a radio telegraphy system operated by one or more operators.

Section 207 - Restrictions on Over-The-Air Reception Devices

This section directs the Commission to promulgate regulations prohibiting restrictions which inhibit a viewer’s ability to receive video programming devices designed for over-the-air reception of television broadcast signals, multichannel multipoint distribution service, or direct broadcast satellite services.
TITLE III - CABLE SERVICES

Section 301 - Cable Act Reform

The definition of “cable service” is amended to include interactive services. “Cable system” is clarified to exclude systems which do not use public rights-of-way to serve subscribers. “Effective competition” is amended to include a telephone company or any multichannel video programming distributor offering video programming directly to subscribers by any means in the franchise area of an unaffiliated cable operator. “By any means” includes MMDS, LMDS, an open video system, or a cable system, but does not include Direct-to-Home satellite service.

“Small cable operator” means a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.

Regulation of cable programming services tier will sunset on March 31, 1999. The FCC is directed to issue a final order regarding a rate increase which has been the subject of complaint within 90 days of such complaint. The complaint must be submitted to the franchising authority by the subscriber within 90 days of the increase. The local franchising authority must then forward the complaint to the Commission for review.

Uniform rate structure requirements do not apply to cable operators whose video programming services are subject to “effective competition” or any video program offered on a per-channel or per-program basis. Bulk discounts to multiple dwelling units are not subject to uniform rate requirements as long as the rates charged are not predatory.

The Act deregulates the rates charged by small cable systems for cable programming services or a basic service tier if that was the only tier in effect as of December 31, 1994. This section applies if the cable system serves fewer than 50,000 subscribers.

Petitions for modification of a market must be acted upon by the FCC within 120 days. State and Franchising Authorities are prohibited from restricting a cable operator’s use of any type of subscriber equipment or transmission technology. The Commissions’ ability to adopt regulations which would affect a cable operator’s features, functions, protocols and other service options is restricted to regulation to ensure compatibility between cable “set-top” boxes, televisions and VCRs.

Cable operators may inform subscribers of rate changes using any written means that is “reasonable.” Rate changes that occur as the result of regulatory fees, franchise fees, or any other fee, tax, assessment, or charge of any kind imposed by a Federal or State agency or Franchising authority are not subject to the notice requirement.

Common Carriers or their affiliates providing video programming to subscribers are subject to all of the provisions that cable operators must comply with, including rate regulation, technical compatibility and subscriber notice. The anti-trafficking cable provisions are repealed,
eliminating the three year holding period. Equipment costs may be aggregated into “broad”
categories such as “converter boxes” regardless of the functionality of the individual equipment
listed in the category. Losses incurred by cable operators operating under the original franchise
prior to September 4, 1992 shall not be disallowed in the determination of whether the rates for
any tier of service, or any type of equipment subject to regulation under this section, are lawful.

Section 302 - Cable Services Provided by Telephone Companies (New Sections 651 - 653)

Section 651 - Regulatory Treatment of Video Programming Services

Local Exchange Carriers may provide video programming via different methods and
subject to different regulatory requirements. First, any person or entity providing video
programming to subscribers using radio communications is subject to the provisions of Title III
governing the regulation of cable services, and Section 652 which outlines the prohibition on
cable buy-outs and mergers. However, the operator would not otherwise be subject to the
provisions of Title IV which govern forbearance and regulatory review issues. Second, any
person or entity providing video programming on a common carrier basis will be subject to the
provisions of Title II, regulating common carrier services, and the buy-out/merger provisions of
Section 652, but would not be subject to the cable services provisions of Title III. Third, video
programming may be provided by way of an “open video” system, in accordance with the new
provisions of Section 653 of Title III. The open video provisions would subject the provider to
the cable services provisions of Title III; however, the only other provisions which the operator
would have to comply with in Sections I-IV of the Act are those that are specifically described in
Section 653.

Section 652 - Prohibition on Buy-Outs

Local exchange carriers and cable operators operating in the same market are prohibited
from entering into joint ventures for the purpose of offering video programming or
telecommunications services with limited and detailed exceptions for (i) the operation of such
facilities in rural areas serving fewer than 35,000 people; (ii) certain joint uses; (iii) systems
operating outside of the top 25 markets with more than one cable operator; (iv) cable systems
serving less than 17,000 subscribers; and (v) small cable systems in non-urban areas. Joint
ventures may be formed for other purposes, such as construction of such facilities.

This section gives the Commission the authority to waive the merger and buy-out
provisions if it finds that (a) the cable operator or local exchange carrier would be subject to
undue economic hardship; (b) the system or facilities would not be economically viable if the
provisions were enforced; or (c) the anticompetitive effects of the proposed transaction would be
outweighed by the public benefit. Additionally, the local franchising authority must approve of
the waiver.
Section 653 - Establishment of Open Video Systems

A local exchange operator may provide cable service to its subscribers by way of an open video system. The Commission is directed to conduct a rulemaking, within six months after enactment, to adopt regulations governing open video systems and rules prohibiting discrimination among video programming providers in rates, terms and conditions. The provision of video programming through an open video system, in accordance with the requirements the Commission is directed to adopt, will allow operators to escape some of the regulatory burdens of the Act. An operator of an open video system may be subject to fees imposed by a local franchising authority or other rates imposed by a local government, such as fees to maintain a public right-of-way.

This section repeals the FCC’s video dialtone rules in effect as of the date of enactment of this Act. However, video dialtone systems which were approved prior to the date of enactment may continue to operate.

Section 303 - Preemption of Franchising Authority Regulation of Telecommunications Services

Franchising authorities may not order a cable operator or affiliate to discontinue the provision of a telecommunications service, or discontinue the operation of a cable system used for the provision of a telecommunications service, by reason of failure to obtain a franchise or franchise renewal. Additionally a franchising authority may not place any requirements under Title III that has the purpose or effect of prohibiting, restricting, or conditioning the provision of a telecommunications service by a cable operator or an affiliate.

Section 304 - Competitive Availability of Navigation Devices (New Section 629)

The Commission is directed to adopt regulations ensuring the commercial availability of devices used by consumers to access multichannel video programming, such as converter boxes and interactive communications equipment. The Commission shall not adopt any rules which would jeopardize the security of any multichannel video programming. The Commission is authorized to waive its regulations with respect to equipment for new services upon a showing by a manufacturer that such waiver is necessary to assist in the development or introduction of new multichannel video products or services. The regulations under this section will cease when the Commission determines that the market for multichannel video programmers and the equipment used therein is fully competitive, and that elimination of the regulations would be in the public interest.

Section 305 - Video Programming Accessibility (New Section 713)

This section directs the Commission to conduct an inquiry 180 days after passage of the Act to determine the extent to which all video programming has been closed captioned. Within 18 months after enactment, the Commission must adopt regulations and deadlines for the close captioning of video programming. Providers may petition to be exempt from the close captioning
requirements upon a showing that compliance would create an undue burden. Undue burden is defined as creating significant difficulty or expense.

Within six months after passage of the Act, the Commission is directed to conduct an inquiry regarding the use of video descriptions on video programming.

**TITLE IV - REGULATORY REFORM**

**Section 401 - Regulatory Forbearance (New Section 10)**

The Commission must forbear from applying any provision of the Communications Act or any of its regulations to a telecommunications carrier or service if it determines that enforcement is unnecessary to: 1) ensure just and reasonable charges; 2) protect consumers; and 3) protect the public interest. In making its public interest determinations, the Commission must consider whether forbearance will promote competition.

Carriers may petition the Commission for forbearance. Such a petition will be deemed granted if the Commission does not deny the petition within one year of its submission. The Commission may extend the one-year period for 90 days. A State may not enforce any provision of the Communications Act if the Commission forbears from applying it.

**Section 402 - Biennial Review of Regulations; Regulatory Relief (New Section 11)**

Beginning in 1998, every two years the Commission and a Federal-State Joint Board must review all regulations issued under the Communications Act to determine whether they continue to be in the public interest. The Commission must repeal any regulations found to be unnecessary.

**Section 403 - Elimination of Unnecessary Commission Regulations and Functions**

This Section eliminates or reduces the following Commission regulations and functions:

* the Commission is no longer required to set depreciation rates for common carriers;

* the Commission may hire outside accountants to audit carriers, and outside contractors to conduct ship radio inspections;

* the Commission may waive the requirement of a broadcast construction permit where the likelihood of interference is minimal or does not exist;

* a broadcaster’s license may be canceled automatically if the station does not transmit for 12 consecutive months;
* Commission staff may process routine comparative applications in the Instructional Television Fixed Service;

* the Commission may delegate the task of testing and certifying compliance of devices or home electronic equipment to private laboratories;

* a hearing will not be required for a station to make routine changes in frequency, hours of operation, or authorized power;

* the Commission may authorize the operation of radio stations without individual licenses for domestic ships and aircraft, citizens band radio and personal radio services:

* applications for fixed microwave licenses need not be placed on public notice prior to grant;

* Commission jurisdiction over ship radios owned by other government agencies is eliminated;

* the Commission will streamline and reduce its renewal procedures for non-broadcast radio licensees; and

* restrictions on corporations having foreign officers or directors are removed.

**TITLE V - OBSCENITY AND VIOLENCE**

**Section 502 - Obscene or Harassing Use of Telecommunications Facilities**

The Act broadens the prior prohibition on the obscene or harassing use of telecommunication equipment from strictly telephonic harassment, so that any person who uses any “telecommunications device” to transmit obscene or indecent communication with the intent to annoy, abuse, threaten or harass another person, or who uses any “telecommunications device” to knowingly transmits obscene or indecent communication to a recipient under 18 years of age, or who knowingly permits any telecommunications facilities under his or her control to be used for such prohibited activity, is subject to criminal fines and up to two year imprisonment. Any person who uses an interactive computer service to send to a specific person under the age of 18 any patently offensive communications regarding sexual or excretory activities or organs, or who knowingly permits any telecommunications facility under his or her control to be used for such activity, is subject to criminal fines and up to two years imprisonment. States and local governments may impose complementary regulations and liabilities on intrastate services, and may govern conduct not covered by this section.

As additional permitted defenses to the Act, no person shall be held to have violated this section solely for providing access or connection to a network not under that person’s control, or
for transmission, downloading, intermediate storage, access software, or other related activities incidental to the provision of access. This defense is not available to a person who provides access or connection to a network that is owned or controlled by such person, nor is it available to a person who conspired with another entity actively involved in the creation or knowing distribution of the prohibited communications or in the knowing advertisement of such communications. It is a further defense to prosecution that the defendant has taken good faith reasonable effective measures, as defined by the FCC, to restrict or prevent access to the proscribed communications.

The Act’s use of the term “telecommunications device” is not intended to impose new obligations on broadcasting station licensees or cable operators covered by other obscenity and indecency provisions in the Communications Act of 1934, nor does it apply to interactive computer services, which are defined as any information service, system or access software provider that provides access by multiple users to a computer server.

**Section 503 - Obscene Programming on Cable Television**

Under the Act, the fine for transmitting obscene or unprotected speech over a cable system, now $10,000 under the Communications Act of 1934, shall now be determined in accordance with the criminal code.

**Section 504 - Scrambling of Cable Channels (New Section 640)**

The Act requires a cable operator, on subscriber request and at no charge, fully to scramble or otherwise fully to block the audio and video programming of any channel so that the subscriber does not receive a comprehensible signal.

**Section 505 - Scrambling of Sexually Explicit Adult Video Service Programming (New Section 641)**

Beginning 30 days from enactment of the Act, a multichannel video programming distributor must fully scramble or otherwise fully block any sexually explicit adult or indecent programming on any channel of its service that is primarily dedicated to sexually oriented programming so that any non-subscriber does not receive such channel or programming. Until the distributor complies with this requirement, it may not provide such programming during hours when a significant number of children are likely to view it.

**Section 506 - Cable Operator Refusal to Carry Certain Programs**

The Act expands the Communications Act of 1934 to permit a cable operator to refuse to transmit any public, educational, governmental or leased access program or portion of a program that contains obscenity, nudity or indecency.
Section 507 - Clarification of Current Laws Regarding Communication of Obscene Materials through the Use of Computers

The Act clarifies current obscenity laws to prohibit explicitly a person from knowingly using an interactive computer service to import or transport obscene materials, or to use such service to transport, sell or distribute such materials.

Section 508 - Coercion and Enticement of Minors

The Act amends the criminal laws to prohibit any person from using interstate commerce to knowingly induce, or attempt to induce, a minor to engage in prostitution or any sexual act for which a person may be criminally prosecuted. A person who violates this section may be fined under the criminal code and subject to up to ten years imprisonment.

Section 509 - Online Family Empowerment (New Section 230)

The Act exempts providers or users of an interactive computer service from treatment as publishers or speakers of any information provided by another information content provider. Providers and users of interactive computer services shall not be liable for actions voluntarily taken in good faith to restrict access to or availability of, or to provide the technical means to restrict access to, obscene, excessively violent, harassing or otherwise objectionable material, regardless of any constitutional protection of the material. This section shall not: 1) impair enforcement of criminal law on obscenity or the sexual exploitation of children; 2) expand or limit intellectual property law; 3) limit laws on communications privacy; or 4) prevent any state from enforcing state law consistent with this section.

Section 551-Parental Choice in Television Programming

Rating of Video Programming: The Act establishes a one year period for the industry to enact a voluntary rating procedure for programming which contains sexual, violent, or other indecent material. If, after one year, no rating system is in place, the FCC must: 1) establish a ratings system based on the recommendations of an advisory committee comprised of parents and industry representatives; and 2) promulgate rules requiring distributors of programming to transmit the ratings so that parents may block the display of programming that they deem inappropriate for their children. In determining whether a voluntary rating procedure exists, the FCC shall consult with the appropriate public interest groups.

Manufacture of Televisions that Block Programs (“V-Chip”): The Act requires manufacturers to install a feature which allows blocking of objectionable programming of a common rating on 13” or larger television sets. The FCC shall oversee the adoption of industry standards for program blocking, and shall review alternate blocking technologies as they become available to facilitate the blocking of programming in absence of a rating. The FCC must establish the effective date of the manufacturing requirement after consultation with the television manufacturing industry, but in no case may that date be earlier than two years after enactment of the Act.
Section 552 - Technology Fund

The Act encourages broadcasters, cable operators, other video programming distributors and other “relevant related industries” to establish a technology fund to encourage television equipment manufacturers to develop technology that would permit parents to block programming they deem inappropriate and to encourage the availability to low income parents. The industry is further encouraged to establish and promote standards for ensuring access to information necessary to use the blocking technology.

Section 561 - Expedited Review

The Act provides expedited judicial review of constitutional challenges to the provisions on obscenity and violence by allowing such challenges to be directly submitted to a three-judge U.S. District Court panel, with review by right of direct appeal to the U.S. Supreme Court.

TITLE VI - EFFECT ON OTHER LAWS

Section 601 - Applicability of Consent Decrees and Other Laws

All conduct or activities that are subject to the AT&T Consent Decree (the Modification of Final Judgment), the GTE Consent Decree, or the AT&T-McCaw Consent Decree shall, on and after the date of enactment, be subject to the Communications Act rather than those decrees. The definition of a BOC is modified so that successors or assigns of BOCs fall within the definition only if they provide wireline telephone exchange service. This change is intended to protect a successor to a BOCs wireless assets from being treated as a BOC simply because of the acquisition of those assets.

Nothing in the bill shall be construed to modify, impair, or supersede the applicability of any of the antitrust laws. The Commission will no longer have authority to review mergers or consolidations of telephone companies and confer antitrust immunity. Rather, the DOJ will review such mergers under antitrust laws.

The bill does not have any effect on any other Federal, State, or local law unless expressly provided by the bill.

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2 United States v. Western Electric, Civil Action No. 82-0192 (D.C. Cir. Aug. 24, 1982).
4 United States v. AT&T Corp. and McCaw Cellular Communications, Inc., Civil Action No. 94-01555 (D.C. Cir. July 15, 1994).
Section 602 - Preemption of Local Taxation With Respect to Direct-to-Home Services

Local taxation of the provision of direct-to-home satellite services is preempted. This preemption does not extend to local taxes on the sale of the equipment needed to receive these services.

TITLE VII - MISCELLANEOUS PROVISIONS

Section 701 - Prohibition on Billing for Toll-Free Calls

Information and service providers cannot charge for 800 number calls unless the calling party has been fully informed of the charge and has agreed to pay for the call either by entering into a prior written agreement and utilizing a personal identification number (“PIN”) for each call, or by providing charge account information for each call. This prohibition does not apply to calls utilizing telecommunications devices for the deaf, to directory services provided by a common carrier or a local exchange carrier or their affiliates, or for any purchase of goods or of services that are not information services.

Section 702 - Privacy of Customer Information (New Section 222)

Carrier Use of CPNI. Every telecommunications carrier has the duty to protect the confidentiality of proprietary information of and relating to other carriers, equipment manufacturers and customers, including resellers. A telecommunications carrier may only use individually identifiable customer proprietary network information (“CPNI”) in its provision of the telecommunications service from which such information is derived, or other services necessary to, or used in, the provision of such telecommunications service. A telecommunications carrier may use CPNI to initiate, bill and collect for telecommunications services.

Carrier Disclosure of CPNI. A carrier must disclose CPNI, upon affirmative written request by the customer, to any person designated by the customer. A local exchange carrier may use or disclose aggregate customer information, for purposes other that its own provision of services, only if it provides such aggregate information to other carriers or persons on a reasonable and nondiscriminatory basis. A telecommunications carrier that provides telephone exchange service must provide subscriber list information on reasonable rates, terms, and conditions, to any person requesting such information for the purpose of publishing directories in any format.

Section 703 - Pole Attachments

Definitions. The definition of “utility” does not include interexchange carriers. For the purposes of the Pole Attachment Act, the term “telecommunications carrier” does not include any incumbent local exchange carrier.
Right of Access. A utility must provide cable television systems and any other telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by the utility. However, an electric utility may deny access where there is insufficient capacity and for reasons of safety, reliability and technical considerations.

Attachments by Telecommunications Carriers. Within two years of the date of enactment, the Commission must adopt rules ensuring that pole attachment rates for all providers of telecommunications services are just, reasonable and nondiscriminatory. These rules apply only when the parties fail to resolve a dispute over such charges and will become effective five years after the date of enactment. Until the effective date of the new regulations, pole attachments for providers of telecommunications services are regulated under current rules.

In providing pole attachments to telecommunications carriers, a utility must equally apportion the cost of non-usable space among all attaching entities according to a formula provided in the bill. The utility must apportion the cost of useable space among all attaching entities according to the percentage of usable space required for each entity. Any increase in rates resulting from the adoption of the regulations must be implemented in five equal annual increments beginning on the effective date of the regulations.

Attachments by Cable Operators. When a pole attachment is used by a cable television system solely to provide cable service, the new regulations will not apply. A cable system providing telecommunications services will be subject to the new regulations when they become effective.

Imputation. A utility providing telecommunications services or cable service must impute to the costs of such service an amount equal to the pole attachment rate it would be obligated to pay under the bill.

Modifications to Pole Attachments. Whenever the owner of a pole, duct, conduit, or right-of-way intends to modify or alter such facility, it must provide written notification to any entity with an existing attachment so that such entity has the opportunity to add to or modify its existing attachment. Any entity that adds to or modifies its existing attachment must bear a proportionate share of the costs incurred. An attaching entity is not required to bear the costs of rearranging or replacing its attachment if it results solely from the attachment or modification of another attaching entity.

Section 704 - Facilities Siting/Radiofrequency Emission Standards

State and Local Authority. The Commission cannot preempt local and State land use decisions. The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government shall not unreasonably discriminate among providers of functionally equivalent services and shall not prohibit or have the effect of prohibiting the provision of such services. A State or local government must act on any siting request within a reasonable period of time and any denial must be in writing and supported by substantial evidence. No State or local government may regulate the siting of facilities based on the
environmental effects of radio frequency emission to the extent that such facilities comply with the Commission’s regulations concerning such emissions.

**Jurisdiction for Appeals.** Appeals of State or local decisions inconsistent with this section may be brought in the Federal district court in which the facilities are located or a State court of competent jurisdiction. However, a party may petition the Commission for relief when adversely affected by an action or omission of a State of local government that is inconsistent with the Commission’s regulations concerning radiofrequency emissions.

**Use of Federal and Property.** Within 180 days of the date of enactment, the President shall prescribe procedures by which Federal departments and agencies may make available on a fair, reasonable, and non-discriminatory basis, property, rights-of-way, and easements under their control for the placement of new telecommunications services that are dependent, in whole or in part, upon the utilization of Federal spectrum rights. Federal departments and agencies may charge reasonable fees for such use.

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**Section 705 - Mobile Services Direct Access to Long Distance Carriers (New Section 332(c)(7))**

A provider of commercial mobile radio services (“CMRS”) shall not be required to provide equal access (i.e., presubscribed “1+” access) to long distance carriers. However, if the Commission determines that subscribers to such services are denied access to the long distance provider of their choice, then the Commission may impose rules to require unblocked access through the use of mechanisms such as carrier access codes. The requirements of unblocking shall not apply to mobile satellite services unless the Commission finds it to be in the public interest. The Commission rules will supersede the equal access, balloting and prescription requirements imposed by the MFJ and the AT&T-McCaw consent decree.

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**Section 706 - Advanced Telecommunications Incentives**

The Commission and the States shall encourage the deployment of advanced telecommunications capability to all Americans (particularly elementary and secondary schools and classrooms) by utilizing price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment. The FCC must initiate an inquiry within 30 months after the date of enactment to assess the extent of such deployment. If it finds that such capability is not being deployed in a reasonable and timely fashion, the Commission shall take immediate action to accelerate deployment by removing barriers to infrastructure investment.

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**Section 707 - Telecommunications Development Fund (Deposit and Use of Auction Escrow Accounts (New Section 714))**

Any deposits that the Commission requires to qualify bidders in a spectrum auction must be deposited in an interest bearing account. Within 45 days following the conclusion of the competitive bidding, the deposits of successful bidders shall be paid to the Treasury; the deposits
of unsuccessful bidders shall be returned; and the interest accrued to the account shall be transferred to the Telecommunications Development Fund (“TDF”). The bill creates the TDF, a seven-member organization to provide funds for eligible small businesses involved in telecommunications applications, to stimulate new technology development, and to support universal service. Businesses that have $50 million or less in annual revenues, on average over the past three years, are eligible for loans, investments, or other extensions of credit from the TDF.

**Section 708 - National Education Technology Funding Corporation**

The bill authorizes an existing non-profit corporation to receive Federal grants and assistance to leverage resources and stimulate private investment in education technology infrastructure; to encourage States to create and upgrade interactive high capacity networks for elementary schools secondary schools, and public libraries; to provide monetary assistance to State education technology agencies; and for other educational purposes.

**Section 709 - Report on Telemedicine**

The bill directs the Assistant Secretary of Commerce for Communications and Information, in consultation with the Secretary of Health and Human Services, to submit by January 31, 1997, a report on telemedicine grant programs conducted by the government.

**Section 710 - Authorization of Appropriations**

This section authorizes appropriation for the Commission of such sums as may be necessary to carry out the bill.