

**THE CABLE COMMUNICATIONS ACT OF 1984**  
**PUBLIC LAW 98-549 - October 30, 1984**

98 STAT.2780

Amendment of Communications Act of 1934

SEC. 2. The Communications Act of 1934 is amended by inserting after title V the following new title:

"TITLE VI - General Provisions

"PURPOSES

47.USC 521

"SEC.601. The purposes of this title are to -

"(1) establish a national policy concerning cable communications;

"(2) establish franchise procedures and standards which encourage the growth and development of cable systems and which assure that cable systems are responsive to the needs and interests of the local community;

"(3) establish guidelines for the exercise of Federal, State, and local authority with respect to the regulation of cable systems;

"(4) assure that cable communications provide and are encouraged to provide the widest possible diversity of information sources and services to the public;

"(5) establish an orderly process for franchise renewal which protects cable operators against unfair denials

of renewal where the operator's past performance and proposal for future performance meet the standards established by this title; and

"(6) promote competition in cable communications and minimize unnecessary regulation that would impose an undue economic burden on cable systems.

## 'DEFINITIONS

47.USC 522

"SEC.602. For purposes of this title -

"(1) The term 'affiliate', when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person;

"(2) the term 'basic cable service' means any service tier which includes the transmission of local television broadcast signals;

"(3) the term 'cable channel' or 'channel' means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by the Commission by regulation);

"(4) the term 'cable operator' means any person or group of persons (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the

management and operation of such a cable system;

"(5) the term 'cable service' means -

"(A) the one-way transmission to subscribers of (i) video

programming, or (ii) other programming services, and

"(B) subscriber interaction, if any, which is required for the

selection of such video programming or other programming service;

"(6) the term 'cable system' means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such terms does not include (A) a facility that serves only to retransmit the television signals of 1 or more television broadcast stations; (B) a facility that serves only subscribers in 1 or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities uses any public right-of-way; (C) a facility or common carrier which is subject, in whole or in part, to the provisions of title II of this Act, except that such facility shall be considered a cable system (other than for purposes of section 621(c)) to the extent such facility is used in the transmission of video programming directly to subscribers; or (D) any facilities of any electric utility used solely for operating its electric utility systems;

"(7) the term 'Federal Agency' means any agency of the United States, including the Commission;

"(8) the term 'franchise' means an initial authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to section 626), issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system;

"(9) the term 'franchising authority' means any governmental entity empowered by Federal, State, or local law to grant a franchise;

"(10) the term 'grade B contour' means the field strength of a television broadcast station computed in accordance with regulations promulgated by the Commission;

"(11) the term 'other programming service' means information that a cable operator makes available to all subscribers generally;

"(12) the term 'person' means an individual, partnership, association, joint stock company, corporation, or governmental entity;

"(13) the term 'public, educational, or governmental access facilities' means -

(A) channel capacity designed for public, educational, or governmental use; and

(B) facilities and equipment for the use of such channel capacity;

"(14) the term 'service tier' means a category of cable or other services provided by a cable operator and for which a separate rate is charged by the cable operator;

"(15) the term 'State' means any State, or political

subdivision or agency thereof; and  
"(16) the term 'video programming' means programming provided by, or generally considered comparable to programming provided by a television broadcast station.

"Part II - Use of Cable Channels and  
Cable Ownership Restrictions

CABLE CHANNELS FOR PUBLIC,  
EDUCATIONAL, OR GOVERNMENTAL USE"  
47.U.S.C. 531

"SEC.611.(a) A franchising authority may establish requirements in a franchise with respect to the designation or use of channel capacity for public, educational, or governmental use only to the extent provided in this section.

"(b) A franchising authority may in its request for proposals require as part of a franchise, and may require as part of a cable operator's proposal for a franchise renewal, subject to section 626, that channel capacity be designated for public, educational, or governmental use, and channel capacity on institutional networks be designated for educational or governmental use, and may require rules and procedures for the use of the channel capacity designated pursuant to this section.

"(c) A franchise authority may enforce any requirement in any franchise regarding the providing or use of such channel capacity. Such enforcement authority includes the authority to enforce any provisions of the franchise for

services, facilities, or equipment proposed by the cable operator which relate to public, educational, or governmental use of channel capacity; whether or not required by the franchising authority pursuant to subsection (b).

"(d) In the case of any franchise under which channel capacity is designated under subsection (b), the franchising authority shall prescribe -

"(1) rules and procedures under which the cable operator is permitted to use such channel capacity for the provisions of other services if such channel capacity is not being used for the purposes designated, and

"(2) rules and procedures under which such permitted use shall cease.

"(e) Subject to section 624(d), a cable operator shall not exercise any editorial control over any public, educational, or governmental use of channel capacity provided pursuant to this section.

"(f) For purposes of this section, the term 'institutional network' means a communication network which is constructed or operated by the cable operator and which is generally available only to subscribers who are not residential subscribers.

"CABLE CHANNELS FOR COMMERCIAL USE"  
47.USC 532

"SEC.612. (a) The purpose of this section is to assure that the widest possible diversity information sources are made available to the public from cable systems in a manner

consistent with growth and development of cable systems.

(b)(1) A cable operator shall designate channel capacity for commercial use by persons unaffiliated with the operator in accordance with the following requirements:

"(A) An operator of any cable system with 36 or more (but not more than 54) activated channels shall designate 10 percent of such channels which are not otherwise required for use (or the use of which is not prohibited) by Federal law or regulation.

"(B) An operator of any cable system with 55 or more (but not more than 100) activated channels shall designate 15 percent of such channels which are not otherwise required for use (or for the use of which is not prohibited) by Federal law or regulation.

"(C) An operator of any cable system with more than 100 activated channels shall designate 15 percent of all such channels.

"(D) An operator of any cable system with fewer than 36 activated channels shall not be required to designate channel capacity for commercial use by persons unaffiliated with the operator, unless the cable system is required to provide such channel capacity under the terms of a franchise in effect on the date of the enactment of this title.

"(E) An operator of any cable system in operation on the date of the enactment of this title shall not be required to remove any service actually being provided on July 1, 1984, in order to comply with this section, but shall make channel capacity available for commercial use as such capacity becomes available until such time as the cable operator is in full compliance with this section.

"(2) Any Federal agency, State, or franchising authority may not require any cable system to designate channel capacity for commercial use by unaffiliated persons in excess of the capacity specified in paragraph (1), except as otherwise provided in this section.

"(3) A cable operator may not be required, as part of a request for proposals or as a part of a proposal for renewal, subject to section 626, to designate channel capacity for any other use (other than commercial use by unaffiliated persons under this section) except as provided in sections 611 and 637, but a cable operator may offer in a franchise, or proposal for renewal thereof, to provide, consistent with applicable law, such capacity for other than commercial use by such persons.

"(4) A cable operator may use any unused channel capacity designated pursuant to this section until the use of such channel capacity is obtained, pursuant to a written agreement, by a person unaffiliated with the operator.

"(5) For purposes of this section -

"(A) the term 'activated channels' means those channels engineered at the headend of the cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel designated for public, educational, or governmental use, and

"(B) the term 'commercial use' means the provision of video programming, whether or not for profit.

"(6) Any channel capacity which has been designated for public, educational, or governmental use may not

be considered as designated under this section for commercial use for purpose of this section.

(c)(1) If a person unaffiliated with the cable operator seeks to use channel capacity designated pursuant to subsection (b) for commercial use, the cable operator shall establish, consistent with the purpose of this section, the price, terms, and conditions of such use which are at least sufficient to assure that such use will not adversely affect the operation, financial condition, or market development of the cable system.

"(2) A cable operator shall not exercise any editorial control over any video programming provided pursuant to this section, or in any other way consider the content of such programming, except that an operator may consider such content to the minimum extent necessary to establish a reasonable price for the commercial use of designated channel capacity by an unaffiliated person.

"(3) Any cable system channel designated in accordance with this section shall not be used to provide a cable service that is being provided over such system on the date of the enactment of this title, if the provision of such programming is intended to avoid the purpose of this section.

(d) Any person aggrieved by the failure or refusal of a cable operator to make channel capacity available for use pursuant to this section may bring an action in the district court of the United States for the judicial district in which the cable system is located to compel that such capacity be made available. If the court finds that the channel capacity sought by such person has

not been made available in accordance with this section, or finds that the price, terms, or conditions established by the cable operator are unreasonable, the court may order such system to make available to such person, the channel capacity sought, and further determine the appropriate price, terms, or conditions for such use consistent with subsection(c), and may award actual damages if it deems such relief appropriate. In any such action, the court shall not consider any price, term, or condition established between an operator and an affiliate for comparable services.

"(e)(1) Any person aggrieved by the failure or refusal of a cable operator to make channel capacity available pursuant to this section may petition the Commission for relief under this subsection upon a showing of prior adjudicated violations of this section. Records of previous adjudications resulting in a court determination that the operators had violated this section, or that the price terms, or conditions established by such system are unreasonable under subsection(c), the Commission shall, by rule or order, require such operator to make available such channel capacity under price, terms, and conditions consistent with subsection (c).

"(2) In any case in which the Commission finds that the prior adjudicated violations of this section constitute a pattern or practice of violations by an operator, the Commission may also establish any further rule or order necessary to assure that the operator provides the diversity of information sources

required by this section.

"(3) In any case in which the Commission finds that the prior adjudication violations of this section constitute a pattern or practice of violations by any person who is an operator of more than one cable system, the Commission may also establish any further rule or order necessary to assure that such person provides the diversity of information sources required by this section.

"(f) In any action brought under this section in any Federal district court or before the Commission, there shall be a presumption that the price, terms, and conditions for use of channel capacity designated pursuant to subsection (b) are reasonable and in good faith unless shown by clear and convincing evidence to the contrary.

"(g) Notwithstanding sections 621(c) and 623(a), at such time as cable systems with 36 or more activated channels are available to 70 percent of households within the United States and are subscribed to by 70 percent of the households to which such systems are available, the Commission may promulgate any additional rules necessary to provide diversity of information sources. Any rules promulgated by the Commission pursuant to this subsection shall not preempt authority expressly granted to franchising authorities under this title.

"(h) Any cable service offered pursuant to this section shall not be provided, or shall be provided subject to conditions, if such cable service in the judgement of the franchising authority is obscene, or is in conflict

with community standards in that it is lewd, lascivious, filthy, or indecent or is otherwise unprotected by the Constitution of the United States.

## "FRANCHISE FEES

47.U.S.C. 542

"SEC.622. (a) Subject to the limitation of subsection (b), any cable operator may be required under the terms of any franchise to pay a franchise fee.

"(b) For any twelve-month period, the franchise fees paid by a cable operator with respect to any cable system shall not exceed 5% of such cable operator's gross revenues derived in such period from the operation of the cable system. For purposes of this section, the 12 month period shall be the 12 month period applicable under the franchise for accounting purposes. Nothing in this subsection shall prohibit a franchising authority and a cable operator from agreeing that franchise fees which lawfully could be collected for any such 12 month period shall be paid on a prepaid or deferred basis; except that the sum of the fees paid during the term of the franchise may not exceed the amount, including the time value of money, which would have lawfully been collected if such fees had been paid per annum.

"(c) A cable operator may pass through to subscribers the amount of any increase in franchise fee, unless the franchising authority demonstrates that the rate structure specified in the franchise reflects all costs of franchise fees and so notifies the cable operator in writing.

"(d) In any court action under subsection (c), the franchising authority shall demonstrate that the rate structure reflects all costs of the franchise fees.

"(e) Any cable operator shall pass through to subscribers the amount of any decrease in a franchise fee.

"(f) A cable operator may designate that portion of a subscriber's bill attributable to the franchise fee as a separate item on the bill.

"(g) For purposes of this section -

"(1) the term 'franchise fee' includes any tax, fee, or assessment of any kind imposed by a franchising authority or other governmental entity on a cable operator or cable subscriber, or both, solely because of their status as such.

"(2) the term 'franchise fee' does not include -

"(A) any tax, fee, or assessment which is unduly discriminatory against cable operators or cable subscribers;

"(B) in the case of any franchise in effect on the date of the enactment of this title, payments which are required by the franchise to be made by the cable operator during the term of such franchise for, or in support of the use of, public, education, or governmental access facilities;

"(C) in the case of any franchise granted after such date of enactment, capital costs which are required by the franchise to be incurred by the cable operator for public, education, or governmental access facilities;

"(D) requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit,

insurance, indemnification, penalties, or liquidated damages; or

"(E) any fee imposed under title 17, U.S. Code.

"(h)(1) Nothing in this Act shall be construed to limit any authority of a franchising authority to impose a tax, fee, or other assessment of any kind on a person (other than a cable operator) with respect for cable service or other communications service provided by such person over a cable system for which charges are assessed to subscribers but not received by the cable operator.

"(2) For any 12 month period, the fees paid by such person with respect to any such cable service or other communications service shall not exceed 5% of such person's gross revenues derived in such period from the provision of such service over the cable system.

"(i) Any Federal agency may not regulate the amount of the franchise fees paid by a cable operator or regulate the use of funds derived from such fees, except as provided in this section.

## "REGULATION OF RATES

47.USC 543

"SEC.623.(a) Any Federal agency or State may not regulate the rates for the provision of cable service except to the extent provided under this section. Any franchising authority may regulate the rates for the provision of cable service, or any other communications service provided over a cable system to cable subscribers but only to the extent provided under this section. (See (b) - (h)).

## "REGULATION OF SERVICES, FACILITIES, AND EQUIPMENT

47.USC 544

"SEC.624. (a) Any franchising authority may not regulate the services, facilities, and equipment provided by a cable operator except to the extent consistent with this title.

"(b) In the case of any franchise granted after the effective date of this title, the franchising authority, to the extent related to the establishment or operation of a cable system -

"(1) in its request for proposals for a franchise (including requests for renewal proposals, subject to section 626), may establish requirements for facilities and equipment, but may not establish requirements for video programming or other information services; and

"(2) subject to section 625, may enforce any requirements contained within the franchise -

"(A) for facilities and equipment; and

"(B) for broad categories of video programming or other services.

"(c) In the case of any franchise in effect on the effective date of this title, the franchising authority may, subject to section 625, enforce requirements contained within the franchise for the provision of services, facilities, and equipment, whether or not related to the establishment or operation of a cable system.

"(d)(1) Nothing in this title shall be construed as prohibiting a franchising authority and a cable

operator from specifying, in a franchise or renewal thereof, that certain cable services shall not be provided or shall be provided subject to conditions, if such cable services are obscene or are otherwise unprotected by the Constitution of the U. S..

"(2)(A) In order to restrict the viewing of programming which is obscene or indecent, upon the request of a subscriber, a cable operator shall provide (by sale or lease) a device by which the subscriber can prohibit viewing of a particular cable service during periods selected by that subscriber.

"(B) Subparagraph (A) shall take effect 180 days after the effective date of this title.

"(e) The Commission may establish technical standards relating to the facilities and equipment of cable systems which a franchising authority may require in the franchise.

"(f)(1) Any Federal agency, State, or franchising authority may not impose requirements regarding the provision or content of cable services, except as expressly provided in this title.

"(2) Paragraph (1) shall not apply to -

"(A) any rule, regulation, or order issued under any Federal law, as such rule, regulation, or order (i) was in effect on September 21, 1983, or (ii) may be amended after such date if the rule, regulation, or order as amended is not inconsistent with the express provisions of this title; and

"(B) any rule regulation, or order under title 17, U.S. Code.

## "COORDINATION OF FEDERAL, STATE, AND LOCAL AUTHORITY

47.USC 555

"SEC.636...

"(c) Except as provided in section 637, any provision of law of any State, political subdivision, or agency thereof, or franchising authority, or any provision of any franchise granted by such authority, which is inconsistent with the Act shall be deemed to be preempted and superseded...

## "EXISTING FRANCHISES

47.USC 556

"SEC.637. (a) The provisions of -

"(1) any franchising in effect on the effective date of this title, including any such provisions which relate to the designation, use, or support for the use of channel capacity for public, educational, or governmental use, and

"(2) any law of any State (as defined in Section 3(v)) in effect on the date of enactment of this section, or any regulation promulgated pursuant to such law, which relates to such designation, use or support of such channel capacity; shall remain in effect, subject to the express provisions of this title, and for not longer than the then current remaining term of the franchise as such franchise existed on such effective date.

## "CRIMINAL AND CIVIL LIABILITY

47.USC 558

"SEC.638. Nothing in this title shall be deemed to affect the criminal or civil liability of cable programmers or cable operators pursuant to the Federal, State, or local law of libel, slander, obscenity, incitement, invasions of privacy, false or misleading advertising or other similar laws, except that cable operators shall not incur any such liability for any program carried on any channel designated for public, educational, governmental use, or on any other channel obtained under section 612 or under similar arrangements.

## "OBSCENE PROGRAMMING

47.USC 559

"SEC.639. Whoever transmits over any cable system any matter which is obscene or otherwise unprotected by the Constitution of the U.S. shall be fined not more than \$10,000 or imprisoned not more than 2 years, or both.